

**CAAV 2011 NATIONAL EXAMINATIONS
WRITTEN BOARD'S REPORT ON QUESTIONS**

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**PAPER 1, QUESTION 1
Multi-Topic**

Your principal has recently been instructed to act as managing agent to Lord S who has inherited an agricultural estate from his late uncle. In preparation for a meeting with Lord S you have been asked to prepare notes on 5 out of the following 8 specific issues raised by Lord S.

Please answer only five parts of this question. Each carries 4 marks.

a. Single Payment Scheme

Entitlements to the Single Payment Scheme (SPS) relating to Home Farm are still held in his late uncle's name – what does Lord S need to do in readiness to claim on these next May – Lord S plans to farm Home Farm himself and all the land is registered on the Rural Land Register. **(4 marks)**

b. Landlord/Tenant (Agricultural Holdings Act)

Answer only one of the parts to the question (stating which part)

- (i) **England/Wales** - One of the let farms with a house, range of traditional brick buildings and land is in a poor state of condition and repair. It is let on an AHA 1986 tenancy with repairing terms per S11473.

What does this mean? Outline what Lord S's principal potential liabilities are. **(4 marks)**

- (ii) **Scotland** - One of the let farms with a house, range of traditional brick buildings and land is in a poor state of condition and repair. It is let on an AHA 1991 tenancy.

What are the basic responsibilities of the parties? **(4 marks)**

c. Landlord/Tenant (Agricultural Holdings Act)

Please state if you answering under the 1986 Act (England/Wales) or the 1991 Act (Scotland)

One of the farms has been let since February 1986 but there is no written tenancy agreement.

What can Lord S do to remedy this and on what terms can he insist? **(4 marks)**

d. Professional Practice

Your principal thinks that the firm's terms of business require updating prior to agreeing them with Lord S. He is particularly concerned about the lack of a Complaints Handling Procedure (CHP).

What should the firm's CHP include? **(4 marks)**

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e. **Taxation**

Lord S is concerned as to whether or not he has any liability under Stamp Duty Land Tax as a result of inheriting the estate.

Advise Lord S when is it payable, by whom, and at what rates, whatever the tenure. **(4 marks)**

f. **Compulsory Purchase**

A new bypass around the local town opened 12 months ago and passes close to one of the estate farmhouses that is currently vacant but no estate land was required for the road scheme. Lord S's uncle didn't claim any compensation for the road scheme in respect of this house.

Lord S wonders if he still can make a claim. Please advise. **(4 marks)**

g. **Renewable Energy**

Lord S is worried about the cost of heating the Manor House on the estate and has heard about the Renewable Heat Incentive.

What is this and could it help him? **(4 marks)**

h. **Landlord/Tenant**

Lord S is considering letting the parkland on the Estate on an FBT (LDT in Scotland) to a local farmer and is wondering what to do about rent reviews.

Outline the relevant legislation and what options he has? **(4 marks)**

No of Candidates answer question: 156

No of Candidates achieving pass mark (65%): 64

Highest Mark: 90%

Lowest Mark: 19%

Average Mark: 58.6%

Pass Rate: 41%

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Examiner's Report

This question sought to examine candidates on a wide range of subjects – 8 in all from which they had to choose five to answer. The scenario was a simple one and the eight subject areas were clearly highlighted in bold headings within the question. Each subject carried an equal amount of marks – 4 each making a total of 20 marks (5 x 4)

The question proved to be very popular with candidates with 156 of the 163 candidates sitting written board choosing to answer it and the overall results were as follows:

- The average mark was	11.72/20 or 58.6/100
- No of candidates with 13+	64 (41%)
- Highest mark	18/20 or 90/100
- Lowest mark	3.8/20 or 19/100

The eight subject areas were:

- a) Single Payment Scheme
- b) Landlord and Tenant (Agricultural Holdings Act)
- c) Landlord and Tenant (Agricultural Holdings Act)
- d) Professional Practice
- e) Taxation
- f) Compulsory Purchase
- g) Renewable Energy
- h) Landlord & Tenant (Agricultural Holdings Act 1995)

The following schedules the number of candidates that attempted each subject area and the average mark for that subject:

<u>Subject</u>	<u>No. of Candidates</u>	<u>Average Score</u>
a)	119	13
b)	130	13.3
c)	116	10.7
d)	101	11.5
e)	46	12.4
f)	62	10.9
g)	57	10.2
h)	146	11.1

The three most popular subject areas answered were:

- h) 1995 Act Landlord and Tenant – rent reviews
- b) Agricultural Holdings Act Landlord and Tenant – SI 1473
- a) Single Payment Scheme

The three most successful answered subject areas were:

- b) Agricultural Holdings Act Landlord and Tenant – SI 1473
- a) Single Payment Scheme
- c) Taxation – SDLT

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The three least popular questions were:

- e) Taxation – SDLT
- g) Renewables – RHI
- f) Compulsory Purchase – Part 1 Claims.

The three least successfully answered questions were:

- g) Renewables – RHI
- h) 1995 Act Landlord and Tenant – Rent Reviews
- c) Agricultural Holdings Act Landlord and Tenant S6 & Sch 1

Generally all questions were attempted and none avoided.

The examiners were disappointed to note that despite being offered the choice of answering only 5 out of the 8 subjects there were still only 3 subject areas that scored an average mark that was a pass.

Turning now from general comments to each of the individual subject areas examiners comments and observations are as follows:

- a) Single Payment Scheme
A popular question that was generally answered satisfactorily with many candidates demonstrating the level of knowledge required hence the average mark being a pass.
- b) Landlord and Tenant – AHA SI 1473
Another popular choice that was generally answered satisfactorily.
- c) Landlord and Tenant – AHA – S6 & Sch 1
The fourth most popular question that was answered in the main in an unsatisfactory manner. Candidates failed to demonstrate sufficient knowledge although knew that a Section 6 notice should be served. The details of Schedule 1 were lacking in many instances and the reference to arbitration was rarely mentioned.
- d) Professional Practice - CHP
Again a popular choice that was not fully answered. Failure to identify the regulatory basis for the requirement for a CHP; the need for CHP to be mentioned in the Terms of Business and a failure to recognise the need to notify PII insurers within the CHP were common failings.
- e) Taxation – SDLT
Those who tackled this question answered it either very well or poorly. Many candidates failed to advise Lord S whether he had a liability to pay SDLT and many candidates advised on other taxes – particularly IHT which was not required. Again the poor answers lacked detail and failed to demonstrate competence.
- f) Compulsory Purchase – Part 1
Again those who answered this question either answered it well or poorly. Many candidates failed to mention the correct statutory basis of the claim, the time scales or the basis of valuation correctly and also failed to mention costs. The poor answers lacked depth of knowledge or competence.

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- g) Renewables – RHI
Examiners were surprised that more candidates didn't answer this question and that the standard of answers was weak given the fact that Renewables are very much on everyone's agenda at present. Generally candidates failed to demonstrate a sufficient level of knowledge of the subject with very few really good answers.
- h) Landlord and Tenant – 1995 Act Rent Reviews
This subject was popular but many of the answers were disappointing. There was a failure to demonstrate knowledge of S9, S10 or S13 with many candidates confusing the 3 sections with each other. Many scripts lacked detail and only talked generally about the issue of rent reviews.

In conclusion examiners were disappointed that the greater choice of syllabus that this question offered was met in many instances by answers that lacked detail and did not demonstrate competence. The frequent lack of question plans was also noted.

This was reflected in an overall average mark that was short of the 65 required to pass.

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**PAPER 1 QUESTION 2
Preparation of Letting Details**

You have been instructed by the owner of an estate to let a 500 acre farm which is to become vacant on 1st September 2012.

Prepare a set of letting particulars for the farm assuming the following:

- The term of the proposed tenancy is 20 years
- There is a good farmhouse, one cottage, adequate buildings for a mixed arable/stock farm, although the principal general purpose building is a tenant's fixture

Candidates should set out the Letting Particulars for the farm on the basis of the above assumptions and should make their own reasonable assumptions on any other matters.

(20 marks)

No of Candidates answer question: 131

No of Candidates achieving pass mark (65%): 60

Highest Mark: 93%

Lowest Mark: 29%

Average Mark: 60.1%

Pass Rate: 46%

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Examiner's Report

Comment

Generally the question was answered reasonably but many answers missed out a number of key issues. Some candidates failed to read the question and set out a list of things they would include in a set of particulars, but failed to actually draft the particulars. This lost marks as marks were awarded on the basis of firstly, the inclusion of a series of key items such as a front page covering the principal facts, mention of the location, description, method of letting, type of tenancy, compensation for improvements and fixtures, procedure for application, information required from prospective etc., etc.. Secondly, marks were awarded for the overall layout of the particulars, the order of the relevant matters and the appropriate level of detail under each. For example spending too much time giving the exact dimensions of every room in the cottage at the expense of even mentioning the terms of the proposed tenancy was unwise.

Some candidates had clearly prepared a set of particulars in the past and set out their answers very well, providing concise descriptions under logically arranged headings in order that the reader or prospective applicant for the tenancy would be able to glean all the main information he/she required about the holding quickly and easily.

Other candidates tended to simply put down chunks of relevant information in no particular order and without any regular structure, which made it very difficult for the reader to get a clear overall impression of the farm.

Some candidates were clearly short of time, perhaps after spending too long on Question 1, but where they had taken time to prepare a plan of their answer but hadn't completed the answer itself, marks were available as this was a question in which a lot of marks could be scored simply by mentioning a series of headings, without necessarily requiring extensive detail.

Those candidates who clearly planned out their answer in advance tended to score more highly.

This was a question where it was assumed that every candidate was likely to have drafted or at least read or seen a set of letting particulars at some point in their careers so far, but even if they hadn't it was considered relatively straightforward to set out the type of information that would be required to let a farm. No detailed specialist knowledge was required; rather a general knowledge of the basics of the terms of a farm lease and an ability to consider how to communicate information about a property. The question therefore offered the opportunity to score highly without detailed or technical explanations and it was disappointing that less than half the candidates achieved the 65% pass mark.

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**PAPER 1, QUESTION 3
Notice to Quit – Part Possession**

You act for landlord of an agricultural estate, the principal farm on which is a 300 acre fully equipped holding let on a full Agricultural Holdings Act Tenancy with a 2nd February term date. Your client obtained planning permission in October 2011 for residential development on 20 acres of bare land on the holding. The tenancy agreement contains a clause which allows the landlord to serve a notice to resume possession on any part of the farm for non-agricultural development – but is otherwise silent.

Your client wishes to sell the 20 acres on the open market with vacant possession as soon as possible. Prepare notes in respect of the following specific questions assuming your advice is given as at today's date.

- a. Briefly explain how the landlord can obtain vacant possession under statutory procedures and by when he will be able to do so. **(5 marks)**
- b. Are there any steps that the tenant can take to resist his landlord's attempt to get vacant possession and are there any other options available to the tenant? **(5 marks)**
- c. Explain how the situation would differ if there was no part possession clause in the tenancy agreement and why. **(4 marks)**
- d. If, instead, there was no planning permission but the landlord was seeking possession of the entire holding on the ground of Greater Hardship, explain how the landlord can obtain vacant possession and how the tenant can resist the landlord's attempts to do so. **(4 marks)**
- e. What would happen in such a greater hardship application if the landlord was held to be acting unreasonably. **(2 marks)**

No of Candidates answering question: 39

No of Candidates achieving pass mark (65%): 11

Highest Mark: 93%

Lowest Mark: 25%

Average Mark: 55%

Pass Rate: 28%

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Examiner's Report

For anyone who has dealt with the simplest of 1986 Act tenancies, this was a very straight forward question with no trick elements. The scenario set was very straight forward and the candidates should have been able to understand the fundamental issues to be able to advise a client. They should equally know what the procedure was if the notice in either scenario is challenged. This was not an opportunity just to test candidates on precise procedures under the 1986 Act but, as candidates who have taken the time to understand this aspect of the 1986 Act will fully appreciate, it is important to be able to advise their clients what both parties can and cannot do, particularly if they have become more used to the ability of the Landlord to serve an unconditional notice to quit on a farm business tenancy.

There was a range in quality of answers from those who gained 25% of the mark to those who gained 93%. Over half the successful candidates scored 77% or above. It was easy to gain marks for giving relatively little information but you had to get it right – even at this stage in your career, candidates should be aware of the implications for their firm's PII i.e. negligence! A lot of candidates muddled up procedures in the two different routes i.e. whether it is an application for an arbitrator or to Agricultural Land Tribunal. They also did not know how, who and when to make the application which was frustrating as it is straight forward on a question such as this. However what was very disappointing was those candidates who simply did not grasp the fundamental issues which are relevant in a tenancy dealing with part possession and notice periods. Some candidates got it so very wrong – negligently so.

The significant facts were that this was a 1986 Act tenancy; planning permission had been granted recently for an obviously non-agricultural use on part of the holding. The tenancy did not have a clause allowing short notice to be served. The question did state that the client wished to sell the land i.e. not develop it themselves.

A - Procedure to obtain possession.

Given the facts of the question this directly leads the candidate to advising serving a notice under Schedule 3 of the 1986 Act under Case B i.e. requirement of land for a non-agricultural purpose where planning consent had been granted. Written notice should be served on the tenant clearly stating the area required and the reason for the notice to quit. This should be accompanied by a plan showing the area of land taken and it is usual for a copy of the planning consent to also be attached to the notice. Some candidates believed it was relevant to serve the Case B notice within a certain timescale of the granting of planning permission which is not the case albeit that the planning permission still needs to be valid. What was important was that the notice to quit area should be all or a smaller part of the planning permission area. Some candidates displayed their awareness of the need for all the area to be used for the non-agricultural purpose and not to include areas for example, grazing of horses which is still agricultural but the question did clearly state that planning permission had been granted for a residential development.

As the tenancy does not include a short notice provision, the 1986 Act requires all notices to quit to give a minimum twelve months notice. Due to the term date, this would have resulted in vacant possession on 2nd February 2013.

Those candidates who decided it was appropriate to answer part of this question by reference to Section 31, which the best of the worst at least referred to the building of farm workers cottages but others waffled on about planting trees, etc not only wasted valuable time but showed a clear misunderstanding of the Act and the practicalities.

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Therefore, when the examiner was looking to find extra marks to help the candidate they certainly did not score any. Equally candidates who decided that a notice to quit on the whole holding would work (even if incorporating a surrender and re-grant!) again clearly demonstrated both misunderstanding of the Act and an uninformed approach.

B - The tenant's steps to resist the landlord's notice

Again this was a very straight forward answer if you know the procedure. Although the Case B is one of the "seven deadly sins" i.e. an incontestable notice to quit in that the notice cannot be referred to the Agricultural Land Tribunal, the tenant can still challenge the validity of the notice. The tenant must within one month of receipt of the notice serve a counter notice contesting the validity of the Case B Notice to Quit. He must then apply within three months of that counter notice for the appointment of an arbitrator to determine the validity. The arbitrator does not determine whether it is a fair notice, whether a reasonably landlord would give possession or take into account any impact the notice may have on the tenant's business. The Arbitrator will consider whether the evidence given to him on the landlord's notice is valid on the usual grounds i.e. correctly addressed, correctly referring to the holding; whether the area shown in the notice to quit is covered by the planning permission; that planning permission on the whole area of the notice to quit is for non-agricultural use and whether the landlord is showing a bona fide intention to develop by himself or a third party. Some candidates made reference to this but surprisingly no candidates made comment on the fact that the client wished to sell the 20 acres and whether in fact he would find a purchaser, or if he did whether that purchaser would be able to develop the land in the current economic climate i.e. how immediate was the intention to develop against the need to serve 12 months notice. Candidates did not lose marks for not making this point but again it would have been another mark to pick up when the examiner was reviewing the whole answer to find any extra marks available.

C - Situation where no part possession clause.

The question was looking for the candidates to recognise the significance of no part possession clause and the ability to serve a general "contestable" notice. Approximately half the candidates appreciated the significance i.e. a Case B Notice where planning consent was only granted on 20 acres would not be sufficient to obtain possession where there was no specific written clause allowing part possession. However, a surprising number of candidates did not understand the significance and several actually stated that the landlord could not use a Case B notice where there was a part possession clause and then advised using it where there was no part possession clause! Such a lack of understanding of how a Case B Notice to Quit works is staggering.

Quite a few candidates did refer to a fact that a Section 31 notice could be used in certain circumstances to regain repossession of part where there is no part repossession clause but those candidates who advised using that notice in this question, where the question clearly stated that the use was for residential development, demonstrated a clear lack of understanding of the situation. Inevitably they failed to show how a landlord would be successful with a Section 31 notice – I doubt a landlord would therefore be pleased to pay for such advice!

The question was looking for the candidates to recognise the limited ability of the landlord to serve a successful general "contestable" notice. This required the candidates to know the limited grounds on which such a notice could be served i.e. not any of the seven deadly sins, and that it would be contestable. Candidates seemed to pick at random any case letter from the seven deadly sins be it Case D, E, G, H or F and used this as an "excuse" to serve a "contestable" notice to quit, not even realising

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they had picked one of incontestable grounds and then tried to use this as a contestable notice! In reality not only did they waste time but they tried to overcomplicate their answer.

Candidates were also expected to refer to the severance of the reversion route whereby the area required is sold with tenancy in place to the developer who then serves a Case B Notice to Quit on the whole of the holding they own which is then successful under the Act. However the question had said the client wished to sell with vacant possession and this therefore would lead the candidate to refer to the fact that the landlord could seek to negotiate a surrender with the tenant, paying the normal statutory compensation plus some further incentive. This route would potentially enable the landlord to regain possession earlier than February 2013 which would make it a more attractive sale in the current difficult market place.

Where it was felt candidates showed the most lack of common sense (combined with their overriding desire to put down on paper everything they knew about notices to quit) was where they referred to the tenant's ability on receipt of a Section 31 notice or a notice to quit following severance of the reversion, to enlarge it into a notice to quit for the whole. This questions those candidates' ability to apply the law to a practical situation as why, in the current climate of high land capital values and high FBT rents, would a tenant on a 300 acre Agricultural Holdings Act tenancy take the "opportunity" to quit the whole holding? Candidates seemed to think that the compensation they would receive would be a "large sum" when in reality it would represent little more than 12-18 months rent on the same holding on a farm business tenancy – if one was available to rent. This advice without any further explanation as to why the tenant would in this particular circumstance follow this route did lose any opportunity to gain any extra marks as it was such questionable advice to give, if not negligent.

Sensible candidates did recognise the opportunity for the landlord to negotiate with the tenant for the surrender of the 20 acres in return for the normal statutory compensation plus a further incentive. The advantage to the landlord was avoiding having to follow the severance and reversion route. However, candidates demonstrated naivety where they went beyond this and suggested that the tenant would agree to a surrender and re-grant of the whole tenancy excluding the 20 acres without making any other reference as to why a tenant may do this. This indicated a misunderstanding of the application of surrender and re-grant which is in fact a complicated matter and involves issues beyond the level of which the candidates would be examined in a Case B notice question.

D - Grounds for Greater Hardship

What is required is for the landlord to serve a general notice to quit requiring possession of the whole holding. In fact the notice does not need to state a ground for it to be a valid notice to quit but the tenant must serve a counter notice in any event to protect his position – a point not picked up by any candidate but again no points were lost for this. However in this question, having served his notice to quit and the tenant served the counter notice, the landlord has applied to the ALT for consent for the Notice to quit to operate on the ground that Greater Hardship would be suffered if the consent to the notice to quit was withheld rather than allowed. It is the landlord who must apply to the Agricultural Land Tribunal within one month of the counter notice. The tenant wishing to contest the application must respond to the ALT within one month of service of a copy of the landlord's application refuting the landlord's request and showing why the tenant would suffer greater hardship etc.

E – Fair and Reasonable Test

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However even if the ALT agrees with the landlord's ground of Greater Hardship, if the Tribunal do not consider that a fair and reasonable landlord would still demand possession, then the landlord's request for his notice to quit to operate will be denied and the tenant will remain in possession. This is an important consideration for the landlord even if he feels that notice to quit is justified, albeit it is rare for the landlord to fail such a test but he must be prepared for it.

The ALT could award that the tenant's costs are paid by the landlord.

General advice

This was definitely an answer where an answer plan would have helped the candidates by leading them through the thought process as to which bits of the answer to put at which part of the question. The Examiner did mark answers put into the wrong section but candidates did not help themselves if their answers were not logically set out. This answer was asked for in note format but even such notes should be logical and act as a sensible help in advising a client at a meeting.

Finally there have been several references above to 'floating marks'. This question is broken down into marks to show where the emphasis should be i.e. Question E only required a two mark answer whereas question D required more depth. That being said this is definitely a question where the Examiner took an overall approach to the answer in an attempt to find the candidates whatever marks could be found to give them a higher total. Unfortunately, those candidates who did not pass often demonstrated a very poor understanding of the practical application of a 1986 Act in a question based on a day to day scenario that was by no means complicated and had no trick elements.

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**PAPER 2, QUESTION 1
Residential Tenancies**

Your client, John Doe, has recently purchased Manor Farm which includes the following two residential properties:

- Holly Cottage – occupied by the farm manager, Bill Smith who has lived in the property as a farm employee for 35 years
- Mistletoe Cottage – which is currently vacant

Since purchasing the farm, the Farm Manager, Bill Smith, has decided to retire but doesn't want to vacate Holly Cottage.

Mr Doe is also now in the process of employing Stephen George as a new farm manager and plans to house him in the vacant Mistletoe Cottage but is worried about granting security of tenure to Mr George

Prepare a letter to your client explaining the following: -

- a) In respect of Bill Smith's existing tenancy:
- i) The type of tenancy Bill Smith has. **(2 marks)**
 - ii) The process and timetable for reviewing the rent and what happens if the rent change is not agreed. **(4 marks)**
 - iii) The basis on which Bill Smith's rent is assessed. **(4 marks)**
- b) In respect of Stephen George's new tenancy: -
- i) The type of tenancy you would recommend and why. **(2 marks)**
 - ii) What must the landlord do to set up that tenancy? **(2 marks)**
 - iii) Outline (in bullet point format) the main terms of the tenancy. **(6 marks)**

No of Candidates answer question: 107

No of Candidates achieving pass mark (65%): 50

Highest Mark: 88%

Lowest Mark: 14%

Average Mark: 61.6%

Pass Rate: 47%

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Examiner's Report

The question was answered by well over 100 candidates. It dealt with the Rent Agriculture Act 1976 and its procedures and with Assured Shorthold Tenancies in relation to agricultural worker's dwellings, the appropriate procedures and the likely main terms of a tenancy agreement put in place as at today's date.

Generally, candidates recognised that the first part of the question dealt with the Rent Agriculture Act 1976 but, having done so, did not then fully understand the procedure for having a rent registered and the matters to be taken into account as part of that procedure and the matters to be disregarded.

Few understood why rents were lower than full market rents and the effective capping placed on rents both on first registration and subsequent reviews. This was disappointing as the information is generally available without detailed research.

With regard to the second part of the question, virtually every candidate appreciated that the new tenancy should be an Assured Shorthold Tenancy and that this would overcome problems with long term security issues. Many did not mention that to prevent security of tenure issues a notice procedure would have to be put in place prior to the Assured Shorthold Tenancy being granted.

Many did not mention the Tenant's Deposit Scheme and that a minimum rent of £250 per annum would have to be charged.

Most candidates had a reasonable "stab" at listing out the main terms of an Assured Shorthold Tenancy Agreement and, as a result, scored well on this section of the question.

Approximately half the candidates who answered this question obtained the pass mark. It was apparent however there were still many who had very basic knowledge only, and not the level of knowledge required for an individual to be tagged a Fellow of the Association of Agricultural Valuers.

That knowledge is, however, readily available and does need to be memorised for agricultural surveyors to effectively and appropriately carry out their day to day work.

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**PAPER 2, QUESTION 2
Diversification – Landlord & Tenant Act 1954**

Your client, James Johnson, owns Pound Farm. The Farm comprises a large range of traditional farm buildings, a steel portal frame hay barn and 100 acres of land. Mr. Johnson has been approached by Stephen Hill, a neighbouring farmer, who would like to rent the entire farm through his company, Hill Farms Limited. Mr. Hill is looking to expand his equestrian enterprise. His proposal involves improvements to the buildings at Pound Farm plus the creation of additional facilities. This may include over 50 stables for livery purposes.

Your client is interested in Mr Hill's proposal but is unsure as to how the arrangement should be formalised and documented.

Prepare a letter to your client, setting out the following: -

- a. The different types of letting arrangements that are available for the use of land and buildings for equestrian purposes. For this specific situation, make a recommendation with reasons as to which option is most suitable. **(8 marks)**
- b. The Heads of Terms (in bullet point format) for your recommended agreement. **(8 marks)**
- c. The tax and planning implications for both parties **(4 marks)**

No of Candidates answer question: 117

No of Candidates achieving pass mark (65%): 48

Highest Mark: 87%

Lowest Mark: 23%

Average Mark: 59.7%

Pass Rate: 41%

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EXAMINER'S REPORT

The question concerned the letting of a small farm to a neighbour for use as an equestrian facility. The aim was to test candidates' knowledge of leases under the Landlord & Tenant Act 1954 and the parameters of when a Farm Business Tenancy can be used. The question also required the production of Heads of Terms and analysis of the tax implications of the proposals.

Generally, Parts A and B were answered reasonably well, however a lot of candidates answered Part C poorly.

The question asked for the answered to be in letter format. A number of candidates failed to do this.

Part A – Type of Agreement with Recommendations

The good answers defined the various alternatives with the pros and cons for each alternative. They also knew what is defined as agriculture and considered the use of a common law lease as well as a licence. A number of candidates recommended the use of a Farm Business Tenancy on the basis that a Section 1(4) Notice would suffice even though it was clear from the outset that the use would be non-agricultural.

Part B – Heads of Terms

Generally this was one of the better answered parts of the question and was a reasonably easy part to pick up marks. A surprising number of candidates missed the basics such as rent reviews and repairs and in some cases even the parties to the agreement. Whilst a number of candidates had picked up in Part A opting out of the security provisions of the Landlord & Tenant Act 1954, they then failed to include this within the heads of terms.

Part C

This was the most poorly answered part of the question. Most candidates seemed to cover Agricultural Property Relief and Business Property Relief. The good candidates identified that for Business Property Relief this farm would have to be considered in the overall context of the landowner's other assets.

A lot of candidates failed to mention income tax and a number did not consider rates or stamp duty land tax.

The planning element of the question was reasonably well answered although there were a number of candidates who failed to address planning at all. The examiner's presumption is that potentially these candidates failed to read the question properly.

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**PAPER 2, QUESTION 3
Capital Gains Tax**

You have been asked to advise a farmer on the Capital Gains Tax implications for him of selling a barn for which he has received planning consent for conversion to residential use.

The relevant facts are as follows:

- He owns a 500 acre farm which he purchased in 1975. The title is in his own name and not in a company. He farms as a sole trader.
- The barn would have been valued at £2,000 in March 1982 and is now valued with planning consent at £300,000. Until now it has been used only for agricultural purposes.
- He proposes to sell the barn unconverted but with the benefit of planning consent.
- He proposes to use the proceeds of the barn sale to repay borrowing.
- After selling the barn, he proposes to carry on his farming business exactly as before.
- He is married.
- With other income, he is a higher rate income tax payer

Set out your advice to him on the likely CGT implications of his proposed sale on the following basis:

- a. What are the **basic** rules on Capital Gains Tax that apply to such a sale
(8 marks)
- b. Calculate the tax he is likely to have to pay in the above scenario assuming current tax rates and standard tax free allowances
(6 marks)
- c. There are other reliefs available for CGT. Give brief notes on all reliefs and discuss what changes to the above circumstances your client could contemplate in order to qualify for some of these reliefs?
(6 marks)

No of Candidates answer question: 39

No of Candidates achieving pass mark (65%): 21

Highest Mark: 90%

Lowest Mark: 27%

Average Mark: 63.8%

Pass Rate: 54%

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EXAMINER'S REPORT

This question sought to examine the candidates' understanding of basic Capital Gains Tax knowledge as it applied to the sale of a barn with planning permission for residential development. It was a part disposal of an in-hand farmer's asset. Whilst it is understood that candidates are not tax experts, this is just the sort of information an agricultural valuer is likely to be asked in his or her daily work.

In general the question was answered well with a pass rate of 54% and with the highest mark being an encouraging 90%. There was a large spread of marks, however, with the lowest being a disappointing 27%.

The question was in three parts.

a. Firstly the examiners were looking to some basic rules of Capital Gains Tax. In essence these are that:

- CGT is a tax on the increase in the value of certain assets which are sold or gifted during a person's lifetime. The gain is calculated on the change in value from the date of acquisition (or March 31 1982 if later than the acquisition date). (6%)
- The gain is calculated after addition of of acquisition costs, sales costs (ie planning costs/fees, estate agent's fees, legal charges, enhancement costs and costs of defending title). (6%)
- The first £10,600 of the gain is tax free under the annual exemption per person. Husband and wife have separate allowances. (4%)
- The flat rate of tax is 28%. If the client is a basic rate taxpayer, in so far as the calculated gain is covered by the remainder of his or her basic rate band that will be taxed at 18%. (6%)
- It applies to individuals (including partners and trustees). Companies have a similar regime under Corporation Tax. (4%)
- Indexation and taper relief have been abolished for personal gains in 2008 and replaced by entrepreneur's relief. (6%)
- Capital losses can be set against capital gains in the same year or carried forward to set against gains for the future. (4%)
- There is no CGT on lifetime gifts between spouses (or civil partners). (2%)
- The gain on the sale of the principal private residence is exempt.

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b. Secondly the examiners were looking for a calculation of the likely tax to be paid on the sale of the barn. This should have looked something like this:

Expected sale value	£300,000	
Less sale costs	<u>£5,000</u>	
		£295,000
Value in March 1982	£2,000	
Cost of obtaining planning permission	<u>£10,000</u>	
Total deductions		-£12,000
Less personal allowance		-£10,600
Taxable gain		£272,000
Higher rate taxpayer, chargeable at 28%		28%
Tax charge - before reliefs		£76,272

Maximum mark if all the elements above were shown in the answer (30%)

c. Thirdly, the examiners were looking for other reliefs from CGT and what changes to the given circumstances would allow the reliefs to be available.

The following were expected to score full marks.

- **Transfer between spouses.** There is no CGT on lifetime gifts between spouses (or civil partners). The client could transfer an interest in the barn to his wife. She would take over his 1982 value (so if she were given half, that would be £1,000) but be able to use her £10,600 personal allowance (unless she has sufficient other gains to absorb this) and, if not a higher rate taxpayer have some benefit of the 18% rate. (8%)

- **Roll-over Relief.** If trade assets, such as buildings or land are sold at a gain and the proceeds from that sale are re-invested in other qualifying trade assets e.g land, then that gain can be 'rolled over' ie the tax on the gain does not become due until the asset re-invested in is sold. Roll-over must be between 12 months and 3 years after the sale of the original property. This is a deferral tax with the original base value being carried forward. If the barn was in business use it might be a qualifying asset but repaying debt is not a qualifying re-use of the money. (6%)

- **Entrepreneurs' Relief.** Where there is a cessation or disposal of all or part of a business (so not just an asset sale) then this relief offers a much lower - 10% - rate of tax on the first £10m of the taxpayer's lifetime gains. The farmer could look at trying to dispose of part of the business (not just the asset) so that he qualified for this relief in view of the value of it. He would have to set up a business associated with the barn – say self-catering, wedding venue or farm shop – for it to be treated as a distinct part of his business. (8%)

- **Holdover Relief.** Assets that are gifted and would qualify for APR and BPR (in an IHT context) can benefit from this relief – which then works like roll-over relief. (4%)

- **Enterprise Investment Scheme.** Tax on gains can also be postponed by re-investing gains into qualifying assets under this initiative. (4%)

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The majority of candidates tackled part (a) well but several missed the important 1982 base date and many omitted to mention that costs could be deducted from the calculation. A number failed to mention the tax-free exemption, lifetime gifts and PPR. It was disappointing to note that many candidates failed to appreciate that indexation and taper relief had been abolished in favour of entrepreneur's relief. Having said that it was heartening that a larger proportion of candidates passed this question than any other, which means that examinees have been putting in important revision time in taxation. The highest mark for the two top performing candidates for this section was 32% out of a maximum 40%.

Generally candidates were able to make a good attempt at the calculation (b) with most components of it completed in some form. The lowest mark, however, was 14% which was disappointing.

The last part of the question (c) was not answered particularly well with the lowest marks being 8% out of a maximum 30%. Transfers between spouses, Holdover Relief and the Enterprise Investment Scheme being omitted by many.

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**QUESTION 2, PAPER 4
Planning – Agricultural Dwelling**

Fred Gummow is a local businessman who runs a large and successful company in the area. He has always been interested in farming and in March 2006 purchased a 300 acre block of pastureland. In March 2007 Mr Gummow put up a large range of modern livestock buildings and in September 2007 stocked the holding with 170 single-suckler cows. The herd is part autumn and part spring calving with all cattle finished on the holding.

In 2008 Mr Gummow employed a full time stockman and obtained temporary planning consent for a mobile home at the farm. He would now like to apply for a permanent dwelling

Prepare a letter to Mr Gummow, ahead of a meeting with him at the farm, explaining the following:

- a) The relevant legislation and policy framework for such a development. **(3 marks)**

- b) The criteria against which a planning application for a **permanent** agricultural dwelling is assessed. **(10 marks)**

- c) The criteria against which a planning application for **temporary** accommodation is assessed. **(4 marks)**

- d) The documentation that will need to be submitted with Mr Gummow's application **(3 marks).**

No of Candidates answer question: 76

No of Candidates achieving pass mark (65%): 30

Highest Mark: 85%

Lowest Mark: 29.5%

Average Mark: 61.4%

Pass Rate: 39%

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EXAMINER'S REPORT

This question was designed to test candidates' knowledge of the planning system with particular reference to agricultural dwellings. Whilst a relatively narrow area of planning work in itself, it was felt that this is an area of work that the majority of agricultural valuers undertake and that valuers at the beginning of their career are often involved with. Although a scenario was set, there was little requirement within the question to apply the answer to that scenario. What was required was a straightforward explanation of the planning process and the rules behind it. The question did ask for the information to be presented in a letter format. All candidates with the exception of two did so. Most letters were logically laid out and well formatted.

Part a) of the question specifically asked for the policy and **legislative** framework governing applications for agricultural dwellings. The policy element of the question was very well answered with all candidates being aware of PP7/Annex A and with a good number mentioning other relevant PPSs. Most, but not all, candidates also mentioned local plans, LDFs, etc with the well informed including the draft National Planning Policy Framework. Where candidates fell down was in looking at the legislative framework and here all that was required was mention of the Town & Country Planning Act 1990 and Section 55 (definition of "Development"). Too many candidates made no reference to any legislative framework whatsoever and only 2 were aware of Section 55 which underpins every application for an agricultural dwelling, farm building, conversion of rural buildings, construction of a wind turbine, etc.

Part b) carried 50% of the marks for the whole question and really required an explanation of how an application for an agricultural dwelling would be assessed. This part of the question was relatively well answered with most candidates having a reasonable understanding of the assessment and the other factors planning officers take into account. The two most important criteria to note were, of course, the Functional and Financial tests which virtually every candidate included. The majority of candidates also provided a good explanation of what the two tests consisted of, with the better scoring candidates also detailing the other factors take into account, such as security, availability of other dwellings, previous sale of dwellings, etc.

Part c) was designed to test candidates' knowledge and understanding of what happens when a dwelling is essential to support a new farming activity or where a new farming business is being established. The principal difference in this situation is that there is no existing enterprise or business on which to justify the application. In the absence of this information, PPS7, Annex A, requires applicants to demonstrate a firm intention and ability to develop the enterprise with construction of new farm buildings often a good indication of this. On the financial side, a business plan is needed to project the profitability and demonstrate the future viability of the business.

Too many candidates said that both the Functional and Financial tests would be assessed in the same way for as for a permanent dwelling but with less detail. This part of the question was poorly answered with only a small number of candidates really understanding the principal difference between applications for permanent and temporary dwellings, ie, showing evidence of intent and provision of business plans.

Part d) simply asked for a list of the documents to be included with a planning application. This was purely factual information and most candidates provided comprehensive lists. Virtually all candidates included scale drawings, Design & Access Statement, agricultural appraisal, financial records/business plan, etc. Surprisingly, a small number of candidates forgot the application form!

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**PAPER 2, QUESTION 5
Environmental Issues**

Bob Smith is a tenant under an Agricultural Holdings Act 1986 tenancy of a 100 hectare holding with a dairy herd of 120 head. The farm is in an NVZ. Bob wants to increase his milking herd to 250 head in the next two years which will involve adaptation of land and buildings.

On the holding there are 25 hectares of old low-lying meadows. The land is always too wet to fertilise or cultivate but Bob wants to drain the land and use it to grow maize and dispose of slurry.

Alteration of the buildings to house the cattle will involve extending a building put up in the 1960s by 400m². This will mean removing the asbestos side cladding and re-siting the diesel tank, also in place since the 1960s.

Before you go and see Bob prepare brief notes to cover:

- a. What assessment procedure should Bob Smith follow in seeking to plough up the old meadows? **(4 marks)**
- b. What are the implications of the farm lying in a NVZ for the expansion?
Calculations are not required **(7 marks)**
- c. How might Bob Smith get his landlord to provide the slurry storage? **(2 marks)**
- d. What should be considered in extending the building? **(7marks)**

No of Candidates answer question: 67

No of Candidates achieving pass mark (65%): 35

Highest Mark: 93%

Lowest Mark: 30%

Average Mark: 63.7%

Pass Rate: 52%

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EXAMINER'S REPORT

The question centred around an Agricultural Holdings Act tenant who wished to intensify the use of his dairy holding. The farm lay within an NVZ and there was some unproductive low-lying meadows.

The questions centred around the assessment for intensification of use on the low-lying meadow land, the practical implications for location within an NVZ for the expansion of the farm before moving onto the question of how the landlord might be forced to provide the slurry storage and the generic issues of extending a building containing asbestos and the re-siting of a diesel tank.

- a) *What assessment procedure should Bob Smith follow in seeking to plough up the old meadows? (4 marks).*

Average mark = 2.24

There were clearly a number of candidates who were well versed with the environmental impact assessment process. They commenced by setting out the regulations, to whom the application should be made, that it would be a screening decision and the timescale of past operations and the type of operations that could influence a decision. They then went on to give the timetable for a decision and what would happen if the screening decision indicated that a more detailed assessment would be required.

Those candidates who were not familiar with the environmental impact assessment regulations and its mechanisms mainly scored marks by questioning if the site was a SSSI, within an agri-environment scheme or constrained by some provision within the tenancy agreement.

- b) *What are the implications of the farm lying in an NVZ for the expansion? (7 marks)*

Average mark = 4.66

Candidates were asked not to provide calculations.

The NVZ regulations which come into force imminently have been widely publicised within the agricultural press. Many candidates identified the period of storage requirement for slurry, whole farm limits, kilos of nitrogen per hectare and the availability of a derogation. They also talked about Nmax field limits and that applications should not exceed crop requirement and closed periods of spreading for organic and inorganic fertilisers on arable and grassland. They also talked about the stand-off widths from ditches and other surface water and wells and boreholes and a nitrogen plan for each field together with the necessity to keep records and the type of records that would be kept.

Many talked in general terms about some or all of these items but the best gave figures and it was clear that a number had detailed experience in this area.

- c) *How might Bob Smith get his Landlord to provide slurry storage (2 marks)*

Average mark = 1

There were a number of candidates who clearly had little understanding of the provisions within the Agricultural Holdings Act 1986.

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The best candidates identified that the tenant might seek his landlord to provide fixed equipment required by Statute under Section 11 and the fall-back provision would be reference to the Agricultural Land Tribunal. Some went on to state that the landlord could then seek an increase in rent under Section 13.

Some candidates were distracted by the possibility of Bob Smith surrendering his existing Agricultural Holdings Act tenancy and taking a Farm Business Tenancy, with some suggesting a very short term.

- d) *What should be considered in extending the building? (7 marks)*
Average mark = 4.8

This is a wide target for candidates to aim at and the best mentioned many items. The question referred to the size of the building and many candidates demonstrated a full and thorough knowledge of the GPDO regulations and debated if consent could be sought under the prior notification provisions or if full planning consent was required. Whilst many clearly understood the provisions very well there were a number who assumed that just because the building was below 465 sq m it would automatically qualify for prior notification provisions.

The presence of the asbestos cladding, which would need to be removed, led many to talk about the provisions for this and the need to test the asbestos and appoint a suitably licensed contractor, the need to go to a licensed landfill site and there would need to be a full record of its appropriate disposal.

The question also referred to a diesel tank in place for many years which would need to be re-sited and this led to an explanation of the necessity for a double-bunded tank, appropriate distance from a water course, security to avoid damage by agricultural machinery and similar.

Many candidates also talked about if the building was to be funded by Bob Smith, the arrangement with his landlord as to whether this was going to be an improvement, conditional or unconditional or as a tenant's fixture.

Many also talked about finance, health and safety implications, working at height, practical arrangements for the separation of farm matters and building contractors, CDM regulations and if it was sensible to extend a building constructed in the 1960s or start afresh. They also talked about considering further expansion plans in the future.

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**PAPER 2, QUESTION 6
End of Tenancy Compensation**

Your tenant client is proposing to retire and give up his full Agricultural Holdings Act tenancy of Yew Tree Farm with 250 acres on 1st February 2012, having held it since 1975.

His Solicitor has suggested that he takes advice from you over claiming compensation for certain end of tenancy matters.

a) Prepare briefing notes to enable you to advise your client on the principles for the compensation basis and treatment of the following items (*values are not required*): -

- i) A 30m x 12.3m steel portal-framed building constructed by the tenant in 1999 with an unconditional landlord's written consent. **(4 marks)**
- ii) 30m x 20m of concrete yard – no consent, laid by the tenant in 2009; **(4 marks)**
- iii) A planning consent for a tenant's building obtained without landlord's consent but yet to be implemented or built. **(2 marks)**

b) **Answer either 1) or 2)**

1) **England/Wales** - How would the items numbered i), ii) and iii) in a) above be treated any differently if the tenancy of Yew Tree Farm was a fixed term Farm Business Tenancy commencing on 2nd February 1996 and terminating on the same date. Prepare further notes outlining your revised advice.

3 marks for item i), 4 marks for item ii), and 3 marks for item iii)

- 2) **Scotland**. The tenant has been pursuing two wind turbine projects with landlord's written consent:
- a. He has erected a 50kW turbine whose electricity is largely used in the farm
 - b. He has erected a 500kW turbine to generate electricity overwhelmingly for export off the farm.

In each case, can the tenant claim compensation? If so, on what legal basis and how would it be assessed? **(5 marks for each case)**

No of Candidates answer question: 83

No of Candidates achieving pass mark (65%): 28

Highest Mark: 83%

Lowest Mark: 16%

Average Mark: 55%

Pass Rate: 34%

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EXAMINER'S REPORT

This question was set to examine the candidate's ability to understand both the AHA 1986 and how this compares and contrasts with the results with that achieved under a Farm Business Tenancy. The three items; a steel portal framed building, concrete yard and a planning consent were in all probability quite normal items to be considered for compensation and the question asked that the solicitor required briefing notes to enable the candidate to advise their client on the principles for compensation, with a value not being required.

In general terms, most of the candidates indeed answered in the required format and the better candidates generally understood the differences between Tenant's improvements and Tenant's fixtures and how these might have been treated differently between the relevant Acts and Sections in each case. It appeared that the planning permission portion may have been considered by some candidates as a trick question and that they had assumed that in all probability, one answer would be positive and one negative, but this was not the case and this did lead to some slippage on marks.

Some of the poorer candidates clearly had a lack of knowledge in these matters and answers were supported by a lack of detail. The best candidates were able to also demonstrate that they understood the practicalities of how the compensation might work, particularly in relation to the concrete pad which in practical terms, would not be something the Tenant would wish to remove due to the fact that a) it would have little or no value and b) it would be expensive to remove. The normal position of using this as a bargaining tool with the landlord was only picked up by a few of the stronger candidates.

Critical points that might help candidates in the future include:-

1. Amazingly, several did not answer the question and simply used this as an opportunity to list out all of their knowledge base on the relevant Acts and Sections without actually coming up with an answer.
2. A number of candidates showed calculations for the compensation when it was specifically asked not to do so.
3. It was surprising to see a number of candidates refer to the concrete pad as a building in their comments.
4. One candidate managed to describe the virtues of residual manorial values and unexhausted manorial values in relation to the farm building.
5. Some of the papers were littered with unimportant and irrelevant information and whilst it was pleasant to read the fact that the candidates had this wealth of information, it did not endear themselves to the Examiner when it was irrelevant.
6. Some of the papers' presentation was simply awful.
7. The statistics were that 83 candidates answered the questions, 28 out of the candidates passed which is 34%, the highest mark was 83% and the lowest mark was 16%.