

2007 CAAV EXAMINATIONS
NATIONAL WRITTEN PAPERS
SAMPLE SUCCESSFUL ANSWERS

The following answers to questions from the 2007 examinations are some of the actual scripts which gained good marks.

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

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

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

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PAPER 1, QUESTION 1

Question

From the scenarios presented below, pick four out of five options and write **short notes** upon the methodology in carrying out a valuation of the assets. Include in your answers what statutory provisions, case law, guidance and/or similar points that may apply.

- a) Valuation of a 50 hectare grassland farm with a substantial house for the administration (probate) of a recently deceased client's estate.
- b) Valuation for stocktaking purposes of :-
 - [i] 20 homebred fattening cattle
 - [ii] 100 tonnes of milling wheat in store
 - [iii] 7 bags of three year old nitrogen in 600kg bags stored outside
- c) [i] Winter OSR sown on 1st October 2007 in a Michaelmas tenancy on a takeover date of 6th April 2008 for an 1986 Act tenancy
 - [ii] A field scheduled as permanent pasture in the tenancy agreement ploughed out without consent in September 2007 valued at 6th April 2008 for a valuation for 1986 Act tenancy
 - [iii] A midden/heap of farmyard muck 40m x 6m x 2m adjacent to an intended potato field.
- d) Three hectares of building land with planning permission for housing - Valuation for sale.
- e) A vacant farm bungalow, subject to an agricultural occupancy clause - valuation for sale.

Answer four out of options (a) to (e). Each option is worth **5 marks**

Two sample successful answers follow.

Sample Successful Answer 1

a) Valuation of a 50 ha grassland farm with a substantial house for administration (probate) of a recently deceased client's estate.

Needs to comply with the RICS 'Red Book' Appraisal and Valuation Manual 5th Edition. If not undertaken until New Year will need to prepare in accordance with 6th Edition.

Need to consider GN3 of Red book and S.172 of the Inheritance Tax regulations when undertaking IHT tax valuation as addition clauses eg no allowance for flooding of market (Buccleuch estates) or need to consider special purchaser.

Need to consider usual factors when valuing land:

- location
- situation
- access
- type of land
- accommodations
- services
- planning
- contamination
- single farm payment

Also need to think about the farmhouse and its value, is it over Agricultural Value? Need to consider McKenna and Antrobus 1 & 2, Farmer IRR and Rosser.

Are they the farmer carrying out the land and who is running the farm?

Is the farmhouse character appropriate i.e.

- situation of farm and buildings)
- association with farm) Antrobus
- Elephant test)
- Use to the profitability of the farm (McKenna)

The agricultural value of the farmhouse

Needs to be valued so to have a perpetual covenant on the house. Stating it to be used only for agriculture.

Are any intensive livestock buildings on the farm (Rosser)?

- If so, are they character appropriate?

Are there any large barns or other factors which would offset the value?

Terms of Engagement. Have they been agreed and if so, what am I valuing? Could be freehold or subject to tenancy or licences; if so what are they?

b) Valuation for Stocktaking Purposes

These valuations need to be undertaken in accordance with BEN 19 Guidance notes publicised by the Inland Revenue.

- (i) 20 Homebred Fattening Cattle

You could value them at cost of production value ie cost of preparing to that stage in their life as they are homebred. However, may not have accurate costings.

More likely to value them at deemed cost. This is figure below market value and for cattle this is set by BEN 19 at 60% of market value.

(ii) 100 tons of Milling Wheat in Store

As the wheat is in store and is not a growing crop you would have to value the wheat on the deemed basis as set out in BEN 19. This would be at 75% of the open market value of wheat.

(iii) 7 Bags of three year old nitrogen in 600 kg bags stored outside

The usual basis for valuing store items such as fertiliser is that you have to value the item on the net realisation price. So you need to value as if it was sold off the farm. This usually means it is a reduced price from its purchase price.

Due to the age of the nitrogen and it being stored outside I need to check the bags. It may be that these have no value and are now more a liability and this would not have a value.

Cannot put negative values in the BEN 19 valuation.

d) Three hectares of building land with planning permission for housing – Valuation for Sale

Due to Valuation for sale would fall outside a valuation needing to be under the RICS red book.

- Is there any option agreement or covenant or development claw back attached to the land which would affect its value?
- Any S.106 Agreements in place which would affect the overall value?
- Need to consider what the planning permission is for and for how many houses it is?
- Need to work out what the total value of the site would be worth when fully built and operational – profit method.
- Does it include value for road and service access? Who is responsible for these?
- Is there any ransom strips or any difficulties in implementing the scheme eg drainage or services?
- Any comparable evidence to compare it to?

e) A vacant farm bungalow, subject to an Agricultural Occupancy Clause – Valuation for Sale

- Due to Valuation for sale falls outside scope of a valuation needing to be undertaken in accordance with the RICS ‘Red Book’.
- What would it be worth without clause? Comparable method to assess OMV.
- What is the wording of the clause? Is it the standard one or is it more restrictive or not?
- What is the correct figure to reduce the price to reflect the conditions:-
 - Comparable method – evidence of other sales
 - Is there a large demand for properties like this?
 - What is it currently being used for? Is there a non-agricultural worker living there? If so, have they been there 10 years and so a possibility for Certificate of Lawfulness?

- Where is it situated? Is it in the development boundary? If so, perhaps chance for a S73A application of the Town and Country 1990 application to remove tie.
- What is the intention of the owners? Are they happy to have the property on the market for 12 months at a reduced rate to see whether they can then apply and try and remove the tie?

Sample Successful Answer 2

PLAN

- a) *Probate valuation of 50 Ha and substantial house*
 - *Inheritance Tax Act 1984*
 - *Antrobus*
 - *Rosser*
 - *McKenna**Agricultural value? Character appropriate?*

 - b) *Stocktaking Valuation – BEN 19*
Homebred – is valuation on herd basis?

 - c) *i) Costs – plus enhancement – provided field listed in tenancy agreement as arable.*
ii) Scheduled as permanent pasture so no compensation for growing arable crop.
Landlord’s agent is likely to treat as dilapidation and the reinstatement cost.
iii) Key factors
 - *midden Stored = compensatable*
 - *next to potato field = useful*

 - d) *Residual/Contractors method*
Not under Red Book as for sale purposes.

 - e) *Comparables*
NB Agricultural occupancy considerations.
-

a. 50 Ha Grassland Farm – Probate Valuation

- Valuation for tax purposes to calculate the level of Inheritance Tax payable under the Inheritance Tax Act 1984.
 - Valuation by comparables – obtain sales values of similar properties recently sold within the local area and use judgement to compare the properties and reach a suitable value for the house and land.
 - As the property is a farm, agricultural property relief may be available. The Antrobus case and in IRV v Rosser guidance was given as to what constitutes a farmhouse. Reference to these factors should be made in the valuation report and comparable evidence justifying the classification of the house as a farmhouse should be included.
 - The McKenna case showed the need to demonstrate that farming was being carried out from the farmhouse by the deceased and reference to this should be made in the valuation report.
 - As Agricultural Property Relief is only available on the ‘Agricultural Value’ of the farmhouse and this may be less than the actual value there is a need to provide both these values within the valuation report. Agricultural values may be evidenced by the sale of agriculturally tied properties and/or by the sale of non-tied farms sold to farming purchasers.
- c.- i) Winter OSR sown on 1st October 2007 in a Michaelmas Tenancy on a takeover date of 6th April 2008 for a 1986 Act Tenancy.**
- Valuation of tenant right matter under the Agricultural Holdings Act 1986.
 - Providing the field was not specified as permanent pasture in the tenancy agreement the crop would be valued on the basis of establishment costs plus enhancement value (if the

crop has taken and is growing well). The enhancement value should not exceed the rent passing for the period of growth.

c. – ii) A field scheduled as permanent pasture in the tenancy agreement ploughed out without consent in September 2007 valued at 6th April 2008 for a valuation for a 1986 Act tenancy.

- Under Agricultural Holdings Act 1986
- As no consent treated as a dilapidation as opposed to an improvement/Tenant right.
- Cost on basis of re-instatement of pasture.
- Total dilapidations claim not to exceed diminution in value of holding as a holding.

c. - iii) Midden of farmyard manure adjacent to intended potato field.

- Valuation basis – manorial value less cost of application.
- Stored manure has a value as there is an obvious outlet on the farm of the potato field.

d) Three hectares of building land with planning permission for housing – valuation for sale

- Value by residual/contractors method
- As valuation for sale purposes red book does not apply
- Very basically, site value = finished development value – cost of development
- Finished development value to be ascertained from comparables
- Cost of development includes
 - building costs (site clearance, labour, materials, fees professional)
 - borrowing costs
 - contractors profit
- Worth referencing final figure against comparable sales values if available.
- Need to consider whether development for which planning has been granted maximises the value of the site. There may be some hidden value that could be released by future planning applications/decisions.

e) Vacant Agricultural Occupancy Bungalow – for sale

- Sale purposes so not governed by red book
- Agricultural Occupancy Condition restricts occupation to person employed in agriculture, thus limiting the number of potential purchasers and generally depressing value by around one third.

There is a need to consider whether an application to the local planning authority to remove the restriction might be successful. The decline in farm profits and the increased mechanisation of farming has led to a decrease in farm workers and therefore, a reduction in the demand for agriculturally tied dwellings. Planning Policy Statement 7 states that local authorities should consider lifting agricultural occupancy conditions where it leaves dwellings unoccupied. A high likelihood of the occupancy condition being lifted will increase the value of the property.

Valuation is by comparables with other agricultural tied dwellings and non-tied dwellings so a judgement can be made regarding un-tied value, % discount from this value to reach tied value and tied value itself.

Sales of non-tied properties to persons fitting the occupancy conditions may again provide useful comparables.

PAPER I, QUESTION 2

Question

Your client, Professor Field, was bequeathed a 400 acre cereal farm in 1980 by his aunt.

Up until the mid-1980's the farm was held on a typical agricultural tenancy, when the tenant went abroad unexpectedly leaving no successors.

Professor Field is considering selling off 55 acres of the farm, the portion east of the main trunk road, to an adjoining agribusiness, Cropwise Farms Ltd. There are no buildings or dwellings on this part. The land is currently in-hand and farmed on a contract farming arrangement in association with a neighbouring farmer, John Smith Farms. Cropwise Farms Ltd is land-hungry and has already indicated that it "is prepared to pay the going rate to purchase land". Currently, in Professor Field's area, bare land for cereals is fetching around £4,000 per acre on the basis of moderate demand.

You have been asked to give advice on the likely level of Capital Gains Tax liability Professor Field is due if the disposal date were this November.

The Professor has also asked what sort of valuations are required, what level of fee would be required for your advice and what negotiations are likely and with whom. Professor Field is a higher rate taxpayer.

Compose a **straightforward letter** to Professor Field outlining the issues involved. Your letter must include the following:

- | | |
|--|------------------|
| (a) The base value for the calculation | (3 marks) |
| (b) Ideas as to any likely overbid by the eventual purchaser | (4 marks) |
| (c) The best method of sale | (2 marks) |
| (d) Tax calculation methodology and any reliefs available | (5 marks) |
| (e) Likely pitfalls to be encountered | (4 marks) |
| (f) Likely fee structure | (2 marks) |

Sample Successful Answer

PLAN

- *Mid 1980's*
- *Base value either at 1980 or 1982 evidence higher. Calculate subject to tenancy.*
- *Aware 1986 Act tenancy was successfully terminated by notice to quit.*
- *Business Asset – more than 2 years full relief*
- *Negotiation – DV possibly contract farmer*
- *Tax charge proposal – CCT – flat rate*
- *Overbid – Land hungry*
 - Potential development*
- *Formal tender*
- *Fee – fix for valuation*
- *Sale - %.*

Answer:

Firm's address

Ref: Field 07

15 November 2007

Dear Professor Field

Re: Sale of 55 Acres of Home Farm

Further to our recent conversation I am writing to confirm my thoughts on the sale of 55 acres of your farm.

As you are aware the sale of the land is likely to give rise to a Capital Gains Tax valuation. I have assumed that you will not be rolling over the gain into a new qualifying asset – rather paying the liability now.

Capital Gains Tax under the current regime is calculated by taking the base value of your land when purchased or in March 1982 (whichever is higher). I understand that you were left the farm in 1980. I therefore propose that we use a base value as at 1982 and this is likely to be the higher figure. We are able to provide a base value by reference to property comparables sold in 1982 which we hold in our office. Base value is likely to be in the region of £1,000 per acre.

As you are aware there are a number of potential purchasers of your land – both in the general market with leisure buyers and long term investment companies interested in the land, especially near good road access. I am also aware that your neighbour, John Smith Farms are currently contract farming the land, it is possible that they may wish to extend their own holding. Finally, Cropwise Farms are growing rapidly and will pay at least £4,000 per acre for your land. As there is a moderate demand for land in your area, I would hope that the 55 acres could fetch somewhere in the region of £4,800 per acre.

The maximum value can only be achieved by careful marketing and sale of the property. I would encourage competitive bidding on the land in order to push the price up. Prudent lotting could also be considered – is there potential for creating a pony paddock or two? In order to create competitive bidding, I would recommend that the land is sold by public

auction – after approx 6 weeks of marketing. If offers are made before auction these can be considered.

CGT will be calculated on the sale of land and will be based on the gain between the base value and the sale price.

At present there are a number of useful reliefs that can be applied to the land in order to mitigate the capital gain, these are Indexation and Taper Relief.

Indexation takes into account inflationary rise in the price of the land since March 1982 to March 1998 by reference to indexation table on since March 1982. This accounts for approx 104% rise in value.

The new indexed value is then deducted from the sub value giving a capital gain. However, farmland is currently classified as a business asset and business asset Taper Relief is applied to the gain. As you have owned the asset for more than 2 years the tax payable on the gain is in effect at 10%.

You will also be able to use your personal annual allowance – if still available to further reduce the tax liability. All values will need to be agreed and negotiated with the District Valuer.

As you will no doubt be aware Alistair Darling has recently announced in his pre-budget report that indexation and Taper Relief are to be scrapped in April 2008. Whilst not yet know if this will happen, it is worth bearing in mind with regards to timing of the sale. A further change will be to introduce a new flat rate of CGT at 18% - this will have a major impact on your tax liability.

I also note from your correspondence that the land was let on what I assume was an 1986 Agricultural Holding Act tenancy. I understand that the tenant left the holding. I assume proper notices to quit were served at that time.

My fee basis for the sale of the land will be on a percentage of the final sale price. The percentage rate to be agreed at 3% (NB can be negotiated).

My fee for carrying out the tax valuation and negotiating with the district valuer will be on a time basis and charged at £100 per hour. (NB Again can be negotiated but not likely due to skill involved.)

It is also possible that negotiation with the contracting farmer will need to be made, depending on what type of agreement you have in place. I would advise a quick sale to avoid the potential new new tax law, as such some cultivation will have already taken place. My fee for their negotiation will be on a time taken again at £100 per hour. (NB could negotiate into sale for a higher %).

Please sign copy letter to confirm.

Many thanks

Yours truly,
Etc.

PAPER 1, QUESTION 3

Question

A farmer client expanded his business by taking on 200 hectares of bare let land in November 2004, under a separate agreement, to add to his existing holding which he has held under a full agricultural tenancy since November 1980.

The landlord of both holdings has indicated he believes rent reviews are due. Your client has asked if the procedure is the same for both tenancies.

Please outline your answer:-

1. The procedures that should be adopted **(5 marks)**
2. The basis for the rent review for each tenancy. **(5 marks)**
3. The position if the parties are unable to reach agreement. **(5 marks)**

The landlord has also said that he would like to amalgamate the two holdings and let them under a single agreement, in return for which he would forego any increase in rent for a further 3 years.

4. Your client has asked what might be behind this proposal and on what terms should he consider this request? **(5 marks)**

Sample Successful Answer

Agricultural Holding Act 1986

Procedure

- S12 Notice served on Tenant
- S12 Notice can be used by either party once served
- Must be at least three years since previous review
- Notice must be served at least 12 months before a term date
- S12 will refer the matter to arbitration if a satisfactory conclusion has not been reached before 30 days after the term date

Basis

- The rent at which the holding would be likely to let in the deeds of a competent tenant, taking into account all relevant factors but must include the following:
 - 1) The terms of the Tenancy
 - 2) The character and situation of the holding
 - 3) The productive capacity and the related farming capacity
 - 4) Comparable lettings

Disputes

- S12 enacts arbitration and unless a settlement is reached the matter will go to arbitration
- Parties have 30 days from the term date to find a settlement before arbitration
- After 30 days the parties have 56 days from the term date to prepare statements of case (may have been removed by TRIG October 2006)
- Arbitration governed by Arbitration Act 1996

Agricultural Tenancies Act 1995 – Farm Business Tenancy

Procedure

- ATA gives much more freedom of contract
- R/R can be agreed at agreed points at agreed levels
- S9(?) R/R Notice served on tenant
- R/R Notice must be served at least 12 months, but not more than 24 months, before the term date.

Basis

- Different basis can be agreed – OMV, RPI, Commodity prices etc.
(Look at tenancy agreement)
- If OMV this will be fairly straight forward as the holding under FBT is bare land.

Disputes

- If an agreement cannot be made the matter is settled under Arbitration Act 1996.

PART 4

Amalgamation

- Both holdings will be let at OMV
- Allow 100% relief under IHT (only 50% for AHA 86 tenancies)
- Remove Security of Tenure from AHA 86 land (Provides much more flexibility for the landlord. Can now give open ended NTQ)

- Improvements valued at the increase in value attributable to the improvement rather than in association with the cost.

Terms

Unless very good terms are agreed in the remainder of the agreement, it may be worthwhile.

AHA 86 gives security till death on tenancies commencing at this time.

Tenancies between 1976 and July 1984 are able to grant succession subject to suitability and eligibility tests.

- How big is the AHA 86 holding?
- Possibility of suitable successor?
- How old is the tenant?

All of these factors will play a vital role in decision making.

Very difficult to suggest terms without further information

20 year fixed term – with T's break option, R/R on 5 yearly basis.

TRIG Reform?

- Amalgamation rules not really relevant.

PAPER 2, QUESTION 2

Question

Your client, Col. Mustard, is the owner of the 1,800 hectare Woodley Estate. The Estate comprises some in hand woodland, 25 cottages in Woodley village and nine farms, all of which are let on AHA 1986 tenancies.

Bachelor farmer, Ted Ward, who has been tenant of Home Farm, Woodley for over 35 years has served notice to quit the holding with effect from 29th September 2008. The holding, which lies at the centre of the estate, includes:

- a large 6 bed farmhouse in need of modernisation and traditional buildings adjoining the farmhouse.
- on a site approximately 200 metres away and with a separate access is a 2,000 tonne bulk on-floor grain store erected by the tenant in 1985, a Dutch barn, an enclosed general purpose fertiliser/machinery store and workshop.
- land extending to 300 hectares of Grade 3 arable land, 20 hectares of permanent pasture and 10 hectares tracks, spinneys and uncroppable areas.
- two cottages: "Pastures" a 3 bed property close to the buildings which is vacant. The second is 1 The Town, a 2 bed property in the village has been occupied by Bob Smith and family, a tractor driver aged 58, employed by Ted Ward since 1980.

Your client wishes to re-let the holding and you are due to see him to discuss the options available. Prepare **notes** in advance of your discussion to cover the following:

1. End of tenancy procedures and claims **(6 marks)**
2. Options for re-letting and possible level of rents for each option **(10 marks)**
3. Likely timetable for letting **(4 marks)**

State clearly in your answer any assumptions you make.

Sample Successful Answer

1. End of Tenancy claims/procedures

a) Dilapidations

- Breach of tenants obligations to repair
- Assume model clauses
- Claim to be submitted no more than 2 months after expiry of term (ie before 29th November 2008) and agreed no more than 8 months after, otherwise refer to Arbitration.

b) Tenants Improvements

- Tenant's grain store
- Was consent granted?
 - If yes, was it subject to conditions on compensation?
 - if yes, these apply.
 - If no, conditions on compensation value to holding as land comprised in an agricultural holding and subject to requirements of Tenant reasonably skilled.
- Is improvement appropriate? Probably
- Valued on basis of capitalised increased rental value.
- If no Landlord's consent, was consent obtained from the ALT?
- If no consent then Tenant's fixture.

c) Tenant's Fixtures

- Tenant has right to remove
- Must serve notice at least one month prior to date of termination
- Landlord has one month to elect to purchase improvement at 'Value to incoming Tenant'
- If Landlord does not elect to purchase, Tenant can remove before two months after expiry of tenancy – must make good damage
- Assumes that Tenant has complied with all other terms of the agreement

d) 'Tenant Right'

- Landlord's consent not required
- Notice must be given to Landlord one month prior to Mole ploughing
- Mole ploughing to be written down over period
- Acts of cultivation and husbandry valued on cost
- Harvested crops and fodder valued on value to incoming tenant or 'consuming value' assuming in good condition and appropriately stored and located
- UMV, RMV etc. as per CAAV guidance

2. Options for Re-Letting

a) Let as a whole holding under 1995 Act Farm business tenancy

Unlikely as this will not maximise returns
Rent possibly £100 - £150 per acre

b) Farmhouse – undertake modernisation and let on Assured Shorthold Tenancy?

Rent £1,000+ per month depending on standard of house etc. Traditional buildings included in letting or converted and let separately.
Subject to planning – given location either residential or holiday type units but possibly offices.

- c) Grain store and buildings. Possible conversion (subject to planning) probably to industrial/commercial uses.
Letting for offices - perhaps £10-£12 per square foot.
Storage or other industrial use less – say £3 - £7 per square foot.
- d) Land – 300 ha arable land, 20 ha permanent pasture. 330 ha in total.
Suggest lotting and letting to other neighbouring farms at rents of approx £60 per acre for pasture and £86 - £100 per acre for arable assuming (and depending on) availability of entitlements.
Small amount of amenity land either let with farmhouse or separately – again £100+ per acre.
- e) ‘Pastures’ – Vacant cottage close to village. Assume no agricultural occupancy condition or agricultural requirement. Therefore let on Assured Shorthold Tenancy say £700 a calendar month.
- f) The Town Cottage occupied by tractor driver employed on holding since 1980. Assume Protected Tenant under Rent (Agriculture) Act 1977. Apply for ‘Fair Rent’ by Rent Officer. Say £350 a calendar month.

General:

Assume that Col. Mustard has financial means to carry out conversions, apply for planning permission, etc.

Would not recommend sale as the property is at centre of large estate. Also therefore assume that Co. Mustard is not interested in farming-in-hand.

3. Likely Timetable for Re-Letting

- a) Let as whole holding (or substantial part)
Assuming marketing prior to September 2008, letting could commence on 30th September 2008.
- b) Farmhouse
Assuming modernisation work carried out after expiry of term and takes circa 6 months, March 2009 letting.
- c. Grain Store and Buildings
Where planning required, expect 3 – 6 months plus time for conversion and finding tenant, say 12 months.
- d. Land
Arrangements can be made for letting on 29th September 2008.
- e. Pastures
Let on 29th September 2008.
- f. The Town
Protected tenant has security of tenure and possible succession. Therefore assume possession in 10 years+.

Note: Where planning permission granted for non-agricultural use tenancy agreement may provide for early termination. Assume this would not be necessary. Vacant cottage could be obtained earlier by negotiation with Tenant.

Some marketing, surveys etc. may be conducted in the period prior to the end of the tenancy in anticipation of vacant possession.

PAPER 2, QUESTION 2

Question

- A) You are being invited to act as an expert witness in a contested rent review which is going to arbitration but could ultimately end up in County Court litigation
- [i] Describe the duties of an expert witness, and how you would fulfil these duties before and during the hearing and to whom you owe the duty of care. **(4 marks)**
- [ii] What rules govern the giving of expert witness evidence in court? **(3 marks)**
- [iii] Explain the difference between witness of opinion and a witness of fact **(2 marks)**
- [iv] You have been instructed by the parties to act as a single joint expert on a farm budget. Prepare a draft appointment letter accepting instructions to act in this capacity. **(8 marks)**
- B) In determining a rent review, what are the differences between an expert and an arbitrator? **(3 marks)**

State clearly in your answers any assumptions you make.

Two sample successful answers follow

Sample Successful Answer 1

A)

- i) The duties of an expert witness are primarily to the Court (and not to the parties/party who instructed them). Therefore, the duty of care is to the Court (however, it is also necessary to remember that in law a Duty of Care can be considered to be any party affected by a decision) – here; however, the Duty of Care to the Court is paramount.

The main duty of the Expert Witness is to advise the Court. The Expert Witness must therefore only act within their area of knowledge; make clear differences between fact and opinion; act prudently in providing objective advice to the Court (or for that matter Arbitrator).

Paramount is that the Expert Witness must not have any undeclared conflicts of interest. There is, for example, under the Civil Procedure Rules, a statutory declaration that must be completed. This states that the Expert Witness has:

- no conflict of interest other than that declared in their CV
- will advise the parties of any conflict that arise prior to a case
- any conflict declared will not affect their objectivity.

An Expert Witness is therefore expected to confirm the instruction in writing (encompassing the above), act in accordance with above responsibility and rules relating to Expert Witnesses particularly those relating to conflict of interest and maintain adequate Professional Indemnity Insurance. They also need to declare any mistakes to the Court as soon as they are aware of them.

- ii) 3 Sets of Rules:

RICS – Practice Statement on Expert Witness

Civil Procedure Rules

Court Protocol Rules

(There are additionally RICS/CAAV Guidance Notes)

- iii) A witness of opinion is a view stated as a judgement – for example, a valuer's judgement of an appropriate rent for a holding. Whereas a witness of fact is a statement of fact – eg the definition of 'agricultural' under the Agricultural Holdings Act 1947. An expert witness is obliged to distinguish clearly between both (in writing or verbal evidence) and to confirm if two or more expert's opinions differ.

- iv) Dear _____

Expert Witness Confirmation

Thank you for your instructions to act as an expert witness with regard to the farm budget at the Arbitration hearing.

I can confirm that I am adequately qualified and have x number of years experience in dealing with a wide range of farm budgets.

I have attached to this letter a copy of my CV. This confirms that I have x qualifications and have acted for X number of clients in respect of the area of farm budgets.

I can also confirm that I am not aware of any conflicts of interest regarding either yourself, or the other party in the Arbitration and have not acted for the other party previously. Should this situation change prior to the Arbitration hearing

I also confirm that I hold Professional Indemnity Insurance up to £2,000,000 per claim.

As agreed, my fees for acting as an expert witness will be £80 per hour plus VAT and expenses and will be payable on a time-basis. I can confirm that the payment of my fees is **not** related to whether or not the Arbitration award is in your favour.

Further to our discussion, I can confirm that you have instructed me to prepare a report confirming my opinion on whether the farm budget that you have submitted with respect to your rent review is an accurate reflection of budget that would be viable on the holding which is subject to the application (and which is, I understand, the only holding you occupy).

I should confirm here, once again, that although you have instructed me, my duty is to the Arbitration proceedings and that my role is governed by various rules. One essential component of this is that my view is seen to be objective.

I will be in contact to ascertain further information in due course. In the meantime, I would be grateful if you could sign the counter copy of this letter and return it to me in confirmation that you are happy for me to proceed.

Yours sincerely

- B) An Arbitrator can only determine an award between the parameters of the two original parties proposals eg rent at £50 or £70. They are also only permitted to use the information submitted by both parties, not make investigations of their own. Arbitrator's fees are normally paid by either side for themselves. Independent Experts can carry out their own investigations and make their own determination. For this reason, it tends to be cheaper than Arbitration.

Arbitrators operate under statute – Arbitration Act 1996 whereas Independent Experts do not (they are guided by RICS/CAAV guidance notes etc.)

Which method is used in a rent review will depend on the tenancy agreement – the preference now is for Independent Experts.

Sample Successful Answer 2

A)

i) The duties of an Expert Witness are as follows:

- Their duty is to the court
- To provide an opinion not based on litigation problems
- Carry out necessary investigations
- Not to doubt any facts and even detail facts which go against this opinion.
- If falls outside area of expertise, confirm this to the court
- If any changes to opinion to notify the court and the parties as soon as possible.

The duties of an expert witness before a hearing is to carry out the necessary investigations and to confirm these instructions to the court and the parties involved in accordance with the RICS Surveyor acting as Expert Witness Practise Statement.

The duties of an Expert Witness at the hearing are to provide an unbiased opinion having considered the facts.

The duty of the Expert Witness is to the court. However, if provision is for an arbitration it is the arbitrator, if appointment by him. If it is by the parties jointly it is them or if one side then it is them.

ii) The rules that govern the giving of expert witness evidence in court is that it is under Oath. It must be in accordance with the RICS Surveyor Acting as Expert Witness's Practice Statement if a Chartered Surveyor, also under the Civil Procedure Rules 1995 especially Part 35 which gives the duties of the Expert Witness.

iii) The differences between a Witness of Opinion and a Witness of Fact is a Witness of Opinion is allowed to give his opinion having considered all the relevant information. Whereas a Witness of Fact can only **give their opinion** on the facts put before them.

iv)

Address

File Ref

Date

Dear Party A & Party B

Appointment to Act as a single joint Expert between Party A and Party B

Further to receiving your letter dated the 14th November to act as Single – Joint Expert between Party A and Party B, I am writing to confirm I will be willing to carry out this instruction subject to the following Terms and Conditions:

- 1) I will be acting in accordance with the RICS Surveyor acting as Expert Witness Practice Statements.
- 2) I will be acting in accordance with the Civil Procedure Rules 1995.
- 3) I have been jointly instructed by Party A and Party B and my fee for acting in this matter will be £_____ per hour and it will be split 50/50 between the two parties. I will also be charging for disbursement.

- 4) Please can you confirm exactly on which part of the farm budget I have to provide an expert opinion on. Also which farm and detail of such.
- 5) Please can you confirm the viewing arrangements for carrying out this in respect of the subject farm.
- 6) If on inspection any part of the instruction falls outside my expertise area I will write to each party confirming such.
- 7) I confirm at this Stage I do not believe I have a conflict of interest with any of the parties. However if after further investigation a conflict of interest arises, I will notify and take your instruction accordingly.
- 8) Please confirm the procedure you wish for me to take on carrying out this instruction. I propose to visit the site make my opinion and send out my opinion within 30 days of visiting the site. However, if you have a preferred alternative procedure please let me know eg do you want to submit statement etc.

I would be grateful if you could sign the enclosed copy and return it to me.

If you have any queries please do not hesitate to contact me.

Yours sincerely

.....
Party A

.....
Party B

I hereby confirm I agree to be bound by these Terms and Conditions contained within the instruction letter.

B)

I am assuming that this is a rent revision for a Farm Business Tenancy (ATA 1995) and the tenancy allows for an appointment of an expert to determine the rent.

The differences between an expert and an arbitrator for this purpose would be as follows:

1. The Arbitrator can only comment on the information submitted before him by either party.
2. An expert usually is put in place to stop a different and he look at the facts and gives a determination on his findings and expertise. No information is usually submitted to expert unless agreed; however, he must make up his own mind.

PAPER 2, QUESTION 3

Question

A. You have been approached by a prospective new client who has asked you to explain why he should appoint a Fellow of the CAAV to act on his behalf rather than another agent who simply describes himself as land agent with no professional qualification.

Write a **LETTER** to this prospective client

- (i) To explain why he should appoint a Fellow of the CAAV to act on his behalf. **(2 marks)**
- (ii) To set out the standard terms of engagement including all client relationship matters for a new client requesting general property advice. **(8 marks)**

B. You have received a telephone call today from a client who has complained that you have failed to ensure that a succession application on death was received by the Agricultural Land Tribunal within the relevant time period and it is now too late to make this application. Write a **FULL FILE NOTE** of the procedures that must now be followed, actions to be taken and the information that will be required in order to properly deal with this matter. **(10 marks)**

Sample Successful Answer

Dear Mr Client

Further to our previous telephone conversation, I am writing to explain to you further about the appointment of a Fellow of the CAAV and confirm our terms of engagement.

I would always suggest to you that you employ a Fellow of the CAAV to act for you on valuation work as they will have passed rigorous examinations to gain their Fellowship and therefore you can be assured that they are qualified to do the job you are asking. There are also guidelines set within the organisation to ensure that members act in a fair and competent manner and the CAAV discipline any members who do not act within their guidelines, again giving you a fall back should there be any problems and ensuring you of best practise. The motto of the organisation is 'do what is right come what may' showing the good intent of its members.

I am setting out below our terms of engagement which I would be grateful if you can please sign and return to me confirming the way in which I will be working for you. I have also enclosed a second copy for you to keep for future reference.

Client: - Mr A Client, Home Farm, Walford, England
 - Contact: 01234 56789

Date of Instructions – as of date of letter

Conflicts of Interest – I confirm that I am not aware of any conflicts of interest between us. I have previously acted for your father on agricultural matters however I see this not to be a problem.

Complaints Procedures – If at any point you wish to make a complaint against any employee of our firm, please make your complaint in writing addressed to Mr T Boss, Head Office, London, England. Mr Boss will then reply to you within 7 working days and aim to satisfy your complaint within 14 working days.

Fees – Our fees at present for dealing with general property advice will be on a time basis with the per hour rates being:

- £100 per hour for Mr A Partner
- £75 per hour for Mr A Assistant

- Valuations will also be charged for at the same rate, however, if you require a formal valuation we will need to do a 'Red Book' valuation then this will take a longer time to prepare. Anything other than advice for sale will need a full valuation report.

Agency – If at any point you require property to be sold and you appoint us as your agent, we will sell in accordance with the Estate Agency Act 1981 and our fees for this will be confirmed before marketing commences.

Payment of fees – All fees are to be paid within 28 days of the invoice date. If fees are not paid within this time interest will accumulate at 10%. Fees will be paid by Mr A Client.

Property – The property which we are currently advising on is Home Farm, Walford extending to 100 acres including a farmhouse and traditional buildings.

Instructions – We are currently instructed to advise on general property matters. Further instructions will need to be confirmed for valuation or agency items.

Interest – Mr A Client owns the property jointly with his wife Mrs B Client. They farm the property in-hand.

Sources of Information – Information will be supplied by Mr A Client or gained from my inspection of the property.

Extent of Liability – All advice given is given to Mr A Client and relates directly to the property specified. No liability will be held for any third party relying on this information.

Extent of Disclosure – No advice is to be reproduced or copied. It is solely for the use of Mr A Client.

Please sign and return these terms of instruction, so that I am then able to come and inspect your property and offer general advice. I look forward to receiving your instructions.

Yours sincerely

Mr A Client:.....

Date:

B) File Note

Date: 15th November 2007 – 10.15 am

Note by:

- Telephone call received from Mr A Client making a complaint.
 - Mr A Client is claiming that I have failed to ensure a succession application on death was received by the Agricultural Land Tribunal within the three month time period.
 - As per the Staff Handbook, I have notified Mr A Partner in charge of our Professional Indemnity Policy and he has contacted our insuring company and let them know immediately of Mr A Client's complaint and possible future claim.
 - As per the Staff Handbook, I have also notified Mr B Partner of the complaint, Mr B Partner has assured me that he will deal with the complaint, however, he must ensure that he speaks to the PI company first to see what he can say, it may be that he is not able to reply.
 - If Mr A Client does wish to sue the company for the error, then the Professional Indemnity cover will be required to deal with this. In order to ensure that the cover is not invalidated, the file for this client must be forwarded to the company for them to check through and ensure that I have acted within guidelines set out by my qualifications and my company.
 - ALL STAFF – Please note – NO CORRESPONDENCE is to be sent from this file without prior consent of Mr A Partner, dealing with the PI claim on this.
 - Further Action to be taken:
 - look into work which was done to see if we were instructed to do the application
 - see if we had made Mr A Client aware of the time limit

- see if correspondence showed whether Mr A Client thought we were doing the application or not
 - ensure Mr A Client is correct that we have missed the deadline.
- Information Required:
 - exact letters sent out and received
 - exact telephone conversations taken place and when
 - copy of signed instructions – see what instructed for.

PAPER 2, QUESTION 4

Question

You act for Mrs Brighteyes who is in a serious matrimonial dispute with her husband – the matter is heading for the divorce courts. Your client's solicitor has asked you to provide a valuation of 20 acres of agricultural land, part of the farm jointly owned with her husband. Three years ago your client and her husband entered into an option agreement to grant first refusal to a developer on the 20 acres. The developer has, for some time been seeking planning permission for a large new settlement. Discussions have also taken place in the interim at strategic planning level with the regional planners. The farm is freehold and the 20 acres is in hand. Normally land subject to an option would not be sold until planning permission was granted but the solicitors have asked for your views on the land's value as it may have to be sold in view of the escalating disharmony within the marriage.

A major developer-partner has just purchased a large tract (20 acres) of contiguous land, without planning permission, for £50,000 per acre. Agricultural land in this area is changing hands for around £3,250 per acre.

Set out a **straightforward report** (remembering that the report may be used in court) for the solicitors to include the following:

- 1) Your valuation of the 20 acres stating any assumptions you make, including assumptions as the terms of the option, any relevant case law and any other matters that may affect your valuation. **(14 marks)**
- 2) Suggestions to the solicitors as to how to maximise the benefit for Mrs Brighteyes. **(6 marks)**

Sample Successful Answer

1. The 20 acres in question has been part of an option as development potential has been recognised. “Hope value” is extremely difficult to value, especially in light of the number of assumptions that here must be made in order to come to a valuation.

It is clear that agricultural land without development value has an average price in the area of £3,250 per acre (see comparable evidence).

This value must therefore form the basis of the land valuation before assumption.

The acknowledged development potential on the land adds considerable value, but the planning permission is yet to be gained. However, an option to purchase (at first refusal) has been extended to the developer identified. We assume that the option allows purchase at market value once planning permission has been obtained for development, plus the projected value for that development. This could be reached by estimating the final value of the developed plot and returning a fixed percentage to the present owner. However, it is assumed that Mrs Brighteyes and her husband agreed a fixed sum for the plot, after estimating the total costs of development and the final sale value to the developer. This sum could not be paid in full now, as the planning permission has not yet been granted.

Therefore, I would propose that we turn to comparable evidence of a similar plot sold under similar circumstances; where the price paid for land with development potential was £50,000 per acre. This would bring a total purchase price of £1,000,000. This valuation is based on the assumption that planning permission will be granted for development on the site, and that there is no land contamination, archaeological issues, scheduled ancient monuments, or any other adverse issues that would impinge upon the possibility of gaining planning permission.

The value of the land, as it stands, without the option in place and the planning permission imminent, is in line with the average arable prices; at around £3,250 per acre. This again is under the assumption that the land is free from contamination or adverse problems that would affect the ability of a competent farmer to farm the land effectively.

The option in place has identified the possibility of gaining planning permission on the site, and therefore this possibility must be taken into consideration when determining the value.

It is assumed that the purchaser of the option has agreed to pay the reasonable fees for both the gaining of the planning permission and the eventual sale. This would continue in the course of an early sale.

It is also presumed that if planning permission was not gained under the option, the developer would not buy the plot. In this case, the plot would revert back to base value.

It is assumed that the developer would see his costs in gaining the planning permission taken off the final sale price should it be granted under the option.

2. I would strongly suggest an overage clause in the sale of the land, whether sold as arable land or with planning permission, or without but with 'hope value'. This is really the only way in which Mrs Brighteyes could gain fully from the sale, if it was prior to the option being seen out and permission gained or failed. A clawback percentage could be agreed for her to take a slice of the increase in value from her sale to the development sales.

If the early sale goes ahead, Mrs Brighteyes could insist that all her costs are paid by the purchaser, thus increasing her eventual take home figure.

The best course of events would be for the land to be sold early, without planning permission, for the full price of £1,000,000 with Mrs Brighteyes retaining the potential for a percentage average payment should the land obtain planning permission.

If it was in Mrs Brighteye's interest, the solicitors could negotiate for a covenant to be put onto the development plot to restrict what was built there, ie restricting to residential rather than commercial or light industrial.

PAPER 2, QUESTION 5

Question

Ian King successfully bid for the tenancy of Green Farm, Bourton on the Wold, in 1982. The tenancy commenced on 29th September. It is a 200 hectare principally arable farm with a suckler cow and beef fattening enterprise on 40 hectare of meadowland. Ian King has asked if you will call and see him and his two sons, Bill and Ben, to talk to them about tenancy succession rights.

The family is:

- Ian, the tenant, a fit and active 58 year old who wishes to take more time to pursue his hobby of sailing but would like his sons to succeed to the tenancy.
- Bill, the elder son, a keen mechanic who has built up a good business repairing agricultural machinery based in the farm workshop, helping out on the farm only at busy times. He lives on the tenanted holding with his wife who looks after their two children fulltime.
- Ben works on the farm but uses some of the spare arable machinery capacity to help out neighbours on a contract basis. Ben is also married, his wife works as a partner in a large city law firm specialising in mergers and acquisitions and they have no children. Ben's wife has just inherited 100 hectares of tenanted arable land with a house which will be available to be farmed and occupied by the family from September 2008.

They farm in partnership together.

Prepare a **briefing note** that you can talk through with your clients to cover:

1. The rights afforded by the tenancy and Ian's options (4 marks)
2. The rules governing tenancy succession (4 marks)
3. The application of these rules to the circumstances at Green Farm and a strategy to follow with action points for each of the three individuals (10 marks)
4. Ways in which the landlord may seek to vary the terms of the tenancy (2 marks)

State clearly in your answers any assumptions you make.

Sample Successful Answer

Client: Ian King
Holding: Green Farm, Bourton on the Wold
Tenancy: 29 September 1982

Date: 15 November 2007

Rights Afforded by the Tenancy

- AHA '86 tenancies granted before 12/07/84 succession rights
- Rights for two successions
- Mr Ian King is the original tenant therefore rights for two further successions remain.
- Succession either on retirement or death S.35 – S.55. AHA 1986.
- Succession on retirement – at age 65 or earlier if disabled, unable to work due to ill health etc. (Not available to Ian as he is in good health) would therefore have to wait to retire until 65.
- On retirement only 1 applicant can apply to succeed the tenancy. If they fail, then can't reapply either on retirement or death. If looks like might fail, should withdraw the application so can reapply in the future.
- On death – more than 1 applicant can apply. Must apply within 3 months of tenant's death. If miss this deadline, can't apply.

Mr King's Options

- At this stage Mr King cannot retire; if he wishes his sons to be able to succeed.
- Suggest put provisions in place now to assist his sons to be deemed to be 'eligible and suitable' by the time Mr King retires in 7 years time.
- Mr King could take more of a back step, and encourage his sons to increase their work on the holding in order to comply with the principle source of livelihood test. Thereby, allowing himself time to pursue his hobby of sailing. Although Mr King must remain in control – must be the tenant.

Rules Governing Tenancy Succession

In order to succeed to a tenancy – must pass the following tests:

1. Eligible:-
 - Close relative
 - Principle source of livelihood
 - Commercial unit occupation
2. Suitable:-
 - In terms of age, health, qualifications, experience etc.

1. Eligible

- a) Close relative – must be a close relative of the original tenant – includes spouse, sibling, child or treated child (eg adopted).
- b) Principle source of livelihood – must be able to prove that principle source of livelihood has been derived from agricultural work on the holding in 5 out of the last 7 years. If applicant has been at college during this time 3 years can be deemed to have been achieved.
- Following TRIG (Regulatory Reform Agricultural Tenancies (England and Wales) Order 2006), agricultural work off the holding and non-agricultural work on/from the holding can be included in the principle

source of livelihood test, where landlord's written consent has been granted since 19 Oct 2007.

- If don't think you will qualify for principle source of livelihood test (ie 51% or more income derived from agricultural work on holding) – can make an application under 5.41 of the AHA 86 to be treated as eligible ie if slightly below 51% still qualify. This application can be made in tandem to normal application.
- c) Commercial unit occupation – must not occupy another unit of agricultural land capable of deriving an income equivalent to or greater than the annual wages of two full time agricultural workers.

Application to Green Farm

- Ian King – can't retire until 65.
- Gives 7 years to make necessary changes in order to secure succession.
- In terms of eligibility both Ben and Bill pass the close relationship test (sons of the tenant).
- Principal source of livelihood (PS of L)
 - Bill - very small amount of his (PS of L) is derived from agricultural work on the holding – only helps out at busy times.
 - Apply to landlord for Bill's diversification into repairing agricultural machinery in a farm workshop to be included in PS of L calculation ie try to obtain landlord's written consent – although no statutory obligation for landlord to grant this.
 - His wife doesn't work therefore combined income is provided from Bill's work on the holding
 - Ben – works on the farm but does carryout some contracting work from the holding. Apply to the landlord for consent to include contracting work. Ben's principal source of livelihood may already be derived from agricultural work on the holding.

Commercial Unit of Occupation

- Bill - assume doesn't own/occupy other land.
- Ben – his wife has just inherited 100 ha of tenanted arable land – which will be available to be farmed and occupied by the family from September 2008 – If Ben occupies this farm, and it produces an income greater than that of two full time agricultural workers he will not be able to qualify for succession. Suggest land remains tenanted, may then be eligible to succeed father's tenancy.

2. Suitability

- Bill spends his time repairing machinery rather than farming. Would therefore question his suitability.
 - Does he have any qualifications, experience in agriculture?
- Ben appears to be suitable – but again check health, qualifications etc.

Ian should retain control but pass some of the day-to-day work to his sons. Also increase their incomes from the agricultural work on the holding.

Ways Landlord may seek to vary the terms of the tenancy

- May seek to offer FBT (Agricultural Tenancies Act 1995 tenancy) – with no succession rights, rent at market value.
- May seek to offer FBT but with rent provision in line with Schedule 2.
- Can only modernise the original agreement unless both parties agree otherwise.
- Should be on same terms but with health and safety and other recent legal matters included.