**CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS**

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**CAAV EXAMINATIONS 2021**

**11TH NOVEMBER 2021**

**NATIONAL ORAL QUESTIONS**

**Each Group is to choose TWO questions from the six and then ask those same two questions of all the candidates in that Group.**

1. **Boundary Dispute and Property Ownership**
2. **Solar Farm Cable Consent**
3. **Commercial Lettings and Net Zero**
4. **Managing Farmland around a House**
5. **Controlling Sold Land**
6. **Grazing Arrangements**

**Question 1 - Boundary Dispute and Property Ownership**

You have been asked by a client to try and resolve a boundary dispute with his neighbour on a joint instruction basis. The dispute relates to the fence between a garden and an adjacent field. The relationship between the parties is reasonably amicable at present.

**a) Give brief details of 5 documents that may assist you in resolving the dispute.**

**(2½ marks)**

 **Answer**

Title Register and Title Plan of both properties – the Registers may refer to other relevant documents. The plans will only show the general position of boundaries based on Ordnance Survey maps

 Pre-registration Title Deeds of both properties – if not destroyed

Conveyance Deed/Contract, Transfer and Plans of both properties – plans not always accurate

Published Maps/Ordnance Survey Maps – not a definitive map of the properties’ boundaries therefore use with care

 Local Searches

 Sales Particulars – may have had a plan attached

 Drawings and plans accompanying planning applications

 Photographs – aerial, terrestrial, family, archived

 Sellers Property Information Forms

 Witness Statements

b**) Provide examples of the alternative methods of solving a boundary dispute?**

**(2 of the below for ½ mark)**

 **Answer**

 (There is no regulatory authority to settle boundary disputes)

 Negotiation and amicable resolution

 Early Neutral Evaluation – will not settle the dispute but allows the parties to make the next decision and gives advice on the best way forward

 Expert Determination / RICS Neighbour Dispute Service

 Mediation

 Adjudication – little used

Legal Action –

England - Land Registration Division of the First Tier Tribunal (Property Chamber

County Court

High Court

**c) Your client has asked you to establish who owns an abandoned cottage in the village where he farms which he would like to buy. It is not registered.**

 **Outline four actions you might take to establish the ownership. (2 marks)**

 **Answer**

 Check adjoining registered properties for any references to documents which may refer or link to the unregistered property

 Search County or Local Authority records including County archives and library

 Check historic planning applications

 Check the local electoral register

 Ask neighbours and adjoining property owners

 Ask local residents

 Ask in local shops, pubs, post office

**Question 2 - Solar Farm Cable Consent**

A neighbour with a solar farm project has approached your client for consent for an underground power export cable across his land. The solar developer has a connection offer from the District Network Operator and is intending to submit a planning application shortly.

**On what agreement might that cable be laid? 1 mark**

Typically, an easement (servitude in Scotland).

Pre-cursor would usually be an option for an easement.

Alternatives could include:

* a licence/wayleave – too insecure for the project and its financing?
* a lease – why should your client agree this?

**How might you approach the valuation of payment for that agreement? 1½ marks**

How essential is the route for the project to work?

* Does your client have a ransom position (Stokes v Cambridge, etc)? or are there other options?
* Value if this gives a grid connection (point of connection)
* Length of route over the land and whether other third-party landowners are required
* Impact on your client and his plans

**Give indicative figures for the payment**

* **If this land gave access to point of connection to the grid ½ mark**
* **If this was simply for the power cable ½ mark**

*Grid connection* - £100,000 possible plus payment per metre run?

*Cable in trench* - £25-75/m run? Some may answer in terms of 50% of the vacant value of the working width. Much will depend on circumstances.

**What is the position if your client’s land is let on a continuing agricultural tenancy?**

* **For access for surveys ½ mark**
* **For granting the agreement 1 mark**

Access for Surveys

* What powers in the tenancy agreement (rights reserved)?
* The effect of *Windsor-Clive v Rees* regarding intrusive investigations/surveys.

Granting the Agreement

* Does the tenancy agreement reserve the power to grant easements/servitudes
	+ If not, tenant has to be party to the agreement
* Consider effect on tenant and co-ordination of timings
* Compensation for disruption and loss?

**Question 3 - Commercial Lettings and Net Zero**

You act for the landlord of farm buildings converted to and let as offices. A key tenant has approached you about ensuing that its office is net zero.

**What do you understand “net zero” to mean in this context? ½ mark**

That any greenhouse gas emissions (here likely to be carbon dioxide rather than nitrogen dioxide or methane) from the property and its use are offset to give a net zero balance.

[While the object here is to consider the building(s) provided by the client and so primarily about fuel and energy use, there are, strictly, differences between being carbon neutral and net zero and then a variety or more detailed definitions:

* Carbon neutral – mitigating emissions regardless of the level of reductions, so often using offsets
* Net zero – more challenging in reducing emissions as required by targets and then removing carbon for residual emissions

These are then assessed across three scopes:

* Scope 1 – owned and controlled sources
* Scope 2 – purchased energy
* Scope 3 – indirect emissions upstream and downstream as from suppliers or business travel.]

**Give 5 ways in which that might be achieved in the case of a group of farm buildings converted to offices?**

**2½ marks**

Reducing emissions and offsetting remaining ones by means such as

* Using renewable energy as the power supply
	+ On the estate or from third parties?
	+ Solar panels on the buildings
* Reviewing fixed equipment such as boilers and any building management systems
* Ground source/air source heat pumps/estate heating system?
* Insulation of spaces, pipes, etc
* Reviewing buildings for energy loss
* Downstream supply chain including waste and recycling, landscape management, waste treatment, site electricity, lighting
* Offsetting remaining emissions

By the tenant’s own business activity and use of the property with

* LED lighting (but might require fittings)
* Electric vehicles (but might require on-site charging points)
* Downstream supply chain

**How would you advise your client? 2 marks**

Improved energy performance is being made essential for lettings. Borrowing by landlord or tenant might need to show energy performance – supply chains might demand it.

Your client has the choice of meeting standards or moving ahead of them but under his control

That brings a cost but could ensure continued lettings to good tenants, protecting (possibly enhancing) rental income (value and limiting voids)

Is this all to be funded by the landlord or provided by third parties? Consent for tenant’s improvements to be on net zero terms? Extend the lease to assist tenant’s investment?

Who will have the benefit of the offsetting – the landlord or the tenant? Each may want to have some (form different sources) as each may have to show their own performance. Your client might want to do this within his property.

**Question 4 - Managing Farmland around a House**

Your client owns the 30 acres of farmland around his house, which were purchased together in 2014. It has been run under a contracting agreement but this is now due for review and your client, wanting to retain the land, is seeking advice on the options.

**The contractor is willing to continue but, in the light of uncertainty about farm economics, proposes that his return needs to be better protected at the cost of your client. What are the pros and cons of renewing the contract from financial, tax and practical perspectives?**

 **2½ marks**

If the contract farming done properly, your client is the farmer of the land with the business status and responsibilities that brings and retains (some) control of the use of the land around the house.

His income is trading income (subject to the hobby farming exclusion).

He should have a business on the land qualifying for Business Property Relief from Inheritance Tax on market value (as well as the land anyway qualifying for APR) and the business reliefs for Capital Gains Tax. All potentially important if there is some development value.

However, it is relatively small area of land for the overhead effort and cost of a properly run contract farming agreement. Your client has obligations for the paperwork from VAT to BPS.

The small area is likely to mean that the land is really being run within the contractor’s own larger operation, making it easy for good practice to slip over time and for convenience into a letting.

The probable facts would mean that the day-to-day farming is not being done from the house which would then not be a farmhouse for APR while the 30 acres would anyway make it unlikely to be of a character appropriate.

**What would be the pros and cons of letting the land on a tenancy instead, again from financial, tax and practical perspectives?**

**1½ marks**

This would give the secure income of the rent with the tenant taking the business risk.

It would relieve the client of the responsibility of being the farmer.

It might recognise the probable reality of the business relationship with the “contractor” and so be cheaper and more practical way of operating it. The contractor (were he to become the tenant) might anyway prefer this.

With 7 years ownership now achieved, the land would anyway qualify for APR on its agricultural value, even though the house would probably not qualify for APR either way. That could expose any excess of market value for hope value or other reason to IHT.

As the land would now be held by the tenant, the owner would, subject to the terms of the agreement have lost immediate control of how it is used.

**What other uses might your client consider? With what practical implications?**

**1 mark**

Moving to a grazing let? Perhaps not grass now, so establishing it. Are there graziers? Is there water? How good is the fencing?

Woodland planting – Long term land use change

Entry into an environmental agreement – say for habitat creation – whether under a government scheme or a private agreement as for biodiversity gain. Is there a phosphate or other offsetting option? Will this need management?

Other uses from pony lettings to development, renewable energy, etc.

**Question 5 - Controlling Sold Land**

Your client owns the 30 acres of farmland around his house. He is now planning to terminate the contracting agreement under which the land has been farmed and sell the land. Remaining in the house, he is however concerned to retain at least strategic control over how the land is used.

**How might he limit the uses of land by its new owner? ½ mark**

Selling the land subject to a restrictive covenant (real burden in Scotland) which prevents the new owner (and any successor) from making specified changes, such as non-agricultural development.

**If he is only concerned not to lose out on future development value in the land what else might he do? ½ mark**

Impose an overage or clawback clause, requiring the payment of a percentage of the uplift in value achieved within a specified period of time. A high percentage might deter development; a low one might not give enough value.

**What is required for a restrictive covenant (Scotland - real burden) to be enforceable?**

**½ mark**

It must impose a condition that benefits other land (so usually, as here, neighbouring land) – not another person. If no other land benefits, the covenant is unenforceable.

**What action can be taken where a restrictive covenant (real burden) is breached?**

**1½ marks**

The owner seeking to enforce a covenant that is being breached can:

* Take legal action to stop any breach
* Require that the breach be remedied
* Demand compensation for the breach

It will also be an issue for any sale proposed by the person bound.

**How can a restrictive covenant (real burden) be altered or lifted and on what grounds?**

**2 marks**

The parties can agree to do this, usually for a price paid to the beneficiary of the covenant.

Failing agreement, the party seeking change can apply to a Tribunal:

* England and Wales – to modify or discharge the covenant by the Lands Chamber of the Upper Tribunal under s.84 of the Law of Property Act 1925.
* Northern Ireland – by the Northern Ireland Lands Tribunal under Article 5 of the Property (Northern Ireland) Order 1978
* Scotland – by the Lands Tribunal for Scotland under s.90 of the Title Conditions (Scotland) Act 2003

The Tribunal can alter or lift the covenant if it finds it:

* Is obsolete because of changed circumstances
* Will not affect the beneficiary

It might also be lifted by sustained breach if the owner of the benefited property does not object to a breach of the burden or no one has an interest in enforcing the burden and enough years have passed.

**Question 6 - Grazing Arrangements**

Your client, not a farmer, has now inherited the 30 acres of pasture around his house from his uncle who was a dairy farmer, the rest of whose land has been sold. He has now consulted you about arrangements for offering the land for grazing.

**What are his options? 1 mark**

Any two of

* Grazing licence – in England, Wales and Northern Ireland
* Grazing tenancy (FBT in England and Wales; SLDT in Scotland)
* Profit a Prendre/Profit of Pasturage
* Conacre – Northern Ireland

**Outside Scotland - What is the difference between a tenancy and a licence? 1 mark**

A tenancy gives the tenant exclusive possession of the land with the powers of the tenant only limited by the terms of the agreement

A licence is a permission to do something (and only that) when it would otherwise be trespass. It gives no rights beyond what is permitted and does not grant exclusive possession.

***Scotland – What is the difference between an SLDT and a tenancy for grazing and mowing?***

***1 mark***

The tenancy for grazing or mowing only must be for less than a year with a clean break before another one has effect. It is only for those uses.

An SLDT can be for any agricultural use and for any term up to five years, giving the tenant more full control over the land.

**What are the key points for a grazing licence (Scotland – grazing tenancy) for the owner to be seen as a farmer in order to be eligible for capital tax reliefs and area payments? Include reference to legal cases.**

**3 marks**

The owner has to have and exercise the powers of positive husbandry over the land, producing the crop of grass that the grazier’s animals graze. Just maintaining the boundaries is property maintenance (as with a let cottage) not agricultural husbandry.

That means that it is the owner who is responsible for fertilising, liming, spraying and, as necessary, reseeding the pasture.

The grazier is simply given a permission to graze and should be given no power to do any husbandry of the pasture – cultivation would be husbandry and demonstrate the control expected of a tenant.

That must be the way that it and the parties work in practice, not just in the written agreement.

That is the structure of the CAAV model grazing licence (grazing tenancy in Scotland) asserting the owner’s status as a farmer for tax and Basic Payments.

The IHT case, *Charnley*, saw the farmer found to be managing the pasture to the extent that:

* His house qualified as farmhouse for APR because he was doing the day-to-day farming of the land from it (the test failed in *McKenna/Arnander*) – and it was of a character appropriate to the land
* He qualified for BPR on the land and machinery

As the grazier said, he “farmed the land using my animals”.

By contrast, the IHT case *McCall* (also *MacLean*) found that all management of the grass was by the graziers who fertilised etc with the owner’s work limited to some property functions for drains, hedges and gates. BPR was not available.

The CGT case, *Allen*, found the owner to have done enough management of the pasture to be the farmer selling his grass the grazier and so have business reliefs on the sale of the land. *Evelyn* was a case where that was not shown for potential development land.

Those criteria tested in tax cases have fitted well with the need to have the “land at your disposal” for the CAP’s Single and Basic Payment Schemes, requiring the power to cross comply (as determined by the ECJ in *Landkreis Bad Dürkheim*) so allowing owner occupier and tenant farmers to claim but excluding landlords, contractors and licensees.