

Central Association of Agricultural Valuers
Written Examinations 9th November 2006
Examiners' Comments

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Paper 1 Question 1

This question sought to examine the basic knowledge of candidates both on the terms of the Model Clauses, (the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulation (SI1473 of 1973)) and the subsequent procedures up to the service of notice to quit under the AHA86 Sch3 1D.

Comparison was sought with the position under the ATA95.

Candidates were inclined to mix up the procedures and time limits, particularly, in respect of Part C of the question, when recognising the significance of the notice to quit and the rights available to the tenant to proceed to arbitration or invoke the ALT's jurisdiction or both.

The importance of the correct notice, identification of the repair, the breach of agreement and the remedy while providing a reasonable time period for compliance with the notice was significant and required to be fully stressed.

The candidates that were successful passed because:-

1. They understood there was a 'material' breach of repairing obligations
2. They answered the question A-D in the logical sequence.
3. They completed the answer as a series of 'short notes' as opposed to working at length, or a letter format which had the tendency to merge the individual sections of the question, which did not easily facilitate marking.

The question was attempted by 58/95 candidates of which 37 achieved a pass mark or better.

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Paper 1 Question 2

The examiners were looking for candidates to show that they had obtained a good day to day working knowledge of the Environmental Stewardship Scheme. As well as this, the examiners were looking for candidates to show that they had the ability to prepare and submit an ELS/HLS application (whilst also assessing the outside assistance that they would require in order to do this).

Bullet points in the examiner's view should have included:

1. Provide a comparison of principal rules and regulations between the Entry Level and Higher Level Schemes.

Entry Level Scheme

ELS is designed to make it easy for all farmers and land managers in England to participate in agri-environmental schemes.

5 year scheme

Farm Environment Record required merely outlining the existing environmental features and the additional management options to be undertaken

Point scoring - 30 per hectare (60 per hectare for organic) therefore minimising liability to client resulting in £30 per hectare being paid (£60 per hectare being paid for organic).

Capital works not paid.

Whole Farm Scheme

Must be on RLR

Higher Level Schemes

HLS is discretionary and only applications which offer the most environmental benefits will succeed.

10 year scheme with a 5 year break requiring where appropriate Landlords support

Farm Environmental Plan required providing a comprehensive guide, condition and management options and detailing consultations to ensure a comprehensive environmental audit.

No points payment. This is dependent upon management scheme agreed.

Capital works paid as agreed.

Applicant has to be in ELS before they can be in HLS.

Must be on RLR

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Paper 1 Question 2 cont'd.....

2. Assuming the Higher Level Scheme is chosen, what confirmations and enquiries will be required?

Archaeological Survey (County Council)

RSPB

English Nature (Natural England) re SSSIs etc.

Footpaths

Field Inspection – identified features

RPA need to know SBI, CPH, Trading Title and Members of Business

Local Planning Authority/Rights of Way Officer/TPO's

Specialist Bodies

Biological Surveys

Land Status (LFA/non LFA/Organic)

Land Management/Stocking

Water Courses

Previous Schemes

In addition there will be a need to identify BAP liabilities, targets to be achieved and joint character areas.

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Paper 1 Question 2 cont'd.....

3. Produce a check list with chronicle order from instructions to the submission of the application.

a) Apply for pre populated forms and maps – offer initial visit
- establish BAP habitat, joint character areas and targets.

b) Enquiries to RSPB, Natural England, County Archaeologist, Local Planning Authority, Biologists/Chemists

c) Detailed Inspection
Management practice
Identify areas of interest
Identify all features
Draw up FEP

d) With reference to FEP and with reference to JCA targets etc. draw up final management proposals.

- Back up with Archaeological/Specialist Reports

e) Application submitted (within quarter dates)
- Rebuttal/alteration/partial rejection – negotiation and hopefully scheme is accepted.

This question was set to test whether candidates had a vague understanding of the ELS/HLS gleaned from reading leaflets or attending a seminars or whether they had gone the “extra mile” to properly understand the subject and therefore be capable of offering professional advice.

Generally the question was answered in an acceptable manner, although candidates knowledge in many cases was not detailed. Many had the knowledge to obtain enough marks for a pass, but few really understood their subject thoroughly.

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Paper 1 Question 3

A report to the client was requested on the conduct of an auction, the work required by the solicitor and accountant and a comment on possible alternative methods of sale.

Perhaps not surprisingly, most candidates (81%) attempted this question as, in theory, it was straightforward and should be an area of work covered by most business in a 'day-to-day' work scenario rather than requiring copious amounts of textbook revision. The majority of candidates achieved a pass mark, but it was slightly surprising that they were mostly borderline. Many failed to comment sufficiently on alternative methods of sale which was clearly indicated on the Question Paper as the highest scoring part of the question.

A good answer would have been under 3 distinct report headings with concise notes to include most of the following salient points:-

1. The work required for an Auction:-

- Confirming instructions
- Inspection
- Preparing particulars/photographs
- Obtaining details of the Farm
- Consider lotting
- Discussion with Planning Authority
- Fix Guide and Reserve price
- Prepare advertising schedule
- Book room and prepare rostrum notes

2. Solicitor and Accountant work:

- Prepare special Conditions of Sale/sale contract
- A legal pack
- Proof of Title/Searches
- Accept the Deposit
- Deal with transfer documents and completion of sale
- Advise on CGT and all tax implications
- Advise on lotting
- Advise on financial state of current market conditions

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Paper 1 Question 3 cont'd.....

3. Alternative Methods of Sale:

i) Private Treaty

Set Timetable

Flexible to specific buyer

Longer sale process

Open to disappointment i.e. gazumping

Less risky

Could be funding and timing problems

ii) Formal or Informal Tender

Can set the timetable.

Formal - committed to process

Informal - can withdraw

iii) Auction

Can be expensive

Can set the timetable

Good in a strong market

A transparent process

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Paper 2 Question 1

Question attempted by 26 candidates.

Passed by	17 candidates	65%
Failed by	9 candidates	35%

Highest	18	90.0%
Low	9.5	47.5%
Average	13.28	66.39%

The question asked for a budget and cashflow for 100 ha arable holding treated as a separate business. Candidates were free to make whatever assumptions they wished and state them clearly then build their budget and cashflow around these.

The most logical answers started by setting out rotation, enterprise gross margins, likely income from SPS and ELS.

Candidates showed good knowledge of crop outputs, values and costs associated and generally scored well on this aspect. Some candidates made unrealistic assumptions on SPS saying that entitlements would not be purchased at all or that the buyer would only get the regional average element and that the history would remain with the seller.

Some detail on the cultivation regime and costs involved together with other fixed costs should have been included to formulate a whole farm budget for the additional land.

Candidates were then requested to produce a quarterly cashflow for the first harvest year. Many restricted this to only four quarters, therefore failing to show all income receipts and distorting the true picture.

Those who scored well showed a sensible and logical layout, with a good appreciation of the timing of receipts and expenditure, using the figures from their gross margins, whole farm budget and assumptions.

Many of the assumptions were required to formulate the rotation, gross margins and whole farm budget. They could be wide and varied – and were. These should have included rotation, areas within crop each year, prices, entitlement quantities and values for 2007 year (approx), modulation deductions (approx), ELS entry comment, cultivations policy and costs. £/€exchange rate.

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Paper 2 Question 1 cont'd.....

The question also stated the purchaser wished to run the land as a separate business.
Therefore SPS matters should have covered:

New SBI
CReg 01 Customer Registration Form
IACS 26/27 Related business questionnaire
New CPH
Beware previous occupier 10 month period
RLE1 forms for transfer of land and entitlements

VAT registration

Up to 2 marks were awarded for general layout and logic of approach.

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Paper 2 Question 2

This was sat by 57 candidates of which 33 (58%) reached the pass mark on this individual paper. This was a question which was relatively easy to answer provided you had an understanding of the Agricultural Waste Regulations 2006, such as set out in the NFU Business Guides or available from Net Regs at www.netregs.gov.uk. We were expecting a straightforward letter advising someone who had no knowledge of the waste regulations what was required. The letter did not need a full explanation as to why the regulations were introduced other than that correct name of the regulation and the date on which they came into force and the fact that there is a twelve month transitional period. A correct definition of "waste" was considered important and there were some points for giving relevant examples of likely waste on the farm described in the question. As this was a livestock holding, some further comment on disposal of livestock effluent and disposal of carcasses was considered relevant.

The essential requirements/prohibitions of the regulations, namely stopping of burying waste and using farm tips, stopping open air burning of non-natural waste and also natural waste (unless with exemption) and the strict obligation to abide by the duty of care should have been clearly stated. The transitional provision for the burning of agro-chemical containers also should have been stated.

This client then required clear advice as to what practical steps he could do. All candidates knew waste could be stored on the farm for twelve months, but surprisingly very few gave further practical information as to how it must be stored e.g. safe and secure, not causing pollution or unacceptable to members of the public, kept clean and different types of waste kept separately. Of those candidates who did very few made any further practical comments as to how this could be complied with on the specific farm.

The options of taking waste to off-farm facilities or instructing a third party waste carrier, were reasonably well dealt with although again surprisingly few candidates correctly referred to the transfer note and specifically, the essential information that must be contained within the note e.g. coded description of the waste, how the waste is contained and its amount.

Most candidates knew about exemptions but not all were clear as to when you required an exemption. Most knew an application had to be made to the Environment Agency by 15th May 2007, not many candidates commented on the problem of farmers applying for blanket exemptions or indeed no exemptions and the fact that this may trigger an Environment Agency inspection. Not everyone identified the fact that whilst most exemptions are a one-off registration, some require annual notifications and further details.

With regard to the consequences of non-compliance with the regulations, the candidates immediately jumped to the conclusion that they needed detailed reference to the Single

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Payment Scheme where in fact they should have been commenting on non-compliance with the agricultural waste regulations as that was what the question was actually about.

It was relevant to comment that the Environment Agency are taking a pragmatic approach at the present time i.e. for the first year of implementation and concentrating on raising awareness, education and advice but they are moving towards enforcement in a controlled manner over time. Few candidates commented that waste stored over twelve months would be considered an unauthorised land fill site. There were very few comments on the requirement that waste management activities of any sort should not cause any nuisance, odours or dark smoke and if so, then the disposal could be considered to be illegal. The client should also have been advised that the circumstances on which the Environment Agency would be likely to undertake a visit at the present time.

Some candidates actually then related the letter to the question scenario and referred to how to deal with the complaining neighbour and where they did so, then generally made sensible comments.

Generally the question was well answered in a letter form although candidates should not waste time in creating full detailed addresses for their supposed firm, for the client, including e-mail addresses. There was no necessity to waffle on about the client's father's health or give superfluous information about the introduction of the waste regulations. This client was seeking succinct practical advice in a letter.

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Paper 2 Question 3

This was sat by 93 candidates of which 72 (77%) reached the pass mark on this individual paper. This was a question which was relatively easy to score full marks and, in the majority of cases at least a good pass mark. Of those candidates who only attained a low mark, most had an idea about the standard items to be recorded in any lease but could not demonstrate a good working knowledge of the usual heads of terms for a telecommunication tower. In practice, most heads of terms are very similar to each other and once you have seen a couple, you have nearly seen them all! The candidates were not required to give very detailed information regarding the specific characteristics of this site as none were given in the question. They were however expected to produce detailed terms i.e. not leaving items, such as rent and location, open for full discussion. They were required to set it out in standard heads of terms layout. As the subject matter was relatively simple, the candidates were required to produce professional heads of terms using terminology and style that one would expect for such a document.

All candidates knew that the parties had to be named, but surprisingly few recognised the usefulness of also stating each party's solicitor's and agent's details, so that the heads of terms becomes a core reference document as well as for instructing solicitors. Most recognised the need to be specific about the user clause and type of equipment and further points were available for those who gave an indication of the schedule of apparatus.

Some candidates stated a lease term of 5 years, which would be un-commercial to an operator and one was expecting a lease of 10 to 15 years. Most candidates commented that it would be contracted out of the 1954 Act, which was an acceptable approach.

Amount of rents varied, but it was obvious that candidates have different experiences across the country. Most recognised the need for a rent review and most referred to market rent or RPI, but surprisingly not all proposed that the rent should be the greater of the two and specifically an upward only clause.

Most candidates recognised that planning would be required and that the operator should obtain this but few, if any, made reference to the possibility the lease would be conditional on obtaining planning consent. Some candidates threw in a 'premium' but did not state why this would be paid or make reference to a possible premium payment for completion of the heads of terms whilst planning consent was sought.

Most candidates dealt with prohibitions on assignment, sub-letting and sharing possession, and it was felt that further points could be gained for suggesting a site sharing basis rather than strictly prohibiting it.

Most included break clauses with a sensible notice period, but surprisingly few made the break clauses conditional on certain events. Unconditional landlord only operated break clauses would almost certainly have made this proposal non-commercial for the operator.

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Most candidates recognised the need for electricity and other supplies and the need for wayleaves. Few candidates recognised the need for a working area, larger than the lease area. Most candidates recognised the obligation of the operator to pay rates and the need for the operator to hold a full insurance for the apparatus and specifically public liability insurance as well as giving the landlord a full indemnity against any claims arising. Most recognised the need for the operator to pay the landlord's costs but those who limited those costs to legal costs missed the opportunity to recover their own costs from the operator!

Generally well answered but as a result, candidates were expected to produce good quality heads of terms in order to score full marks.

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Paper 2 Question 4

On the whole the question was answered fairly well. I suspect this may be, in comparison with last year's fairly poorly answered national taxation question, because the National Tutorial organisers had given some detailed training on the subject.

Notes on the meeting.

Again there was some mixing up of the two Antrobus cases – this question was wholly in relation to Antrobus 2 and Antrobus 1 was irrelevant. It is unfortunate that many candidates are unable to give the proper name of the case or in which Court the case was decided. The fact that the valuation in question was within the scope of the Red Book escaped most candidates.

It was important to understand the thought processes of candidates in this section of the answer. Few were able to distinguish between the cited situation and Cookhill Priory, to mention the difference in size between the two or make a case (even by assumption) regarding the condition of the subject property. The fact that the subject property had not sold would be a key point in negotiations. There was little mention of the practice of properties with AOCs in the Home Counties selling very close to their unrestricted values. Notes of 'settlements' at 15% but to settle at 20% would have had an effect on the examiner. Some able candidates, however, score well and gave remarkable answers, if a little far-fetched!

Letter to the solicitors

A well-constructed, straightforward letter to the solicitors outlining the statutory basis and reference to the Red Book was what was required. Few managed to capture the true essence of the issue and few mentioned the symbiosis with Agriculture Occupancy Conditions, even if they are conservative comparisons and that AOCs can be lifted where restrictions under s115 IHTA cannot. It would have been comforting to see a section stating that a true comparison between the two would be difficult but that some settlements do exist even if to get the authority from the parties might prove difficult.

A mention that there was no appeal to the Court of Appeal in Antrobus 2 means that at present that decision is good law and we must comply with it. This means the taxpayers are in a less favourable position than they would have been without Antrobus 2. It should mention that a settlement at 30% may be likely (the LT suggested that it may be more) but that anything under 30% difference would be a bonus. There were some answers, which provided a lot of the above issues, but some answers were so poorly answered that the letter covered half a side of A4. The majority of answers, however, lay in the middle but, on the whole, were much better than last year.

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Paper 2 Question 5

This question concerned the possibility of applying for planning permission for residential development of a stone barn within a family tenancy. Generally speaking the answers to this question were completed well and competently as the subject comes up frequently in many rural practices.

The question asked for a letter composed in straightforward terms. Most candidates managed this but some became carried away and resorted to a very technical response, which defeated the object. A lot of the answer material was contained in the wording of the question; some failed to spot this and answered their own question.

In dealing with the tenure issues, it was important to set out the detail but not too technically (most did so) but, importantly to set out the practical way forward and convince the examiner that landlord and tenant were completely happy with the partitioning off of the barn and that a deed of variation/partition would be undertaken.

Other pitfalls, such as national planning guidelines for development in the countryside (preference of LPAs to secure development involving local industry etc.), condition, distance of the barn from the road, were covered generally well. Local opposition, flooding, structural integrity were dealt with in only a very few cases.

Feasibility schemes were either answered well or very badly. In those cases where the feasibility was dealt with well, a full list of factors was put forward together with costs of construction and likely values of the finished product either with VP if to be sold or on an investment basis. Several of these were really very good indeed. Some were answered very poorly with remarkably low prices per m² conversion costs.