

**CAAV EXAMINATION 2003**  
**ORAL SECTION – 13<sup>TH</sup> NOVEMBER 2003**  
**NATIONALLY SET QUESTIONS**

**NOTES**

- a) **Group examiners must choose THREE of the four questions set out below and ALL candidates in a Centre MUST be asked to answer the same THREE questions.**
- b) **The questions are intended to prompt a reasoned and meaningful response explaining the answer as if to an enquiring client.**
- c) **Examiners may ask a follow up question to elicit a full answer where the first response is incomplete or unclear. Such follow up should not include leading questions.**
- d) **Each question is worth FIVE marks which should be awarded according to the examining panel's decision on the completeness and correctness of the candidate's response.**
- e) **The four questions are listed below to ease choice and then set out in this paper with suggested outlines of answers which are, of course, not exhaustive.**

**QUESTIONS**

- Question 1.** Your client has been approached by a telecommunications operator to erect a permanent mast on his farm. Outline the salient points you would cover in your initial advice if your client were:
- An owner-occupier
  - A tenant
- Question 2.** Compare and contrast the arbitration procedures under the Agricultural Tenancies Act 1995 with those under the Agricultural Holdings Act 1986.
- Question 3.** What are the implications of “Control of Asbestos at Work Regulations 2002” to agriculture?
- Question 4.** Outline the matters that should be covered when confirming your terms of Engagement in connection with a Red Book Valuation.

- Question 1.** Your client has been approached by a telecommunications operator to erect a permanent mast on his farm. Outline the salient points you would cover in your initial advice if your client were:
- An owner-occupier
  - A tenant

- Answer 1.** Suggested matters that need to be covered in the answer:
- i) Owner Occupier:
- Rent – depends on equipment rights, operator etc.
  - Rent reviews – frequency, basis.
  - Assignment of lease – group companies only?
  - Subletting – bar or with consent?
  - Site sharing – split of site sharing fee. Consent required?
  - Apparatus and equipment rights – height of mast, number of antennae, dishes, cabinet size etc.
  - Upgrade of equipment – exclusion from Part II, L & TA 1954.
  - Area of land – location, size, access, power. Possible sterilisation of development.
  - Lift and shift redevelopment clause – on receipt of planning or “settled intention” to develop.
  - Break clauses – operator and owner.
  - Insurance – level and risks.
  - Indemnity
  - Repairs
  - Planning – operator to obtain.
  - Fees – whether or not to proceed to completion.

The above are the matters likely to be covered by Heads of Terms.

Advice should also include:

- Likely public objections and possible view of client in local community.
  - Perceived health issues and potential liability.
- ii) If client is a Tenant:
- What are terms of tenancy agreement?
  - 1986 Act – can they sublet or L/L will probably give notice to quit part on receipt of planning.
  - Can tenant get a premium for giving early VP?
  - Compensation for crop loss – construction, services and access.
  - Caution over how surrender of land dealt with – possible FBT by default?

- Question 2.** Compare and contrast the arbitration procedures under the Agricultural Tenancies Act 1995 with those under the Agricultural Holdings Act 1986.

- Answer 2.** i) Arbitration Act 1996 applies to FBT’s and not to tenancies under the AHA 1986.

- ii) Very few mandatory sections under Agricultural Tenancies Act 1995 – special code set out in Section 84 and Schedule 11 of AHA 1986 apply to AHA tenancies. Arbitration is used throughout the 1986 Act to settle disputes and within the 1995 Act only three areas (rent, consent to improvements, compensation) require arbitration and the parties can, to an extent, contract out of at least one of these areas (rent).
- iii) References to dispute resolution under ATA 1995 – arbitration under AHA 1986. Parties agree procedures under 1995 Act.
- iv) Rigid code under 1986 Act.
- v) Statement of Case 1986 Act – 35 day time limit. No such procedures under 1995 Act, again limits are agreed by parties.
- vi) 56 day time limit for making Award under 1986 Act. None under 1995 Act, again limits are agreed by the parties.
- vii) Extensions of time procedures under 1986 Act but not 1995 Act.
- viii) Statutory back-bone of 1986 Act contrasts with contractual arrangements of 1995 Act.
- ix) 1986 Act covers wide range of potential disputes – 1995 Act limited range.
- x) 1986 Act disputes – possible use of ALT and arbitration.
- xi) 1995 Act disputes resolution – expert determination – mediation as well as arbitration are encouraged for more use of courts. Very few arbitrations under 1995 Act.

The candidate should display knowledge of the difference between the two codes not necessarily mentioning specific sections or time limits but recognising the differences with some examples.

**Question 3.** What are the implications of “Control of Asbestos at Work Regulations 2002” to agriculture?

- Answer 3.**
- i) They impose a new duty of care in managing asbestos in buildings.
  - ii) It applies to anyone who has maintenance and repair responsibilities for non-domestic premises, either through a contract or tenancy agreement, or because you own the premises.
  - iii) A risk assessment plan has to be prepared of the buildings which:
    - Identifies asbestos
    - Assesses the risk to health
    - Prepares a plan to minimise the risk
    - Takes necessary steps to implement the plan and reviews and monitors the plan.
  - iv) Everyone working in and around the building must be aware of the location and condition of the asbestos material.

**Question 4.** Outline the matters that should be covered when confirming your terms of Engagement in connection with a Red Book Valuation.

**Answer 4.** Direct quote from the RICS Appraisal & Valuation Standards (5<sup>th</sup> Edition) Chapter 2, Practice Statement 2.1:

Terms of Engagement

PS2.1 Confirmation of Terms of Engagement

The member must always confirm to the client in writing, before any Report is issued, the terms on which the valuation will be undertaken. As a minimum the terms must include the following:

- a) identification of the client;
- b) the purpose of the valuation;
- c) the subject of the valuation;
- d) the interest to be valued;
- e) the type of property and how it is used, or classified, by the client;
- f) the basis, or bases, of valuation;
- g) the date of valuation;
- h) the status of the member and disclosure of any previous involvement;
- i) where appropriate, the currency to be adopted;
- j) any Assumptions, Special Assumptions, reservations, any special instructions or Departures;
- k) the extent of the member's investigations;
- l) the nature and source of information to be relied on by the member;
- m) any consent to, or restrictions on, publication;
- n) any limits or exclusion of liability to parties other than the client;
- o) confirmation that the valuations will be undertaken in accordance with these Standards;
- p) the basis on which the fee will be calculated;
- q) the member's or organisation's complaints handling procedure, with a copy available on request.

Further guidance is given in the Appendix to Practice Statement 2.1.