

December 2021 e-Quiz*Notes to candidates:*

- (1) Most of the contents of this e-Quiz are adopted from December 2019 e-Quiz.*
- (2) Please read the scenario and annex (if any) before attempting the questions. The subject matter and names of parties are fictitious.*
- (3) Clause 5.2 of the CPD Scheme Guidelines provides that, for the purpose of the award of the Certificate of Attainment, the following limitation applies in calculating CPD points:*

To encourage practitioners to diversify their modes of learning, certain modes may be capped. For example, the cap for EAA e-Quiz is four CPD points per a 12-month CPD period. Therefore, even if a participant completes more than four e-Quizzes (one CPD point each) during a 12-month CPD period, only four CPD points can be earned.

Pass Mark: You will have 12 questions in this e-Quiz. You will earn one CPD point if you can score not less than 6 correct answers.

Remarks: In the following questions, the following words have the following corresponding meanings:
 “the Authority” means the Estate Agents Authority;
 “the Ordinance” means the Estate Agents Ordinance;
 “the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation;
 “the Licensing Regulation” means the Estate Agents (Licensing) Regulation;
 “the Order” means the Estate Agents (Exemption from Licensing) Order;
 “the Code of Ethics” means the Code of Ethics issued by the Estate Agents Authority; and
 “the Practice Circular” means the practice circulars issued by the Estate Agents Authority.

Case

Mrs. Boss has recently passed the Estate Agents Qualifying Examination, and she intends to start an estate agency business. Her good friend Mrs. Financier would like to join her as a partner. Mrs. Financier is not, however, a licensed estate agent or a licensed salesperson, nor does she want to be involved in the business, and her only contribution will be to provide the necessary capital. Mrs. Boss thinks that in these circumstances it is possible for Mrs. Financier to be her partner, and so she agrees to form a partnership with Mrs. Financier under the business name of “B&F”.

Mrs. Boss immediately attends to the matters necessary for starting a new estate agency business. Having just passed the Qualifying Examination, she remembers quite clearly what

she has to do.

At the same time, Mrs. Boss also intends to recruit one licensed estate agent and one licensed salesperson to assist her in the business. Mrs. Financier notes that the salary for a licensed salesperson is much lower than that of a licensed estate agent. Since both can perform estate agency work, Mrs. Financier suggests employing two licensed salespersons and no licensed estate agent at all. Mrs. Boss explains to her the differences between the two and why it is desirable to recruit a licensed estate agent as well.

On the first day B&F opens for business, Mr. Landlord walks into the shop of B&F. He says he wants to put his property (“the Property”) on the market for rental. Mrs. Boss carries out a land search of the Property. The land search says that Mr. and Mrs. Landlord hold the Property as tenants in common in equal shares. Mr. Landlord says his wife passed away last year, but his solicitor has since dealt with the legal matters arising from his wife’s death. His solicitor says he will soon register some documents with the Land Registry, and has advised him he can now let the Property.

The land search also says that the Property is subject to (1) a legal charge in favour of a bank (“the Bank”), and (2) an order of the Building Authority under section 28 of the Buildings Ordinance (“the Building Order”), which refers to some repairing work relating to the drains and sewers of the building of which the Property forms part.

Later that day Miss Tenant also walks into the shop of B & F. She says she wants to rent a flat for her own occupation. Mrs. Boss introduces the Property to her. After viewing it, she instructs Mrs. Boss to negotiate for the renting of the Property from Mr. Landlord.

Because the Property is subject to a legal charge, Mrs. Boss advises the parties that Mr. Landlord should obtain the Bank’s consent for the tenancy. Mr. Landlord refuses to obtain such consent, saying that once the Bank knows he does not occupy the Property himself but lets it, the Bank will increase the interest rate for his mortgage loan. He says if Miss Tenant insists on obtaining such consent, he will call off the transaction. Miss Tenant is very keen about renting the Property. She asks Mrs. Boss what the risks are for renting the Property without obtaining such consent. Mrs. Boss gives her some advice on this matter.

After some negotiations, the parties agree to enter into a tenancy agreement (“the TA”) containing, among others, the following provisions:

(a) Term

The term of the tenancy is for two years from 1/12/2021.

(b) Break clause

At any time after 30/11/2022, Miss Tenant shall be entitled to terminate the tenancy by serving on Mr. Landlord two months' prior notice in writing after that date.

(c) Rent-free period

A rent-free period from 1/12/2021 to 15/12/2021 shall be given to Miss Tenant for the purpose of decoration.

(d) User

The Property shall be used for residential purpose only.

(e) Furniture and Fittings

The furniture and fittings now in the Property will form part of the tenancy.

After the TA is drawn up by Mrs. Boss, she invites Mr. Landlord and Miss Tenant to attend at her shop for signing the TA. Before signing the TA, Mr. Landlord asks Miss Tenant to supply some income proof. Miss Tenant is not prepared to supply any personal financial information. Mr. Landlord then asks Mrs. Boss what remedies he will have if Miss Tenant should default in payment of rent. Mrs. Boss gives him some advice on this.

Mrs. Boss then asks Mr. Landlord to sign a Form 5, and after signing it herself, she gives a copy to Mr. Landlord. She also asks Miss Tenant to sign a Form 6, and after signing it herself, she gives a copy to Miss Tenant. She herself signs a Form 2, after which she gives a copy to Mr. Landlord and a copy to Miss Tenant. She does not think it necessary to inform Miss Tenant of the existence of the Building Order, as Form 2 does not require the particulars of a building order to be stated.

Mrs. Boss then asks the parties to sign the TA. She also asks Mr. Landlord to sign a Form CR109. Mr. Landlord refuses to sign the Form CR 109, not knowing what it is about, and so Mrs. Boss gives him some advice on this matter.

After Mrs. Boss has completed her first transaction, she waits for payment of commission from the parties. Despite repeated requests and even after legal actions have been taken, however, Mr. Landlord still fails to pay the commission due to B & F. Mrs. Boss would like to engage a debt collection company to recover the commission due from him. Mr. Landlord knows her intention and warns her that if she should engage a debt collection company, he will complain to the Authority. Mrs. Boss is quite confident, however, that her engagement of a debt collection company is quite proper as she has fulfilled all the requirements of the Authority.

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Answer Guide for e-Quiz – December 2021

Note:

1. This answer guide is prepared by the Professional Development Section and provides the correct answers to the questions of the e-Quiz of December 2021.
2. In this answer guide, the following words have the following corresponding meanings:

“the Authority” means the Estate Agents Authority;

“the Ordinance” means the Estate Agents Ordinance;

“the Practice Regulation” means the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation;

“the Licensing Regulation” means the Estate Agents (Licensing) Regulation;

“the Order” means the Estate Agents (Exemption from Licensing) Order;

“the Code of Ethics” means the Code of Ethics issued by the Estate Agents Authority; and

“the Practice Circular” means the practice circulars issued by the Estate Agents Authority.

3. The copyright of the e-Quiz, this answer guide and all supporting materials (collectively "the materials") belongs to the Authority, and the materials may be reproduced by candidates for the purpose of attempting the questions only. No reproduction of the materials for any other purpose is allowed without the prior written consent of the Authority.

Question 1

1. Under the Order, Mrs. Financier as a partner of B&F is exempted from the requirement for obtaining an estate agent's licence if:

- (i) she is not engaged in the partnership business as an estate agent.
- (ii) she has completed an educational level of Form 5 of secondary education or its equivalent.
- (iii) she is not an unfit person as defined in the Order.
- (iv) at least one other member of that partnership is a licensed estate agent.

- A. (i) only
- B. (i) and (iv) only
- C. (i), (iii) and (iv) only**
- D. (ii), (iii) and (iv) only
- E. (i), (ii), (iii) and (iv)

Answer to Question 1:

Section 3 of the Order states that any person who is a member of a partnership carrying on an estate agency business shall be exempted from the requirement for obtaining an estate agent's licence if-

- (a) he is not engaged in the partnership business as an estate agent;
- (b) he is not an unfit person; and
- (c) at least one other member of that partnership is a licensed estate agent.

In this section, "unfit person" means-

- (a) a person who-
 - in the case of an individual, is an undischarged bankrupt, or has, within the 5 years immediately prior to the day on which the Authority considers, or, where appropriate, begins to consider whether he is an unfit person, made a composition or scheme of arrangement with his creditors;
 - (ii) in the case of a company, is in liquidation or is the subject of a winding-up order, or in relation to whom there is a receiver appointed, or who has, within the 5 years specified in subparagraph (i), entered into a composition or scheme of arrangement with its creditors;
- (b) a person who is a director or officer of a company which is for the time being disqualified under the Ordinance for holding a licence, or was a director or other officer of that company at the date when the company was so

disqualified;

- (c) a person who is a mentally disordered person, or a patient, within the meaning of section 2 of the Mental Health Ordinance (Cap 136);
- (d) a person who has been convicted, whether in Hong Kong or elsewhere, of any offence (other than an offence under the Ordinance), as regards which conviction it was necessary to find that the person acted fraudulently, corruptly or dishonestly; or
- (e) a person who has been convicted of an offence under the Ordinance in respect of which he has been sentenced to imprisonment, whether the sentence is suspended or not.

In other words, an unfit person is one who does not satisfy the “fit and proper” requirement for the grant of a licence.

Option (ii) is not a requirement of the Order. Answer is C.

Question 2

2. Before B&F could start its new estate agency business, what must Mrs. Boss do under the Ordinance and the Licensing Regulation?
- (i) Apply for an estate agent's licence for B&F.
 - (ii) Apply for one statement of particulars of business for B&F for both its shop and its business name.
 - (iii) Apply for 2 statements of particulars of business for B&F, one for its shop and one for its business name.
 - (iv) Apply for an estate agent's licence for herself.
- A. (i) and (ii) only
B. (i) and (iii) only
C. (ii) and (iii) only
D. (ii) and (iv) only
E. (i), (ii) and (iv) only

Answer to Question 2:

The Ordinance (see section 15(1)) requires the individual, the partner, not the partnership, to apply for an estate agent's licence. Therefore, option (i) is wrong.

Each statement of particulars of business (SPOB) is issued for one place of business and one business name (see section 10(1) of the Licensing Regulation). Unless B&F has more than one place of business or more than one business name, only one SPOB is required.

Answer is D.

Question 3

3. Under the Ordinance, which of the following statements regarding some of the differences between licensed estate agents and licensed salespersons is/are correct?
- (i) A licensed estate agent can be the sole proprietor or a partner of an estate agency business or a director of a corporate licensed estate agent.
 - (ii) The majority shareholder of a corporate licensed estate agent must be a licensed estate agent but not a licensed salesperson.
 - (iii) A licensed salesperson cannot be employed as a sales manager to do estate agency work.
- A. (i) only
B. (iii) only
C. (i) and (ii) only
D. (ii) and (iii) only
E. (i), (ii) and (iii)

Answer to Question 3:

The major differences between a licensed estate agent and a licensed salesperson are as follows:

1. An individual licensed estate agent may perform estate agency work as (a) the sole proprietor or (b) a partner of an estate agency business, or (c) a director of a corporate licensed estate agent, or (d) an employee of a licensed estate agent.
2. Under section 38 of the Ordinance, the business of each office of an estate agency business shall be under the effective and separate control of a manager. Only an individual licensed estate agent may be appointed such a manager.
3. A licensed salesperson may only perform estate agency work as an employee of a licensed estate agent.

Under the Ordinance, there is no licensing requirement at all for shareholders of a corporate licensed estate agent, and therefore a shareholder of a corporate licensed estate agent, whether he is a majority or minority shareholder, need not be a licensed estate agent or a licensed salesperson. Therefore, option (ii) is wrong.

Option (iii) is also wrong because only a manager appointed for the effective and

separate control of the business of an office under section 38 of the Ordinance has to be a licensed estate agent. A sales manager or marketing manager or any other kind of manager appointed other than for the purpose of section 38 need not be a licensed estate agent.

Option (i) is correct. Answer is A.

Question 4

4. To confirm Mr. Landlord has the authority to let the Property, Mrs. Boss should look for registration of which of the following documents at the Land Registry?

- (i) A power of attorney executed by Mrs. Landlord in favour of Mr. Landlord
- (ii) Mrs. Landlord's will
- (iii) The grant of probate or letters of administration of Mrs. Landlord's estate

- A. (i) only
- B. (ii) only
- C. (iii) only**
- D. (i) and (ii) only
- E. (i) and (iii) only

Answer to Question 4:

The document which would confer authority on Mr. Landlord to deal with Mrs. Landlord's interest in the Property is a grant of probate (if Mrs. Landlord left a will which appoints Mr. Landlord as executor), or a grant of letters of administration (if she died without a will or left a will with no appointment of executor) to him as the administrator, of Mrs. Landlord's estate. Mrs. Landlord's will alone is not sufficient for this purpose as a will must be proved before a grant could be issued.

Generally speaking, a power of attorney is revoked upon the death of the donor and therefore it would not be capable of giving Mr. Landlord authority to let the Property.

Answer is C.

Question 5

5. Which of the following statements about the effect of the break clause (Clause (b)) in the TA is correct?
- A. Miss Tenant must terminate the tenancy of the Property after 30/11/2022.
 - B. Miss Tenant needs to rent the Property for at least 14 months.**
 - C. Miss Tenant can terminate the tenancy of the Property by giving 2 months' notice anytime during the term of the tenancy.
 - D. Miss Tenant needs to rent the Property for at least 12 months.
 - E. Miss Tenant needs to rent the Property for 24 months.

Answer to Question 5:

A break clause in the form as drawn up by Mrs. Boss is quite often used in practice. Under such a clause, Miss Tenant can terminate the tenancy by giving two months' notice in writing after 30/11/2022, which means in effect she must rent the property for at least 14 months.

Answer is B.

Question 6

6. Which of the following provisions in the TA is/are relevant to the determination of the amount of stamp duty payable on the TA?

- (i) The term of 2 years
- (ii) The break clause
- (iii) The rent-free period
- (iv) The residential user

- A. (i) only
- B. (iii) only
- C. (i) and (iii) only**
- D. (i), (ii) and (iii) only
- E. (i), (iii) and (iv) only

Answer to Question 6:

For lease, stamp duty is calculated at rates which vary with the term of the lease as follows:-

(Where the stamp duty calculated includes a fraction of \$1, round-up the duty to the nearest \$1.)

<u>Term</u>		<u>Rate</u>
Not defined or is uncertain		0.25% x of the yearly or average yearly rent (Note 1)
Exceeds	Does not exceed	
	1 year	0.25% x of the total rent payable over the term of the lease (Note 1)
1 year	3 years	0.5% x of the yearly or average yearly rent (Note 1)
3 years		1% x of the yearly or average yearly rent (Note 1)
Key money, construction fee etc. mentioned in the lease		4.25% of the consideration if rent is also payable under the lease. Otherwise, same duty as for a sale of immovable property

Duplicate or counterpart	\$5 each
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Note 1: The yearly rent/ average yearly rent/ total rent has to be rounded-up to the nearest \$100

Please note that any deposit which may be mentioned in the lease will not be taken into account in assessing the stamp duty.

Option (i) is clearly relevant.

Option (ii) has no relevance. The existence of a break clause would not affect the amount of stamp duty payable. (Similarly the existence of an option to renew clause would also not affect the amount of stamp duty payable.)

Option (iii) is relevant as it would reduce the amount of average yearly rent of the tenancy.

Option (iv) has no relevance.

Answer is C.

Question 7

7. If Miss Tenant enters into the TA without requiring Mr. Landlord to obtain consent from the Bank to the TA, what consequences will follow?

- (i) The TA is not valid.
- (ii) Mr. Landlord cannot maintain an action to recover rent from Miss Tenant.
- (iii) The TA cannot be produced in a court of law.
- (iv) If Mr. Landlord defaults in repayment of loan to the Bank, the Bank may recover possession of the Property and evict Miss Tenant from the Property.

A. (iv) only

B. (i) and (ii) only

C. (iii) and (iv) only

D. (i), (ii) and (iv) only

E. (i), (ii), (iii) and (iv)

Answer to Question 7:

Paragraph (6) of Chapter 2 of the Monograph on Hong Kong Domestic Tenancy states:

“Bank consent

Where a property is mortgaged to a bank or other financial institution, the relevant mortgage deed or legal charge will usually contain a covenant by the owner of the property not to let the property or any part thereof. Hence, if an owner lets a mortgaged property without the mortgagee’s prior consent, the owner will be in breach of the mortgage deed or legal charge and the mortgagee may recover the property from the owner.

Where bank consent has been obtained, a tenant should inspect the same to see whether it is subject to any condition.

If the landlord does not agree to seek the bank’s consent, the tenant should understand the potential risks that he/she may face. If the property is let without consent, the mortgagee may take legal action against the landlord to enforce the relevant provision in the mortgage deed or legal charge to recover the property. Further, if the mortgagee exercises its right of sale under the mortgage deed or legal charge upon failure of the owner to repay any installment of the mortgage loan, it may apply to the court for the eviction of the tenant and the tenant will have to yield up vacant possession to the mortgagee within a fairly short period of time if the mortgagee has not consented to

the letting.”

For the protection of Miss Tenant, Mrs. Boss was right in advising the parties that Mr. Landlord should obtain the Bank’s consent to the tenancy. She should also advise Miss Tenant of the risks involved if Miss Tenant agrees to dispense with such consent. If no such consent is obtained, however, it does not mean that the TA is not valid, or that Mr. Landlord cannot maintain an action to recover rent from Miss Tenant, or that the TA cannot be produced in a court of law. The correct consequences are those set out in option (iv).

Answer is A.

Question 8

8. If Miss Tenant should default in payment of rent, Mr. Landlord can take the following actions against her:
- (i) Apply for a distress warrant to recover the arrears of rent only.
 - (ii) Apply for a distress warrant to recover both the arrears of rent and possession of the Property.
 - (iii) As an alternative to applying for a distress warrant, commence proceedings against her at the Lands Tribunal to recover the arrears of rent only.
 - (iv) As an alternative to applying for a distress warrant, commence proceedings against her at the Lands Tribunal to recover both the arrears of rent and possession of the Property.
- A. (i) only
B. (ii) only
C. (i) and (iii) only
D. (ii) and (iv) only
E. (i), (iii) and (iv) only

Answer to Question 8:

Distraint is a remedy which enables a landlord to recover arrears of rent, but not possession of a property. Therefore, option (ii) is wrong.

Option (iii), Mr. Landlord may apply to the Lands Tribunal for possession and payment of arrears of rent. The Tribunal has the right to make an order for the payment of arrears of rent with or without an order for possession of the property. All the other answers are correct and they show the legal remedies which a landlord has against a tenant who defaults in payment of rent.

Answer is E.

Question 9

9. If Mr. Landlord does not sign a Form CR 109 and lodge it with the Commissioner of Rating and Valuation within one month from signing of the TA, what consequences will follow?
- (i) A fee of \$310 is payable by Mr. Landlord if a Form CR 109 is submitted after one month from signing of the TA.
 - (ii) Mr. Landlord is not entitled to maintain an action to recover rent under the TA unless a Form CR 109 relating to the TA is endorsed by the Commissioner of Rating and Valuation.
 - (iii) The TA is not binding on the parties.
 - (iv) The interest of Miss Tenant is not protected.

A. (i) and (ii) only

B. (i), (ii) and (iii) only

C. (i), (iii) and (iv) only

D. (ii), (iii) and (iv) only

E. (i), (ii), (iii) and (iv)

Answer to Question 9:

Under section 119L of the Landlord and Tenant (Consolidation) Ordinance, (a) a fee of \$310 is payable by Mr. Landlord if a Form CR 109 is submitted after one month from signing of the TA, and (b) Mr. Landlord is not entitled to maintain an action to recover rent under the TA unless a Form CR 109 relating to the TA is endorsed by the Commissioner of Rating and Valuation. Options (i) and (ii) are correct.

Even if Mr. Landlord fails to sign and submit a Form CR 109, the TA is still binding on the parties and the interest of Miss Tenant unaffected. Options (iii) and (iv) are wrong.

Answer is A.

Question 10

10. Under the Practice Regulation, which of the following are some of the duties which Mrs. Boss should have discharged before arranging the parties to enter into the TA?
- (i) Obtaining a copy of the Hong Kong Identity Card of Mr. Landlord to ensure that his name is correct.
 - (ii) Preparing a written inventory of the furniture and fittings to be included in the TA.
 - (iii) Supplying a copy of the Form 5 made between Mr. Landlord and B&F to Miss Tenant.
 - (iv) Carrying out a land search of the Property in the Land Registry and supplying a copy of the land search to Miss Tenant.
- A. (i), (ii) and (iii) only
B. (i), (ii) and (iv) only
 C. (i), (iii) and (iv) only
 D. (ii), (iii) and (iv) only
 E. (i), (ii), (iii) and (iv)

Answer to Question 10:

Under section 13(3) of the Practice Regulation, a licensee is required to take all practicable steps to ensure that the name of the landlord is correct (which steps may include, if the landlord is an individual, collecting a copy of his identity card within the meaning of the Registration of Persons Ordinance or other identification document).

Under section 10(c) of the Practice Regulation, a licensee should establish what is to be included in the tenancy of a residential property and prepare a written inventory thereof.

Under section 13(4) of the Practice Regulation a licensee should before a lease is entered into cause to be carried out a land search of the property and supply a copy of the land search to the tenant.

Options (i), (ii) and (iv) are all correct but there is no requirement for option (iii).

Answer is B.

Question 11

11. Which of the following statements is correct in regard to the Building Order?
- A. **Mrs. Boss should disclose to Miss Tenant the existence of the Building Order.**
 - B. Whether Mrs. Boss should disclose to Miss Tenant the existence of the Building Order depends on whether it requires the carrying out of any building works in the Property.
 - C. Whether Mrs. Boss should disclose to Miss Tenant the existence of the Building Order depends on whether it affects the structure of the building.
 - D. Whether Mrs. Boss should disclose to Miss Tenant the existence of the Building Order depends on whether Miss Tenant is required to carry out any building works in the Property.
 - E. Mrs. Boss need not disclose to Miss Tenant the existence of the Building Order.

Answer to Question 11:

Although Form 2 does not require the particulars of a building order to be stated, this does not mean that a licensee need not disclose to a tenant the existence of a building order. A building order may require the carrying out of building works in the property in question (e.g. to remove an illegal structure), in which case it directly affects it, or it may require the carrying out of building works in other parts or in the common areas of the building in which case the tenant's interest may also be affected as the carrying out of such building works may necessitate the construction of scaffoldings over parts or the whole of the building and generate noise and pollution. Inconvenience and disturbance may also be caused to occupiers of the building.

Under common law, an agent is required to act with care, skill and diligence in the discharge of his duties. This is also required by paragraph 3.5.1 of the Code of Ethics. Also, under paragraph 3.4.1 of the Code of Ethics, a practitioner should "protect and promote" the interests of his client. Therefore the existence of the Building Order should be disclosed to Miss Tenant. This is so even if the Building Order does not affect the structure of the building or require the carrying out of any building works in the Property. Generally speaking, so long as a building order affects the building of which the property in question forms part, it ought to be disclosed to the tenant.

Answer is A.

Question 12

12. Under the Practice Circular, what are some of the requirements B&F should comply with for engaging a debt collection company to recover the commission due from Mr. Landlord?
- (i) Before appointing a debt collection company, B&F should notify Mr. Landlord in writing stipulating the amount owed to B&F and the deadline for payment and stating that a debt collection company will be appointed if no payment is received after the deadline.
 - (ii) B&F should enter into a written agreement with the debt collection company.
 - (iii) B&F should issue an authorization document to the debt collection company so that it can be produced as proof of its appointment in the course of debt collection.
 - (iv) B&F should require the debt collection company, when collecting debts, to identify itself and the practitioners for whom it is acting.
- A. (i), (ii) and (iii) only
B. (i), (ii) and (iv) only
C. (i), (iii) and (iv) only
D. (ii), (iii) and (iv) only
E. (i), (ii), (iii) and (iv)

Answer to Question 12:

Practice Circular no. 08-04(CR) advised practitioners, among other things, that (1) before appointing a debt collection company, a practitioner should notify the defaulting client in writing stipulating the amount owed to the practitioner and the deadline for payment, and stating that a debt collection company will be appointed if no payment is received after the deadline; (2) in instructing a debt collection company, a practitioner must enter into a written agreement with the debt collection company; (3) practitioners should issue an authorization document to their debt collection companies so that it can be produced as proof of their appointment in the course of debt collection; and (4) practitioners should require their debt collection companies, when collecting debts, to identify themselves and the practitioners for whom they are acting.

Answer is E.