

# Examiner Report – Ship Sale & Purchase November 2022

## General Comments

Marks have stabilised but most of the issues raised in the Summer 2022 exam session remain pertinent being:

- Candidates in some cases paid little attention to the actual terms of the questions but simply put down what they knew about the general area rather than adapting their knowledge intelligently to the questions
- Knowledge of newbuild contracting was again rather thin compared to knowledge of second-hand vessel sales, though even in the case of the latter the understanding of the practicalities of the S&P process was not always as good as might be desired
- Quality of handwriting remains a significant problem as well as English usage – sometimes rendering answers hard to interpret
- Maritime geography knowledge was occasionally very faulty
- Answers for the essay type questions were often too thin/brief – in some cases this may have been down to poor time management – and while brevity can be a virtue, a single page essay is unlikely to cover the necessary ground

It should also be added that few candidates evidenced much practical knowledge as to how scrap sales differ from sales of vessels for onward trading.

A few candidates only submitted answers to 4 questions not 5 – making a pass mark that much harder to achieve.

It was however good to see that in the “full terms offer” question, more candidates noticed the type of vessel concerned and gave some thought at least to vessel type specific terms, though this was not the case across all exam centres.

## **Question. 1**

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### **Question. 2**

A general essay question not seeking specific knowledge of Refund Guarantee clauses or of the refundment provisions of Newbuildcon in detail.

Candidates should have explained the fundamental commercial reasons behind the need for Refund Guarantees – that they are security for the contractual obligation on a shipyard to refund advance milestone payments in case the shipyard fails to deliver the vessel or fails to meet the specification or goes insolvent.

Candidates should also have explained how Refund Guarantees may be issued by shipyard parent companies or by commercial banks or state banks – showing awareness that the credit rating of the RG provider is a key consideration.

Additional marks were available for a well-structured essay.

Not a particularly popular question and marks, on the whole, were quite poor – as in previous exam sessions knowledge as to newbuild contracts was sketchy at best. Many candidates wasted time describing buyer’s payment guarantee provisions when the question clearly asked about refund guarantees – i.e. refund of payments made by buyers to builders. Few candidates had much to say on the second part of the question – who issues refund guarantees – or were aware at all of credit rating issues which are fundamental to the finance-ability of newbuild projects.

### **Question. 3**

A general essay question. Candidates should have shown a broad understanding of the role of supervisors including as to:

- Countersigning milestone/stage payment certificates
- Attending and monitoring vessel trials
- Assessing compliance with specification – especially as to those parameters associated with liquidated damages
- General monitoring of project timelines and liaison with Class

Additional marks were available at examiner’s discretion for mentioning further relevant points

Hardly any candidates attempted this question, so it is hard to draw conclusions. Those few that picked this question did not seem to have any in-depth understanding of the role of supervisors in newbuild projects, apart perhaps from the area of bunker consumption specifications.

The question left it open as to whether the supervisors in question were “in-house” or 3rd party contractors – those who answered this question assumed the owners’ “port captains” would fulfil this role so perhaps naturally they concentrated on purely technical supervision as opposed to any role in stage payment authorisation or wider project management. This may have left them with not too much to say.

#### **Question.4**

This question was in two parts and was designed to test awareness of the relevant clauses.

##### **Part A**

Candidates should have identified and discussed the following:

- LDT certificate/trim and stability book
- Makers list of machinery and equipment
- Local agent’s letter re dues
- Crew releases
- IMO Guidelines inventory
- Propeller material certificate
- Gas free certificate (where relevant)
- No nuclear or industrial waste confirmation
- No removals confirmation
- Inward general manifest
- Deratisation certificate.

##### **Part B**

Candidates should have identified and discussed the following:

- Right to take ashore cutlery/crockery/linen
- Bunkers and lubes included w/o payment
- Spares and equipment used and unused included w/o payment
- No requirement to replace consumables

No marks were available for mentioning items which match usual secondhand sale terms – as this question was about differences.

A moderately popular question though marks were disappointing – candidates simply did not have enough detailed knowledge of the differences between the two sale scenarios and many wasted time listing items that were common to both scenarios (bills of sale, powers of attorney etc). On the specific delivery documents for a scrap sale, most candidates were aware of LDT certification and sometimes also propeller material certificates but that was it.

### **Question. 5**

A general essay question.

Candidates were expected to identify the following factors:

- Tax on profit
- Labour regulations
- Corporate law
- Limited liability and disclosure or otherwise of ultimate beneficial owners
- Restrictions on trade
- Regulation/safety rules
- Risk of requisition/nationalisation
- Financing documentation and procedures

Additional marks were available at the examiner's discretion for identifying that the picture is not so simple due to international conventions (that may limit ability of flag states to offer loose regulation) and where sanctions law promulgated by the US, UK or EU may impact on other jurisdictions.

A very popular question and while marks varied most candidates produced good answers – awareness of crewing and cabotage issues was good. More understanding of taxation issues would have been good though – i.e. how in basic terms tonnage tax provides an advantage. Many candidates stated that “national” flags did not offer tonnage-based taxation, which is not true (UK, Netherlands and Norway do amongst others).

A surprising number of candidates asserted that flags such as Panama, MI or Liberia were preferred by lenders over national EU flags in terms of mortgage security – which is not the case. They are acceptable to most financiers but not considered superior security to, say, Greek or Maltese mortgages.

### **Question. 6**

The usual ship-type question

- a) A description on the following lines:  
DWT – c.100,000 – 120,000mt  
LOA – c.245m  
Beam – c.42m  
Draught – c.15m  
Engine – c.18,500BHP  
Speed – c.14kn
- b) Standard plan (profile and cross section) for a LR2 tanker
- c) Labelling of plan
- d) Any credible routes were accepted

Extra marks were available at examiner discretion for detailed knowledge

A very popular question and marks were mostly good – a few candidates seemed to have misread the question and answered basis an LR1 tanker.

Plans and labelling were mostly satisfactory if sometimes a little messy.

Knowledge of maritime geography was a mixed bag – there were some worrying basic mistakes still evident.

### **Question 7.**

A question around Clause 9 of Saleform 1993 or 2012 but broader than just the terms of that clause.

Candidates should have mentioned the terms of the standard warranty – that the vessel is (at delivery) free from:

- All charters
- Encumbrances
- Mortgages
- Maritime Liens
- Other debts

Candidates should have mentioned that the warranty is backed up by an indemnity meaning that the buyer is to be compensated for the consequence of any part of the warranty being untrue

Candidates should have explained the importance of the fact that this warranty bites “on delivery” so in particular in the case of Mortgages, they usually are discharged on the day of delivery not before – and in the case of charters the vessel must be redelivered from charter before the delivery under the sale unless the buyer agrees to take on the charter.

Additional marks were available at examiner’s discretion for a detailed answer.

A popular question though on the whole marks were mediocre. Most candidates were able to identify the elements mentioned in the standard warranty (though charters were often missed out) but were poor at explaining the practical consequences involved. Very few candidates went on to mention that the warranty was backed up by an indemnity or to describe what this meant. All in all, answers were disappointing given the “freedom from encumbrances” issue is a fundamental one in S&P contracting.

### **Question. 8**

This question was testing the knowledge of a full terms offer including the correct terms and language used in such an offer.

The following essential terms should have been drafted in clause form:

1. Price
2. deposit
3. payment
4. inspection declaration
5. notices (time)
6. delivery range/date and cancelling
7. underwater inspection whether diving inspection or drydocking
8. Spares, exclusions and bunkers/lubes
9. Documentation
10. Condition on delivery
11. Law/jurisdiction/arbitration

This was the bare minimum. Additional marks were awarded for clauses that recognised that the vessel in question was a ro-pax e.g. onboard tractor equipment, passenger service items (linen, cutlery etc).

A very popular question and marks were, on the whole, good and in some cases very good. Some candidates failed to appreciate that question was asking for a “full terms offer” – so bullet points were not enough – and an offer on an “outright” basis.

Pleasingly however a fair number of candidates did include some terms specific to Ro-Pax vessels rather than just a formulaic offer for a bulker.

