

ICS Examiner's Report

NOVEMBER 2015

Ship Sale and Purchase

General comments

When approaching this examination the student should ask themselves:

“What is the examiner looking for?”

Not understanding this basic question can lead to a lot of wasted effort. This examination is not simply a memory test, e.g. writing all you know about sale documentation. The questions are set to test the knowledge **and** understanding of the candidate about a particular subject matter. So the candidate should aim to:

- understand the question
- understand what knowledge is required to answer the question
- communicate clearly, in clear handwriting and in a well structured format, using the relevant knowledge required to answer the question

Many students fail because they have not grasped that the knowledge should not just be regurgitated as it comes to them students should bear in mind the structure of their essays, and pay close attention to what the examiner is asking. Particular focus should be applied to key words, e.g. analyse, describe, explain etc. which appear in most questions. This will affect how the question should be answered.

Studying and revision, particularly using past papers and examiners reports, will enable a candidate to understand what is required. Writing a number of pages of material on a subject not related to the question, however well written, will not achieve a pass mark. Submitting an essay that does not answer what the question has asked likewise will not pass.

It is therefore of paramount importance to read the question properly, and not just jump in. It is recommended that students spend some time planning their essays before starting to write (there is little evidence that many candidates take this advice seriously). Candidates who wrote less than a page per question can not realistically expect to pass.

Once again it was evident that those who possessed a detailed knowledge of Saleforms, whether NSF 1993, NSF 2012, Nipponsale or otherwise, did well. Likewise those who were aware of current market trends, ship types and trades, and good general shipping knowledge were able to illustrate their answers with examples and thus achieved higher marks.

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Question 1

This was a sales documentation question. Firstly the candidate needed to show that they knew the role of a broker in the run up to, and during the delivery of the vessel.

Then they needed to show their knowledge of what specific documents were required to transfer title, and then analyse them. These were:

- Bill of Sale
- Corporate Documentation
- Freedom of Encumbrances/certificate of ownership
- Certificate of Deletion
- Protocol of Delivery

No marks were awarded for documents not needed in the documentary closing, i.e. certificates on board, plans etc., or superfluous documents at the documentary closing not involved in the transfer of title, e.g. invoices, letters of warranty etc. The question was answered satisfactorily overall, but it did require the candidate to *analyse* the documentation. This means going into to some depth as to what the documents are and what they are for. Simply repeating the wording in the documentation clause from a Saleform was not enough.

Question 2

This ship type question tested the knowledge for container ships and liner trades. Marks were awarded for:

- a) A full written description such as is seen in normal Sale & Purchase Circulars including:
- dimensions (recognising a post panamax beam is in excess of 32.26m)
 - TEU capacity (at least nominally)
 - Speed (and consumption)

The explanation required an understanding that the Panama canal is about to expand, and also that many liner operators are looking for larger ships to take advantage of increased economies of scale.

- b) A ship drawing should show a profile and cross section with all relevant spaces identified. High marks were given to those showing accurate dimensions.
- c) One post Panamax liner route, with ports. Again accurate knowledge was required here, because a liner route for containers will always have a series of ports en route. Those answers showing a transit through the Panama canal were, by definition, market incorrect.

This question is hard to answer without accurate market knowledge.

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Question 3

This question examined the ability of the student to identify what information is normally provided by Sellers or their brokers when a vessel is openly in the market for sale. This requires an understanding of the day to day life of a Sale & Purchase broker. The information should include (but is not limited to):

- full description
- plans (GA, capacity, Midship section)
- class survey status
- list of machinery type and makers (deck and engine)
- trading history (eg. last 10 cargoes and voyages)
- photos
- t/c description
- itinerary for inspection

Those that achieved the highest marks were students who had market or sector specific knowledge, especially when they were able to support their answers with relevant examples.

Question 4

This was the most popular question answered.

The student needed to show their knowledge of the relevant clause in the Saleform, e.g. Clause 4 in NSF 2012, i.e. pre-purchase inspection, as well as not confusing it with Divers Inspection/Drydocking, i.e. pre-delivery underwater inspection. Many students continue to make this elementary error. Secondly they needed to show knowledge that Saleforms have the option to either offer outright (i.e. without any subjects) following inspection of class records and the vessel, or alternatively with subject inspection of both records and the vessel.

The main thrust of this question is for students to be able to **compare** and **contrast** the two options, i.e. an outright Memorandum of Agreement or one Subject to Inspection. This is where the majority of the marks were awarded. Many students lost marks by failing to do this.

The remainder of the marks available were awarded to those able to link the inspection clause to those concerning :

- condition on delivery
- deposit
- spares/bunkers etc

Students that just repeated the wording of Clause 4 therefore were unlikely to pass.

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Question 5

This tested the students understanding of the both the practical day to day job of a broker and also the legal issues surrounding misrepresentation and negligence with or without authority.

In the first part of the question the student needed to show their knowledge of the problems facing the broker handling information both of a technical and commercial nature. This could also include the nature of the basic legal principles involved.

The second part of the question addressed preventative measures for the problems arising, e.g. disclaimers, but answers that also included Errors and Omission insurance, P&I clubs for brokers, etc . were awarded further marks. Few students mentioned accuracy, double checking, and an attention to detail, the best way of avoiding these problems.

This was a two part question – those that failed to answer both parts reduced their chances of passing this essay by 50%.

Question 6

Another two part question, which was also the least popular question attempted by students. The question tested:

- a) Geographical and market knowledge, i.e. where the main shipbuilding nations are, (with extra marks awarded) for accurate answers on other specialities, e.g. cruise ships or offshore)
- b) Knowledge of the shipbuilding process, both practically and commercially.

The first part of the question was mostly answered satisfactorily. However many students found the second part challenging. Examples that any business, including shipyards, can use to react to changing market conditions can include:

- Diversification of products (eg. bulkers to tankers)
- Reducing the price
- Improving payment terms
- Investing in new technology
- Developing new skills (e.g. new designs)
- Obtaining government support (training, tax breaks, subsidies)
- Offering finance and/or credit

Question 7

This question tested a very basic concept in shipping contract practice and law, i.e. that an agreement with subjects is not a contract and therefore unenforceable if the subjects are not lifted. This question tested the students

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understanding.

Of course, subjects can legally be for almost anything, but more marks were given to those answers which are commonplace and relevant to ship sale and purchase, e.g.:

- inspection
- board of directors approval
- charterer's approval (when a time charter is attached)

Further marks were awarded to those who were able to illustrate their answer with examples of why the particular subjects may not be lifted, e.g. vessel's condition, a change in market conditions and so on.

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Question 8

This is a Buyer's default question, and therefore requires detailed knowledge of the relevant clause, e.g. Clause NSF 2012 Clause 13.

The circumstances in this clause say that the Buyers are in default

- a) if the deposit is not lodged, the sellers will have the right to cancel and claim compensation
- b) if the Purchase Price is not paid, Sellers will have the right to cancel, and deposit together with interest shall be released to the Sellers, the sellers are entitled to claim more if the Deposit does not cover their loss

The highest marks were awarded to those candidates who illustrated their answer with examples. Those that simply repeated the clauses without a discussion did not achieve as high marks.