

Examiner's Report

April 2016

Ship Sale and Purchase

General comment

Care must be taken when reading the question and planning how to answer it. Students should ask themselves what the examiner is looking for and in particular what the key words in the question are. For example, being asked to "Analyse" is different from "describe"; the questions are designed to bring out the best in the student.

It is disappointing for both the examiner and the student to get to the end of a well written essay and then having to fail it because the students has misread or misunderstood the question. Examiners want those taking the examinations to pass, and seeing such efforts put into an essay and then not being able to reward those efforts is frustrating and dispiriting, for the students and the examiner alike.

The examination is not a memory test. The examiners are looking for evidence that the students has the knowledge *and* the understanding required.

Students should not be afraid to use different sources for their answers. Current market knowledge, recent current affairs and practical examples can all help to illustrate your answers – providing such illustrations will help the examiner assess your understanding of the topic, and you will find answering the question easier. Remember that the way a question is answered will indicate to the examiner that you have good communication skills, essential for those working in shipping, which is primarily a relationship business. You cannot have a relationship with someone that you cannot communicate with.

A few practical tips:

- Saleforms are the basis of by far the majority second-hand ship sales; a thorough knowledge of one of them, whether it is NSF 1993, NSF 2012 or Nipponsale will enable you to pass easier
- Make an effort to structure your answer that makes it easy for you to write and the examiner to read and mark.
- Remember that half a page is not enough to get a pass; the questions are designed for an answer of at least two pages

The highest marks awarded were to those students that knew the subject, communicated well and showed an interest in Ship Sale and Purchase beyond the confines of the syllabus. The most successful brokers in the field employ a similar approach in their professional lives.

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Question 1

Answer ALL parts of the question.

- a) Write a detailed written description of a Large Range I (LRI) product tanker as found in a typical sales message circulated by a seller's broker;
- b) Briefly discuss the implications of the sale of a ship which has been trading dirty petroleum products since delivery as a newbuilding;
- c) Draw the profile and midship cross section of a typical Large Range I product carrier;
- d) On the world map provided, using different loading and discharge ports, show TWO typical trading routes for this vessel

This was a classic ship type question, broken down in to four equal parts.

A Large Range I product tanker is a specific type of vessel. The examiner was looking for accuracy on the following:

- Deadweight and draft
 - Where and when built
 - Class and survey status
 - Dimensions (loa and breadth)
 - Number of tanks and cubic capacity
 - Number of pumps
 - Coating and coils
 - Main Engine
- a) If a vessel has been trading "dirty" then without sufficient cleaning or recoating of the tanks the vessel will not be able to trade clean products. This will affect the future trading flexibility of the vessel, and therefore the value will be affected. Many students did not explain the difference between "clean" and in particular "dirty" cargoes, perhaps confusing them with crude oil.
 - b) Two diagrams (drawn with a ruler) were required reflecting the above description and including:
 - Cargo tank location (in both profile and cross section)
 - ballast tank location (in both profile and cross section)
 - main engine
 - location of pumps
 - correct labelling of dimensions
 - c) This is a simple and easy way to get full marks: all that is required are two different relevant load and discharge ports, correctly labelled and in the right position on the map, and the likely route taken by the vessel.

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Question 2

Your client is interested in buying a second hand vessel and has instructed you to offer with a price 'subject further terms to be agreed'.

Write to your client briefly explaining why sale and purchase offers are normally drawn up on a full terms basis, and provide them with an example of a full terms offer for their consideration.

- I. This question was examining how buyers actually offer for ships. It is not common, or generally desirable, for a buyer to offer for a ship "subject further terms to be agreed" because many of the terms can materially affect the price of the ship. Many owners reject such approaches because of this. Further, unlike chartering negotiations, most secondhand deals are done on a full terms basis because of the time sensitivity (and the large sums) involved.

As a bare minimum, the following terms, apart from price, should be included in the draft offer:

- deposit
- payment
- inspection
- notices
- delivery range date and cancelling
- underwater inspection
- Inclusions/exclusions
- Documentation
- Condition on delivery
- Law/jurisdiction
-

Additional marks were awarded to those students who could provide further relevant terms. A knowledge of Saleforms was helpful in answering this question.

Question 3

In the sale of a second hand vessel, sellers provide buyers with delivery documentation to complete the sale. Identify and analyse the documents issued to prove freedom from encumbrances.

This was a prime example of how reading a question is so important; it asked to identify **and** analyse the documents issued to prove freedom of encumbrances. First of all this means knowing what an encumbrance is. The students answers that just gave a list of documentation (e.g. as per NSF 1993 Clause 8) could not complete the question satisfactorily. The documents that do evidence freedom of encumbrances are:

- Bill of Sale
- Transcript of Registry
- Letter of Warranty
- Certificate of Deletion or letter of undertaking

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Those that did analyse each of the above naturally got high marks.

Question 4

Buyers and sellers have entered into an agreement for the sale of a second hand vessel, agreed and signed a Memorandum of Agreement, and the buyers have lodged the deposit. However, despite their best efforts the sellers will be unable to issue Notice of Readiness before the cancelling date. Using a saleform of your choice, explain the options available to the buyers in such a situation, and the consequences to the sellers.

A knowledge and understanding of Saleforms was key in answering this question well. Using NSF 2012 as a basis, there were two clauses which could be used to explain the Buyers' options:

- a) Clause 5, i.e. What happens if the Sellers anticipate that the Vessel will not be ready for delivery by the Cancelling Date
- b) Clause 14, i.e.
 - Should the Sellers fail to give Notice of Readiness (or fail to be ready to validly complete a legal transfer) by the Cancelling Date the Buyers shall have the option of cancelling
 - If after Notice of Readiness has been given but before the Buyers have taken delivery, the Vessel ceases to be physically ready for delivery and is not made physically ready again by the Cancelling Date and new Notice of Readiness given, the Buyers still have the option to cancel
 - In the event that the Buyers elect to cancel, the Deposit together with interest earned, if any, shall be released to them immediately
 - Should the Sellers fail to give Notice of Readiness by the Cancelling Date or fail to be ready to validly complete a legal transfer they shall compensate the Buyers for their loss and for all expenses together with interest if their failure is due to proven negligence, whether or not the Buyers elect to cancel

This was on the whole answered well by those who attempted it, as the knowledge could be easily expressed in a well-structured answer following the structure of Salesform.

Question 5

Answer BOTH parts of the question.

Buyers and sellers have entered into an agreement for the sale of a second hand vessel, agreed and signed a Memorandum of Agreement which includes the right of the buyers to place their representatives on board. Using a saleform of your choice:

a) Describe in detail the function of the relevant clause;

b) Suggest and draft a suitable amendment to the standard wording that could further protect seller's interests.

Another question where a thorough knowledge of the Salesform was essential. With marks equally split between the two parts, it required students to:

a) Provide a basic description and understanding of the clause – i.e.:

- after MOA signed and the Deposit has been lodged, Buyers have the right to place two representatives on board of the vessel at their sole risk and expense
- these representatives are on board for familiarisation and as observers only, and they shall not interfere in any respect with the operation of the vessel

b) Suggest some sensible and relevant amendments. Good examples included:

- limiting the time of the reps onboard to one voyage
- providing an LOI prior to boarding of the reps (when NSF 1993 used)
- limiting the access of the reps to certain areas
- restricting the use of telecommunications
- reserving the right to disembark the reps if they interfere with the operation of the vessel.

The students that answered part a) well generally were successful in part b).

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Question 6

Using a saleform of your choice, describe the problems faced by buyers when attempting to lodge a deposit in the buyer's and seller's names during a second hand sale, and the solutions available to them.

Testing the knowledge of current problems in lodging a deposit, this was not a popular question probably because it required a basic understanding of current banking practices, particularly in regard to anti money laundering laws and "Know Your Client" regulations within banking and financial institutions.

Those students who had this knowledge found it relatively easy to describe the problems setting up a deposit account, i.e. paperwork, the time taken and cost/fees involved to set up the account, providing evidence that the money is sent from a bonafide source, overcoming the reluctance of banks to open accounts in two names.

Having done that, the correct solutions presented included: the three banking days counts from the day the account is ready to receive funds, nominating a broker or a lawyer (or another third party) to hold the deposit in escrow for both parties.

Question 7

A sale and purchase shipbroker's working life can involve many different people and organisations. Choosing TWO out of the following, analyse their roles in relation to all aspects of ship sale and purchase.

i) Lawyers;

ii) Bankers;

iii) Flag state Registries;

iv) Classification Societies

Those that attempted to answer this question tended to avoid Flag State Registries and Classification Societies, which on the evidence that those who did attempt them was understandable. Some correct answers included the following

- i) Lawyers: drafting of contracts, particularly newbuildings, drafting delivery documentation, requesting valuations, advising on and representing clients and brokers in dispute resolution;
- ii) Bankers: financing, providing performance guarantees and receiving refund guarantees for newbuildings, holding deposits, hosting closing meetings, receiving valuations;
- iii) Flag state Registries: providing regulations for newbuildings, delivery documentation (legalising, apostilling etc), freedom of encumbrances on delivery and clean title;
- iv) Classification Society: class survey status when marketing a vessel, class records in pre-purchase inspection, attendance at underwater survey prior to delivery, Class maintenance certificate on delivery

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Question 8

Analyse the different factors that can affect ship values in the dry bulk sale and purchase market.

Some students wrongly thought this question referred to ship valuations, rather than what affects the values of ships in the marketplace, which of course is of huge importance to the Ship Sale and Purchase Broker. Marks were awarded for a well written and structured essay that could argue that one or more of the following factors can have significant effects:

- supply and demand of cargoes affecting the freight market;
- the supply and demand of ships themselves;
- the supply and demand of second-hand tonnage;
- the availability of newbuilding berths, and when delivery will take place;
- regulatory changes (e.g. emissions, ballast water treatment, Tier III regulation);
- availability of finance;
- the scrap price

The best answers were those that appreciated that not one factor can by itself drive the market and the reasons values change are complex and interconnected.