

ICS Examinations May 2017: General Examiners Report

Subject: SSP

Lead Examiner: Simon Ward

General Comments:

It is encouraging that in general the standards of papers submitted continues to improve. However there are still areas where students seem to slip up, reducing their chances of achieving the marks they deserve.

Reading the question properly is extremely important. The exam is not a memory test, and every question is designed to bring out the students' knowledge and understanding of the subject. Be careful to answer the question asked by the examiner, not the one you wish had been asked. Bearing this in mind, be especially attentive to key words, for example "examine", "compare and contrast", "explain" and "analyse". Those students that do what the examiner is looking for naturally gain higher marks, especially when answered in a legible and well-structured way.

The exam is based on the syllabus, and a core part of that is the knowledge and understanding of Saleforms. Once again it was proven that a thorough knowledge of NSF 1993, NSF 2012, Nipponsale etc. gives the best foundation for passing.

There is no better way to show your overall knowledge than bringing real life examples into your answers. Students who were able to answer the questions in a legible and well-structured way gained the highest marks, especially when they impressed the examiners with knowledge from the market or their own experience.

Question One.

Explain the advantages and disadvantages of the options available if a dispute under a second hand sale contract cannot be resolved amicably.

The three main forums for dispute resolution are:

- a) Arbitration
- b) Litigation in the courts
- c) Mediation

Many candidates also rightly pointed out the role of the broker in resolving disputes.

Marks were awarded for knowledge of:

- The relevant Saleform clause for arbitration
- The arbitration process itself
- The difference between arbitration (equitable award) and courts (legal judgement), and mediation (agreement between parties)

The examiners however were looking not just for a repetition of the Saleform Arbitration clause, but also the advantages and disadvantages of the different methods. These can be summarised as follows:

- a) **Arbitration**
Advantages: cheap, quick and market experts decide on what is an equitable solution. Disadvantages: can be flawed in law, and subject to judicial review.
- b) **Litigation**
Advantages: is thorough and final (subject appeal to higher courts). Disadvantages: It is more expensive and takes longer, and concentrates on the law and in some cases the legal interpretation can be surprising.
- c) **Mediation**
Advantages: cheaper and ends with an agreement rather than an award.
Disadvantages: binding only on the parties as a contract once a settlement is reached and such contract may not be unenforceable by all jurisdictions.

Question Two

Answer ALL parts of the question.

- a) Provide a detailed written description of a Medium Range product carrier, paying particular attention to size, dimensions, tank configuration, cargo carrying features and the main machinery.
- b) Draw a profile and cross section of a typical Medium Range product carrier, labelling your drawing with the dimensions, cargo and ballast tank configuration and other areas of interest to a buyer.
- c) On the world map provided, for three different cargoes of your choice show three typical trading routes for this vessel, using different loading and discharge ports in each case.

This type of question can gain the student a lot of marks, and indeed this proved to be the case again, when answered correctly. Sale and purchase brokers should know their product, including where and how they trade.

An MR tanker is generally described along the following lines:

40-55,000 dwt
Loa 175 -190.00m
Beam 27- 32.26m
10, 12 or 14 tanks
Epoxy coated cargo tanks
Coiled (optional)
COW, IGS, SBT
Cargo pumps (pump room or deepwell)
IMO 2/3 or IMO 3
5, 6 or 7 grades
Main Engine: around 10,000 bhp
Generators: 3

Marks were lost unfortunately when students failed to follow the instructions in the question, in particular:

- Not all students labelled the drawing with the appropriate dimensions
- Three different cargoes, three different trading routes and three different sets of loading and discharge ports.

Geography continues to be challenging for some. It helps when plotting ports on the world map that they correspond to where they exist in real life.

Question Three.

Choosing either a dry bulk carrier or a tanker, identify and briefly explain and explain the purpose of the documents Sellers should provide to Buyers both at the documentary closing meeting and on board the vessel on delivery of the vessel.

The key words in this question were **identify** and (briefly) **explain**. Some students did not always manage both, and lost marks accordingly. It is not enough just to repeat the wording of Saleforms.

Further, the question asked documents particular to a vessel type, and those on board.

Those that managed to answer all the question asked of them naturally got the highest marks.

At the closing meeting, the candidate should have mentioned the following:

- Bill of Sale
- Board of Director minutes
- Power of Attorney
- Articles of Incorporation or bye-laws
- Transcript of Registry showing Ownership and Freedom of Encumbrances
- Class Maintenance Certificate
- Certificate of Deletion or Letter of Undertaking
- Continuous Synopsis Record
- Commercial invoice for the bunkers and lubricating oils
- Commercial invoice for the Vessel
- Letters of warranty that the vessel had neither been blacklisted or touched bottom since last drydocking

And on the vessel:

- classification certificate(s)
- all plans, drawings and manuals, (excluding ISM/ISPS manuals)

There was in some cases confusion around the difference between a Transcript of Registry and a Certificate of Registry. Marks were most commonly lost when attempting to identify documents to be delivered on board.

Question Four.

Using a Saleform of your choice, identify the situations when a Classification Society is involved in the sale of a secondhand ship from pre-purchase inspection until delivery, and explain the role of Class at those times.

The examiners were looking for an understanding of the Classification Society's role in the sale of a ship by **identifying** and **explaining** their role. These situations are:

- Inspection of Class records. The explanation should include how Class collects and stores these records, and the relevance to the Buyers before they decide to buy the ship
- Divers inspection/drydocking: the role of class during the underwater inspection includes:
 - a) Determining that the the underwater parts are free of damage that results in a condition of class/recommendation
 - b) That Class is the sole arbiter
- Issuing a Class Maintenance certificate on delivery showing the vessel is free of conditions of class/recommendations on delivery unless otherwise agreed

The classification society's role at these times are different, and those that explained this got more marks than those just repeated the wording from the Saleform of their choice. Some students got pre-purchase inspection mixed up with divers' inspection.

Question Five.

Explain the usual downpayments by buyers under newbuilding contracts and analyse why the timing and proportions may vary under different market conditions.

This was a two part question.

The first part dealt with the customary downpayments as follows:

- a) Contract signing
- b) Steel cutting
- c) Keel Laying
- d) Launching
- e) Delivery

The explanation didn't need to be in depth, but it did need to be explained.

The second part of the question required analysis of the factors that can affect the proportion and timing of the payments. Many students correctly identified market conditions, but elected not to analyse the factors any further. Some of these are:

- The freight market of the sector being considered
- The size of the orderbook
- The availability of newbuilding berths
- Overall demand for newbuilding berths

- Availability of full refund guarantee cover for pre-delivery instalments

Question Six.

Using a Saleform of your choice, explain the obligations of the Buyers when lodging a deposit and paying the balance of the purchase price in the sale of a secondhand vessel.

Using NSF 2012 as a basis, the candidate was required to explain the Buyers obligations as follows:

- a) Deposit (clause 2)
 - Deposit should be lodged within 3 banking days of MOA signed and account ready to receive funds
 - Buyers should supply all documents necessary to open the account or satisfy the escrow holder
- b) Payment (Clause 3)
 - Pay the balance of funds as well as payments for bunkers, lubricating oils and any additional payments to the Sellers nominated account within 3 banking days of Notice of Readiness (under clause 5) being given
 - Joint instructions to be given to release the deposit to the sellers

Many students mentioned the liabilities of the Buyers should they not fulfil their obligations as per Clause 13.

Extra marks were awarded when additional, relevant, clauses (such as Clause 5) were mentioned in context.

Question Seven

Your client has inspected a secondhand containership and wants to make an outright offer, having accepted the vessel. Draft a full terms offer for their approval.

This question tested terminology and language normally used in such an offer.

Most errors made concerned the fact that the vessel had been inspected and the buyer wanted to make an outright offer. This means that there should be no subjects in the draft offer at all, particularly subject to inspection of class records or subject to physical inspection of the vessel.

Another thing missed by most students was the fact that the vessel was a containership. Very few inserted relevant clauses, e.g. inclusion of lashing materials and twist locks.

The bare minimum as far as the offer itself concerned was:

- Price
- deposit
- payment

- inspection declaration
- notices (time)
- delivery range/date and cancelling
- underwater inspection whether diving inspection or drdocking
- Spares, exclusions and bunkers/lubs
- Documentation
- Condition on delivery
- Law/jurisdiction

It was also important that the answer required a draft offer, not an essay, in a format generally recognisable to market practitioners.

Question Eight

Shipbrokers are often contracted to provide valuation certificates. Identify the different parties who would pay for this service, and analyse the reasons why they would require such a certificate.

Most marks were lost by students who failed to **analyse** as well as **identify**.

Those parties that contract brokers for valuation certificates are:

- lawyers for arbitration/court hearings
- lawyers for litigation
- insurers (both P&I and H&M)
- tax authorities
- accountants
- banks and other financial institutions for purposes of financing and compliance with loan to value covenants
- inheritance/divorce proceedings
- Other civil disputes
- Fraud cases

Many answers mentioned the Baltic Exchange, but this was incorrect as the Baltic Exchange issues indicative values of specific types of vessels, and does not require valuation certificates from brokers themselves. Likewise it is unlikely that buyers or sellers will pay for valuation certificates, as it is they who are setting the market. Their brokers will be keeping them fully informed of market values during and after the negotiations are completed.

Many students referred to the methodology of valuations which was not relevant for this answer.