



EXAMINER'S REPORT

NOVEMBER 2017

SHIP SALE AND PURCHASE

General Comments

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

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.

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.

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 essay plan so that it is 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 were awarded to those students who not only knew the subject, but understood it, and were able to communicate that knowledge and understanding, as well as bringing in extra knowledge and examples from beyond the confines of the syllabus and the course book. The most successful brokers employ a similar approach in their professional lives.

Q1. Answer all parts of the question:

- Provide a detailed written description of a feeder container vessel stating size, cargo capacity, dimensions, machinery and other significant features.**
- Draw a profile and cross-section of the vessel showing the layout of the vessel clearly labelling the dimensions and other significant parts of the vessel.**
- On the world map provided show one route of a typical feeder liner service for this type of vessel including ports.**

The majority of students who answered this question passed. Knowledge of ships and geography as well as market trades were required.

An example of a written description follows. Note it is similar to a sale and purchase market circular:

2,500 teu (nominal)
1,900 teu (on 14t homogenous load)
500 reefer plugs
5 holds/10 hatches
Dimensions: loa 210m, beam 30m, draft 11.5m
Cranes (optional) 3x45t
Main engine 25,000 bhp

An acceptable ship drawing showing profile and cross section with relevant spaces identified, including dimensions, received good marks. Small drawings drawn without a ruler did not.

A feeder liner route should be accurate and show more than two ports in succession.

Q2. Disputes often arise during secondhand ship sales over the pricing of bunkers remaining on board at the time of delivery. Using a saleform of your choice, describe and explain the standard wording of the relevant clause and suggest what amendments a buyer can make to protect their position.

This question tested knowledge of the standard wording, e.g. Clause 7 of NSF 2012, but also understanding of how the wording can compromise the buyers' position. The student was required to:

i) Accurately identify the relevant clause and paraphrase the wording, e.g.:

The Buyers shall take over remaining bunkers ... and pay either:

- the actual net price (excluding barging expenses) as evidenced by invoices or vouchers; or
- the current net market price (excluding barging expenses) at the port and date of delivery of the Vessel or, if unavailable, at the nearest bunkering port, for the quantities taken over.

Payment under this Clause shall be made at the same time and place and in the same currency as the Purchase Price

*(a) and (b) are alternatives, delete whichever is not applicable. In the absence of deletions alternative (a) shall apply.

The student was required to show their understanding of what this means to the Buyers (rather than just repeat the wording), that the obligation of the buyers is to pay extra for the bunkers accordingly at the time of delivery.

ii) The second part of the question required that the student showed they understood that the prices of bunkers vary between different ports and at the time that they were taken onboard.

The suggested wording could include:

- Deleting one or the other
- Including Platts prices at a specific port (e.g.) Singapore
- Specifying actual prices for the bunkers
- Dictating the split between low Sulphur content and standard bunkers

Those that achieved highest marks were those that were able to answer both parts of the question

and show they understood the issues involved.

Q3. Buyers and sellers have agreed all terms for the sale of a secondhand vessel on an outright basis, and both parties have signed and exchanged a Memorandum of Agreement. Using a saleform of your choice, describe the buyers obligations in lodging the deposit, and explain the remedies available to the sellers if they fail to do so.

This question required both a knowledge (using NSF 2012 as an example) of both Clauses 2 & 13, i.e. Deposit and Buyers' default. As a two part question:

- a) The student had to identify the following points (clause 2):
- Deposit to be lodged within 3 banking days of the MOA being signed and the account is open
 - Fee for the deposit to be shared between both parties
 - Providing necessary documentation to open and maintain the account
- b) That failure to lodge the deposit will lead to the sellers having the right to cancel the Agreement and entitled to claim compensation for losses and expenses.

Not all students were able to tie both of these points together. It is not enough to just repeat the wording of the Saleform, but to show understanding through describing and explaining the relevant issues.

Q4. Draft a full firm offer for a demolition sale of a bulk carrier for delivery in Bangladesh, including price, commission and delivery dates.

The draft offer should have contained the following elements:

- Parties, ship and offer validity
- Price and commission, i.e. price per light deadweight ton
- Deposit
- Payment
- Inspection or waiving inspection
- Delivery dates and cancelling date/delivery range/Notices
- No Divers inspection
- Inclusions (everything including bunkers and lubs)
- Exclusions personal items/effects, ISM/ISPS manuals/description of vessel
- Ldt to be evidenced by trim stability book/capacity plan
- Free of encumbrances
- Buyers reps for beaching
- Documentation Law/Arbitration

Those students that managed to draft an offer containing these elements in a well written offer achieved highest marks.

Q5. Analyse the effect of the crude oil price and the freight market on tanker values, using examples.

This question was examining how markets work and could be tackled in many different ways, but the analysis could have included:

- The effect of the oil price on the supply and demand of cargoes
- The effect of the oil price on the quantity of cargoes and subsequent tonne mile demand
- The consequent effects on the freight market, both in the spot and time charter market
- The time lag between rises and falls in the freight market and corresponding movements in ship values
- The rise of China as a major importer
- The rise of Shale oil and fracking in the US making them self sufficient

In approaching an essay like this, facts are important but well-reasoned and argued analysis is critical. It is therefore imperative that the essay should be written in a well-structured way. However an in depth knowledge of the oil market by itself is not enough; a corresponding analysis of the freight and S&P markets, and therefore ships values is also required.

Q6. Your client has agreed the sale of a secondhand vessel to a buyer on a subject inspection basis. Using a saleform of your choice, explain both the sellers and buyers obligations, prior, during and after the inspection.

This was a three part question, testing knowledge of Clause 4 b) as follows (using NSF 2012 as an example):

- Buyers to have the right to inspect class records and declare within a certain time
- Sellers to make the vessel available for inspection at a certain time and place
- Buyers to carry out inspection without delay
- Buyers will inspect without cost to sellers or opening up the vessel
- Sellers to make deck and engine logs available
- Buyers to provide sellers with written notice of acceptance from 72 hours of completion of inspection
- Should buyers fail to inspect the vessel as above then deposit to be released to Buyers and Agreement shall be null and void
- Should buyers fail to declare inspection as above then deposit to be released to Buyers and Agreement shall be null and void

What was needed here was not just repeating the wording of the Saleform but an explanation showing an understanding of the clause as a whole. Highest marks were awarded to those who could illustrate their answers with real life examples. Sadly some students confused this clause with the Divers Inspection/Drydocking clause which was not relevant in this case.

Q7. Give two examples of situations where subjects could be inserted in a full terms offer for a secondhand vessel, analysing both their function and legal significance.

This question was looking for both accurate knowledge of the practical use of subjects, and their legal context, i.e. there is no contract unless all subjects are lifted.

The examiners were looking not just for examples, but an analysis, i.e. going into depth and detail on when and how they are used, as well as the legal implications to the principals. This meant that highest marks were awarded to students who could suggest practical situations where they are used,

and why.

Q8. Giving appropriate examples, examine the legal relationship between the broker and their principal in all stages of a secondhand sale, and explain how brokers can protect their right to a commission.

This was a two part question examining the students' awareness of this sometime difficult legal issue.

The first part required the student to identify the relationship as one of agency, where the broker acts implicitly on the authority and instructions of their principal, whether buyer or seller, and includes appropriate actions in:

- marketing
- requesting and obtaining permission for inspection
- negotiations
- drawing up contracts
- giving notices, including notice of readiness
- attending closing meetings

The second part of the question required knowledge of who pays the commission (the sellers), when it is paid (on successful delivery of the vessel), and how they can protect their right to it (by ensuring it is included in the recap of terms agreed).

Extra marks were awarded to those who illustrated a knowledge of action under Tort.