



EXAMINER'S REPORT

MAY 2018

SHIP SALE AND PURCHASE

General Comments

A question all students should ask of them before taking this exam is "What is the examiner looking for?" This examiners report should provide some guidance.

The examiner does not expect the student to be a Ship Sale and Purchase broker, neither will the student be able to walk straight into a Shipbroking company and be able to start working immediately after passing the exam. The examiner does however expect the student to be able to know the basics so that when he or she comes across the business of buying and selling ships in their career they will know more than others. This means having a wide basic knowledge of the disciplines involved, newbuilding, secondhand and demolition, the product itself, i.e. ship types and how they trade, and detailed knowledge of the contracts used and the issues raised by their use.

The syllabus is the basic guide to this knowledge, and should be used as a checklist for learning and revision: all the questions can only be based on the syllabus.

This sessions results showed a pleasing improvement in the overall pass mark showing that students' basic knowledge is improving and are better prepared. Attention should continue to be paid to the structure of the essay and asking the question the examiner has asked, and not repeating material learnt off by heart. The questions are designed to test the student's knowledge **and** understanding of the subject matter, and students will struggle unless they have both, and are able to show them in a well structured manner.

Q1. Identify and explain the function of the documentation that the sellers would be required to provide at the closing meeting of the sale of a secondhand bulk carrier active in the grain trades.

A straight forward documentation question, requiring an explanation of the function of each document, which are:

- Bill of Sale (document of title, freedom of encumbrances)
- Power of Attorney (identifying who is authorised to act on behalf of the sellers, and the limits of their authority)
- Minutes of BoD (showing that the sellers have authorised the sale in accordance to company regulations, and that they authorise the issuing of a Power of Attorney)
- Transcript of Registry showing freedom of encumbrances and certificate of ownership (this can be in two different documents)
- Certificate of Deletion and/or Letter of Undertaking (showing that no outstanding fees are

payable to the Registry by the sellers)

- Class Maintenance Certificate (showing the vessel is in class and free of conditions of class)
- Commercial Invoices for the Vessel and the bunkers and lubs RoB
- Letter of guarantee that vessel is not blacklisted
- Some form of document, e.g. guarantee that vessel is free of gypsy moth, grain clean, or similar to show that the student has realised the vessel is active in the grain trades

Students that produced lists of documents not needed in the documentary closing, i.e. certs on board, plans etc., or buyer's documentation were not awarded any further marks. Likewise a simple list of documentation without an explanation restricted the marks awarded.

When answered correctly, this question was answered well, but most candidates avoided mentioning certificates specifically required for the grain trades.

Q2. Answer all parts of the question:

- a) **Provide a detailed written description of a capesize bulk carrier stating size, cargo capacity, dimensions, machinery and other significant features.**
- b) **Draw a profile and cross-section showing the layout of the vessel clearly labelling the dimensions and other significant parts of the vessel.**
- c) **On the world map provided show three typical trading routes for ONE cargo of your choice, using different loading and discharge ports in each case.**

The examiner required the following:

- a) A full written description including deadweight, dimensions, engine, number of holds and hatches, and cubic capacity was required, as follows:

179,221 dwt on 18.300m draft

Built 2010, Sungdong Shipbuilding & Eng, Korea

AB SS/DD due 07/2020

Loa 292.26m, Beam 45.00m

9/9 ho/ha 197,599/187,719 cbm gr/bl

Man-b&w 6S70MC-C 25,370 BHP

- b) An acceptable ship drawing showing profile and cross section with all relevant spaces

identified. Top marks were given to those showing dimensions.

- c) 3 routes for either coal or iron ore to/from appropriate port.

This is a question that if the student has the knowledge they can optimize their marks. Sadly, particularly in the trading routes/geography part of the question accuracy was in many cases wanting. Accuracy means knowing the right cargoes for the ships, the right ports for the cargoes, ports suitable to accommodate the ships and ports accurately placed on the map. Geography is an essential requirement for anybody employed in shipping.

Q3. Your client, a potential buyer, physically inspected a secondhand vessel during which they noted a spare propeller on board. Following negotiations the buyers and sellers both signed a Memorandum of Agreement which included the following wording:

“All spare parts and spare equipment including spare tail-end shaft(s) and/or spare propeller(s)/propeller blade(s), if any, belonging to the Vessel at the time of inspection used or unused, whether on board or not shall become the Buyers' property, but spares on order are excluded.”

The buyers subsequently lodged the deposit, but prior to delivery their representatives discovered that the spare propeller was no longer on board the vessel.

Using a Saleform of your choice, write to your client outlining their rights and suggest what course of action they should take.

This was a two part question. The first part is testing the student's knowledge of three basic clauses, e.g. those of NSF 2012 clause 4, 7 and 11 and marks were awarded for the following points made:

- The wording (which comes from clause 7 of NSF 2012) says that all spares on board at the time of inspection (Clause 4) are included in the sale
- Clause 11 states further that:

“The Vessel with everything belonging to her shall be at the Sellers' risk and expense until she is delivered to the Buyers, but subject to the terms and conditions of this Agreement she shall be delivered and taken over as she was at the time of inspection, fair wear and tear excepted.”

- However the burden of proof should be with buyers, in the form of photographic or other evidence

The second part asks for suggested (sensible) courses of action, which could include:

- Presenting the sellers with photographic evidence and asking them to deliver the vessel with a spare propeller
- Putting the sellers on notice that they are in breach of contract and ask them how they will resolve the situation, but reserving buyers rights
- Asking for compensation for the lack of the propeller being on board

Sometimes during a ship sale a situation arises which is not always completely covered by the terms of the saleform. This question examined just such a case. What was required was knowledge of the whole of the Saleform to use as a basis to resolve this problem. Some answers were very constructive and were able to use that knowledge well, however many candidates jumped to nuclear options of discussing cancellation possibilities rather than a more gradual approach.

Q4. 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, and the buyers have lodged the deposit. Prior to delivery however the sellers notify the buyers that the vessel will be delayed and will miss her cancelling date. Using a Saleform of your choice explain the buyers options and rights.

This question required a combination of knowledge (using NSF 2012 as an example) of both Clauses 5 and 14.

The first part dealt with Clause 5. Students were required to identify and explain the three options in Clause 5, i.e. to maintain, cancel or do nothing (which is the same as maintaining the contract).

The second part of the question dealt with the buyers rights. This is detailed in Clause 5 (d):

“Cancellation, failure to cancel or acceptance of the new Cancelling Date shall be entirely without prejudice to any claim for damages the Buyers may have under Clause 14 (Sellers’ Default) for the Vessel not being ready by the original Cancelling Date.”

The examiner was not looking for a repeat of the wording of the Saleform, but an understanding through explaining the relevant issues, and by realising that the whether or not the Buyers cancel the sale, this does not stop them claiming for damages. Most candidates achieved this, but in many cases the explanations were too brief.

Q5. For a ship type of your choice, identify the countries that specialise in constructing that type of vessel and discuss the advantages and disadvantages of building in ONE of those countries.

This was a market question, and required firstly the correct identification of more than one shipbuilding nation constructing a particular type of vessel, e.g. kamsarmax bulk carriers in China and Japan.

The second part of the question required the identification of the main factors in deciding where to order, such as:

- Design
- Specifications: quality and the ability to change
- Contract flexibility
- Supervision
- Track record/performance for ship quality
- Track record/performance for timing of delivery
- Availability of berths for first time customers
- Financial stability
- Political stability
- Resale value

Highest marks were awarded to those students who were able to discuss both the advantages and the disadvantages, e.g. Japanese yards have high quality design, but difficult to change the specifications, for the buyers to have their superintendents supervise construction, and for first time customers to

order there. An awareness of the current market situation gained further marks.

Q6. The Ballast Water Management Convention, adopted by the IMO in 2004, is in force. Briefly explain the requirements of this convention and analyse the potential effects on the secondhand ship sale and purchase market.

This question was designed to examine knowledge of the technical aspects of BWTS but also the market response to the convention. Many students had basic knowledge of the convention but few were able to analyse further, in particular the implications on:

- Newbuilding deliveries to be fitted with suitable systems on delivery
- Secondhand vessels being bought with BWTS at a premium, or those without at a discount
- The possibility of more ships being scrapped due it being uneconomic to fit these systems according, and decreasing the fleet size

Those students that were able to show their understanding of how the market works, and the factors that can affect prices in general did well.

Answer ALL parts of the question.

Your client wishes to purchase a secondhand container vessel with a long-term timecharter attached, subject to the charterers' approval. Using a Saleform of your choice:

- a) draft a suitable clause to be inserted into the MOA which covers this subject;**
- b) explain what existing wording of the Saleform would need to be altered, and why;**
- c) analyse the additional documentation needed to evidence the transfer of the charter from sellers to buyers.**

In order to pass this question students were required to answer three parts. This was not always achieved as many tried to combine the three together. In particular, many students found it difficult to draft a clause, an essential requirement for any shipbroker.

In particular:

- a) The wording had to be simple enough to appreciate that the transfer of the charter would require changing the name of the owners and the managers in the charterparty. A suggested version is as follows:

“The vessel is currently on period time charter to Maersk Line APS at US\$ 17,500 per day less total 3.75% commission until min 1st January 2020 max 1st June 2020. This sale is subject to the charterers’ approval of the new owners and their managers, which not to be unreasonably withheld, and to be declared within 5 banking days of main terms agreed. A tri-partite agreement to be drawn up and signed by Buyers, Sellers and Charterers to evidence the novation of the charterparty”

- b) This was testing the knowledge of Saleforms, and in particular, clause 9 of NSF 2012, for example, states that:

“The Sellers warrant that the Vessel, at the time of delivery, is free from all charters, encumbrances, mortgages....”

The reason why this would have to be altered is because the vessel could not be delivered charterfree. Other clauses that could be altered may include:

- Clause 7 (bunkers as per CP prices)
 - Clause 12 (names and markings, if vessel is trading under a cp name, for example a container vessel)
- c) A novation agreement would be required to affect the transfer of the charter. This would have to be signed by the sellers, buyers and charterers and would
- *release the old owner*
 - *bind the new owner to the terms of charter*
 - *bind the charterer to undertake the new owner to comply with all the terms of charter*
 - *include bank details and allotment of costs related to the transfer*

This was admittedly quite a tough question and highest marks were achieved by those who were able to point out:

- The sale cannot go ahead until the subject is lifted
- A third party’s approval is needed for the sale to become outright
- The novation agreement is needed to bind the charterer to the sale
- The original wording of Saleforms are designed for charterfree sales

Q8. Write a market report discussing the current situation of the secondhand dry bulk carrier sale and purchase market.

This was a simple test of:

- Knowledge of the current market conditions
- Ability to write a coherent market report

This was, obviously, a “no right answer” question, because opinions differ from broker to broker, but those that did well had both accurate market knowledge and a convincing, and well written and structured, argument.