



# EXAMINER'S REPORT NOVEMBER 2018

## SHIP SALE & PURCHASE

### General comments.

This report is not designed to advise on the general performance of students, but to give students who took the exams, and those that follow, with some helpful assistance as to what the examiner was looking for. The advice remains the same for every session:

- Read all the questions and decide which ones you can answer before starting to write
- Answer five questions
- Plan your essay prior to writing it
- Remember that the exam is not a memory test, but asking the student to show their knowledge and understanding in a well structured and written essay

Those students who follow these simple guidelines will have a much better chance of passing.

### 1. Explain why a ship needs to be registered and identify the different factors that may decide a buyer's choice of flag. Give examples to support your answer.

This was a two part question.

The first part was testing the student's knowledge on registered ownership as far as ship sale and purchase is concerned, and the examiners were looking for the following:

- the need for registered corporate (as opposed to individual) ownership of a vessel in a country so it can trade in international waters
- the identification of the vessel's "nationality"
- the need for a register where ownership can be recorded, together with registered mortgages and other encumbrances
- the ability for the entire ownership of a vessel to be transferred completely, with title, risk and liability
- compliance with IMO regulations, particularly SOLAS, MARPOL and ISM

Other issues, such as insurance, minimum manning requirements and other ship management issues related to flag were largely irrelevant for this subject.

The examiners were looking for awareness and understanding that different flags have different regimes for:

- registering beneficial ownership
- taxation
- manning requirements, including employment of a minimum number of national (or in the case of EU flags, EU nationals) officers, crew and cadets

- specific environmental requirements
- certain flags required for local or cabotage trades
- sanctions, or the threat of sanctions, e.g. Iran, Russia, North Korea
- blacklisting, e.g. Arab League/Israel, Cyprus/Turkey

For the second part of the question, highest marks were given to those candidates who have shown their understanding of the relevance of flag decisions in terms of running costs, future trading patterns etc. i.e. as far as the nature of investment is concerned.

## **2. Answer ALL parts of the question:**

- a) Provide a detailed written description of a large container carrier stating size, cargo capacity, dimensions, machinery and other significant features.**
- b) 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.**
- c) On the world map provided show ONE typical trading route showing ports of call.**

This was a simple ship type question which was looking for:

- a) Full written description including dimensions, engine, and teu capacity. An example is as follows:

TBN  
 52,300 Dwt 12.54 m Draft  
 Built: 2010 at Csbcorp Taiwan - Kaohsiung, Taiwan  
 Loa 268.8 m, Beam 32.2 m  
 4,178 TEU / 2,882 TEU homog at 14t  
 700 reefer plugs  
 Gearless  
 M/E: 1 x Wartsila 7RT-flex96C 40,040 kw  
 max. speed: 21 knots on 87,5 mts 380 cst rmh 380  
 min. speed: 12 knots on 27 mts 380 cst rmh 380

- b) An acceptable ship drawing showing profile and cross section with all relevant spaces identified. Top marks were given to those showing dimensions.
- c) One main trading route showing a multiple number of ports on a line.

## **3. During the sale of a secondhand vessel, buyers usually have the right to put two representatives on board for familiarisation purposes. Using a Saleform of your choice, explain the buyers' rights and obligations in this regard, and discuss why sellers may wish to amend this wording.**

This was a two part question testing the knowledge of Clause 15 of NSF 2012 (or equivalent). The examiners were looking for:

- a) The 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 (2) representatives on board 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
- The Buyers and the Buyers' representatives shall sign the Sellers' P&I Club's standard letter of indemnity prior to their embarkation

b) The Sellers may wish to alter amend the wording to protect their interests as follows:

- limiting the time onboard, which means that the reps do not get bored and start making trouble
- providing an LOI prior to boarding of the reps (if not NSF 2012) to protect their liability
- limit the access of the reps to certain areas so as not to disrupt operations
- reduce costs and restrict the use of telecommunication equipment
- reserve the right to disembark the reps if they interfere with the operation of the vessel
- reps to always be accompanied by crew member

The examiners were not looking for a simple reproduction of the clause, but proof that they understood the issues surrounding the process of buyers' representatives boarding the vessel, and the problems encountered, as mentioned above.

**4. You have successfully arranged for your client to physically inspect a panamax bulk carrier and its classifications society records online. Your client now wants to make an offer for the vessel on an outright basis. Draft a full terms offer for their approval.**

This question is testing the knowledge of a full terms offer including the correct termination and language used in such an offer.

The following essential terms should have been drafted in clause form:

1. Price
2. deposit
3. payment
4. inspection declaration
5. notices (time)
6. delivery range/date and cancelling
7. underwater inspection whether diving inspection or drdocking
8. Spares, exclusions and bunkers/lubs
9. Documentation
10. Condition on delivery
11. Law/jurisdiction/arbitration

This was the bare minimum. Additional marks were awarded for clauses that recognised that the vessel in question was a panama bulk carrier, e.g. that the vessels will be delivered with holds swept clean of cargo.

Students that presented their answer as an essay, not in draft offer form, lost marks.

**5. Using a Saleform of your choice, identify and analyse the documentation that would be reasonably required by buyers from sellers at the closing meeting to transfer the title of the vessel only, making amendments and additions where necessary.**

This was a delivery documentation question, and the examiners were looking for the following to be included:

- Bill of Sale, notarially attested and legalised/apostilled
- Board of Director minutes or equivalent, notarially attested and legalised/apostilled
- Power of Attorney, notarially attested and legalised/apostilled
- Articles of Incorporation or equivalent, notarially attested and legalised/apostilled
- Transcript of Registry incorporating freedom of encumbrances and certificate of ownership (two separate documents are acceptable)
- Certificate of Deletion and/or letter of undertaking to provide within a certain timescale

The question asked for identification and analysis, therefore a simple list of the documents did not obtain many marks. The examiners awarded higher marks depending on the quality of the analysis, with highest marks given to those who showed their understanding as well as their knowledge.

**6. Answer ALL parts of the question:**

- a) Identify the five main countries that carry out ship recycling.**
- b) Explain how the price of a ship sold for demolition is calculated and state the documentation normally required as proof.**
- c) Detail what technical information about the vessel the buyers would require from sellers in a demolition sale, prior to offering on a full terms basis.**
- d) Explain why the price offered for dry bulk carriers is usually less than the price offered for tankers.**

This was a simple four part demolition question. The examiners were looking for the following"

- a) India, Pakistan, Bangladesh, China and Turkey
- b) This refers to light displacement tonnage. The answer should have included a definition of light displacement tonnage, i.e. the total weight of the vessel, excluding bunkers, lubs other constants and material, and the documentation should include:
  - Trim and stability book
  - Capacity plan and deadweight scale
- c) This is what is included in the sale and materials:
  - Type, size and dimensions of vessel
  - Main engine and other machinery/equipment make and type
  - Spares (including propeller/material etc)
  - Type/make of cargo handling equipment (pumps/gear etc)
  - Special materials (stainless steel, brass coils/manifolds)
- d) The quality and condition of the materials is usually less in bulk carriers, and bulk carriers are usually in worse condition for recycling

**7. A buyer has inspected a vessel and its class records, and accepted it. They have then entered into outright negotiations with the sellers, agreeing and signing a Memorandum of Agreement. Using a Saleform of your choice, identify the areas where the buyer can be in default up to and including delivery, and discuss the remedies available to the sellers in these cases.**

This was a two part Buyer's default question, and therefore required detailed knowledge of the relevant clause, e.g. Clause NSF 2012 Clause 13.

Buyers can be in default:

- Should the Deposit not be lodged in accordance with Clause 2 (Deposit)
- Should the Purchase Price not be paid in accordance with Clause 3 (Payment), the Sellers have the right to cancel

If the deposit is not be lodged the Sellers have the right to cancel the Agreement, and they shall be entitled to claim compensation for their losses and for all. Top marks to be given to those candidates who can explain that in English Law the minimum damages should be the amount of the deposit.

If the Purchase Price is not paid the Sellers have the right to cancel the Agreement, in which case the Deposit together with interest earned, if any, shall be released to the Sellers. If the Deposit does not cover their loss, the Sellers shall be entitled to claim further compensation for their losses and for all expenses incurred together with interest.

Highest marks were awarded to those students candidates who could illustrate their answer with examples.

**8. Discuss the impact of LNG, as both a cargo and a fuel, to future newbuilding order.**

This was a "no right answer" market related question, however marks were awarded as follows:

- The increasing use of LNG as a "clean" fuel in China and elsewhere will result in larger amounts of LNG to be shipped, and owners may decide (and indeed are) investing in new vessels. Due to their size and complex nature (and high costs) yards who are able to build them are keen to take as many orders as possible, and therefore berth availability could be affected
- For the same environmental reasons, LNG as a fuel is increasing particularly for larger, specialist ships like cruise vessels, container vessels. This will also increase the demand for ships, bunker tankers, able to deliver the fuel to the ships themselves

Extra marks were available for good argument, structure and relevant market information, but an essay on emissions policy by the IMO without addressing the newbuilding market could not be given a pass however well informed.