



# EXAMINER'S REPORT NOVEMBER 2019

## SHIP SALE & PURCHASE

### General Comments:

In common with previous papers a marked difference is noticeable in results obtained on questions that are chiefly testing information recall as opposed to essay type questions that demand structuring and applied knowledge.

This year the paper addressed a number of important items in the syllabus that may have been only lightly touched on in previous papers – the role of mortgagees, choice of flag, environmental issues in recycling and newbuild supervision. Unfortunately, it appears that most candidates were not well prepared for these questions even if they managed to gain a pass-mark due to efficient answers to the more traditional questions (ship/cargo type, full offer terms, Saleform 2012 terms).

### Q1. What are the functions of the seller's and buyer's mortgagees on a vessel sale?

A 2 part question which tested the following:

- Seller's mortgagee – candidates should show awareness of the terms of Clause 9 Saleform 1993 or 2012 that the vessel should be free of mortgages on delivery and also the Clause 8 requirement for a clean transcript of registry.
- Buyer's mortgagee - candidates should show awareness that most purchasers need bank finance for at least 60% of the purchase price and that their bank will want to put a mortgage on immediately upon transfer of title so will want disclosure of the delivery documents that relate to title.

Extra marks were given for an understanding of the complications that may arise when the seller needs the sale proceeds to pay off his mortgage and thus the incoming bank must fund before title has transferred.

This was not a popular question and marks were mostly poor. In general candidates only picked up on the first limb of the question. Several candidates referred to the role of class societies which was entirely irrelevant.

The role of mortgagees on a vessel sale is often crucial and should be given more attention. In particular, in the current market there should be no glib assumption that finance will be available or that funders will not have their own views on how a ship sale should be completed.

**Q2. All shipbuilding contracts have liquidated damages provisions. Explain the purpose of these provisions and identify what types of deficiency are usually covered by such provisions.**

A 2 part question which tested the following:

- Candidates were required to explain that liquidated damages are pre-agreed sums to compensate the buyer for deficiencies or delays in the build – they are designed to motivate the shipbuilder to perform rather than for punitive reasons.
- Candidates were required to identify a typical set of LDs, which would be:
  - Late delivery
  - Speed deficiency
  - Deadweight deficiency
  - Excess fuel consumption
  - Excess draught

Candidates should also be able to explain why these parameters are of concern to buyers. Additional marks were available for candidates who included the need for grace periods or thresholds before the LDs become active or who explain the need for total liability caps on LDs.

Not a popular question and results were poor. Few candidates had any real understanding of the issues or the terms of Newbuildcon or other standard industry contract templates. Most candidates only talked about LDs for late delivery. This is a key area in newbuild contracting and candidates need to understand it in detail. Some candidates decided to set out the typical milestones for payment in a newbuild contract. This was irrelevant and gained no marks.

**Q3. Using a Saleform of your choice, assess how the buyer's default and seller's default clauses operate.**

A 2 part question which tested the following:

- Candidates' awareness of the workings of clause 13 of Saleform – buyers may be in default of paying deposit or the final balance. Cancellation rights and further compensation apply (including release of deposit with interest in latter case)
- Candidates' awareness the workings of clause 14 of Saleform – sellers may be in default by failing to issue notice of readiness or failure to complete a legal transfer by the cancelling date in which case buyers may cancel, require return of deposit plus interest and seek further compensation.

Additional marks were available for candidates who explained the nature of further compensation claims – and discussed issue of direct as opposed to consequential losses. A very popular question. Results varied – either candidates had a good knowledge of clauses 13 and 14 and did well (though typically clause 13 was better understood than clause 14) or they waffled. There was generally little discussion of the scope of consequential losses.

**Q4. Discuss the considerations that a broker should raise with his principal when recommending a flag state for a 15 year old bulk carrier operating in the Indian Ocean and Australasia.**

A general essay question where the candidate was expected to show awareness of, inter alia, the following issues:

- Crewing related requirements of various flags and their cost implications
- Age restrictions on certain flags
- Financier acceptability of various flags
- Ship-owners eligibility (e.g. on EU flags)
- Company formation requirements (if flag requires a locally incorporated owner)
- Taxation and social security liabilities
- Survey requirements
- Piracy and flag state protection
- Paris and Tokyo MoU lists
- Sanctions issues
- ITF blacklisting possibility in Australia

A moderately popular question though the results were mediocre. Few candidates managed to mention more than 4 of the above and many candidates just wrote what they knew generally about the difference between national and FOC flags without really addressing the question.

**Q5. Discuss the role of the supervisors in a newbuild contract and the factors that need to be taken into account when appointing them.**

A general essay question. Candidates were required to show that they understand:

- the role of supervisors in signing/approving stage certificates for milestone payments and in supervising vessel sea-trials.
- that supervisors need to carry professional indemnity insurance if they are not employees of the buyer.
- that where supervisors are third parties, a supervision agreement should be entered into – e.g. BIMCO Superman.

Some candidates evidenced a reasonable understanding of the practicalities of new build supervision but none picked up on the need for PI insurance or for a supervision contract.

**Q6. Analyse the impact of environmental issues in ship recycling contracts. Use examples to support your answer.**

A general essay question. Candidates were expected to show an awareness of the IMO Guidelines on Ship Recycling and how these are reflected in demolition contracts (like Demolishcon) – as well as “cradle to grave” passporting, inventories of hazardous materials,

ISO approval of shipyards and ship recycling policies of major ship companies (like Maersk). Candidates are not expected to know any environmental regulations in detail but to have a general understanding of the issues and the pressures on the ship recycling industry.

Several candidates discussed mainly health and safety issues in demolition yards which was not relevant to the question.

**Q7. Answer ALL parts of the question.**

- a) **Provide a detailed description of a handymax bulk carrier including size, dimensions, machinery and other significant equipment and features.**
- b) **Draw a profile and cross-section of the vessel labelling the dimensions and other significant parts of the vessel.**
- c) **On the world map provided show THREE trade routes for appropriate cargoes for this vessel type. Show load and discharge ports.**

This is a standard ship and cargo type question. Minor problems still evident in the ship drawing with many candidates failing to label dimensions and maritime geography in some cases remains poor with a number of very basic mistakes.

**Q8. Your principal wants to make an offer for a Suezmax tanker on an outright basis. Draft a full terms offer for their approval.**

This question was testing the knowledge of a full terms offer including the correct terms 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 drydocking
  8. Spares, exclusions and bunkers/lubs
  9. Documentation
  10. Condition on delivery
  11. Law/jurisdiction/arbitration
- Additional marks were available for terms relevant specifically to tankers – e.g. gas freeing

Clearly students are being well prepared for this type of question.

It would be nice to see more candidates focus on the vessel type and include terms specific to that vessel type.