

EXAMINER'S REPORT

Shipping Business

July 2020

General comment

Shipping business exams are looking to test your understanding of the industry and your ability to apply the knowledge to the question. Giving an answer that is theoretically correct but practically not the best option, meant that you did not score as well as you could have done. It is important to consider the full question and the clues it is giving you, before you attempt your answer.

Examiners work to a positive marking scheme and it is your opportunity to gain marks by demonstrating your knowledge. Don't assume the examiner knows what you are referring to by writing 'etc' for example – make sure you gain marks by explaining things fully in writing.

Question 1 Describe the different forms of charter parties used in maritime transport. Select one of these charter parties and explain the reasons for its use.

The first part of the question wanted you to describe the various ways in which you could charter a vessel. You needed to give more than just one and you needed to give a description of each of the ones that you named.

So, a reasonable explanation of a voyage, consecutive, time charter, trip time charter, contract of affreightment and bareboat charter party.

The second part of the question asked you to select a charter party and describe the purpose of its use. This may include for a voyage charter the movement of one or more cargoes from port(s) of loading to port(s) of discharge. Contributing factors may include a falling market and customer demand.

A time or trip time charter party may be required because of a range of forward cargo purchases that allow a low-cost hire to fit in with existing owned or spot tonnage needs. Alternatively, and more often the cargoes as yet have not been sold making planning more difficult as no discharge ports are yet available.

A contract of affreightment is often used to cover a large quantity of cargo where a preferred freight rate is agreed. This establishes a management of contracts of a fixed period of time which benefits the charterer if the market does not fall further.

A bareboat employment is a unique venture by the demise charterer who has a good portfolio and strong market position which can accommodate a long term 15/20 year venture involving a lower hire rate. This type of charter often involves the use of a ship management company who engages in a total management agreement, with the principal, for the ship

Where students went wrong

Only mentioning one type of charter or just stating the three main types of charter without giving the important details of the charter such as freight or hire.

With the second part of the question a number of students thought they needed to give the charter party details and did not give any reasons as to why an owner and a charterer would opt for a particular type of charter.

Question 2. A cargo has been sold internationally to a new buyer. Describe the methods of payment that may be used and the functions of the bill of lading in the process

Firstly, you needed to recognise that this is a new customer and describe the methods of payment that best protected you as the seller. These are cash in advance, DLC, and a Bill of Exchange. Your reasons for opting for these options will have included the lack of awareness of credit rating, risk involved if buyer becomes insolvent and action needed to be taken in event of fraud. Explain Bill of exchange and Letter of credit and that these would be the most appropriate to use. If you gave the reasons why open account is an unacceptable risk to a new buyer, you gained a mark

The second part of the question required you to not only know the functions of a bill of lading, but how these functions work in conjunction with the method of payment.

When cargo has been loaded the carrier will issue a bill of lading, which will be used for the purposes of a receipt, evidence of a contract and a document of title.

The bill of lading offers proof of shipment, apparent condition. Bills of lading negotiated under a DLC are required, under UCP 600 rules, to display clean condition. Goods that are damaged must be paid for outside L/C terms and may involve insurance claims.

The bill of lading can be made to order to facilitate payment. This is acceptable for a new buyer who has prepaid or paid under a DLC.

The bill of lading is evidence of the contract agreed prior to shipment where its terms may be used by a third party when dealing directly with the carrier.

Extra marks for mentioning the risk and liability associated with methods of payment and remedies for resolving disputes including arbitration, mediation and litigation.

Where students went wrong

Many students only gave one example of method of payment. The question says methods, so you should know that we are looking for a number of options

Too many answers just stated the functions of a bill of lading without tying in how they assist ed with the transaction.

Question 3 An existing client has contacted you in your role as a port agent. They are planning to export a container to Luanda Angola from their factory near Bristol UK. Describe two incoterms 2010 for any mode of transport which may be used for this shipment and the reason for your choice. Suggest the payment terms that may be used for this established customer

You could have mentioned any of the seven any mode of transport incoterms including EXW, FCA, CIP, CPT, DAT, DAP and DDP, but you needed to consider the relationship between the two parties and what would be the best options based on them being in different countries and having an established relationship.

Explain why the two terms selected are preferred. For example

FCA the seller delivers the goods, cleared for export, to the carrier selected by the buyer. The buyer prefers to have control of transport where cost savings can be achieved. The seller loads the goods if the carrier pickup is at the seller's premises. From that point, the buyer bears the costs and risks of moving the goods to destination. The buyer arranges transport and insurance. Property and risk pass on loading to the first carrier which will benefit the seller.

When using DDP the seller delivers the goods -cleared for import to the buyer at Luanda. The seller has control of the cost of transport where again savings may be achieved. The seller bears all costs and risks of moving the goods to destination, including the payment of customs duties and taxes. The seller arranges insurance. DDP offers the seller an opportunity to increase price to compensate for the risks delivering goods to the customer in Luanda. The property and risk will pass when the goods are delivered to destination which benefits the buyer.

Other forms of incoterm may be acceptable provided an appropriate explanation is given. Look for the rationale behind the choice and it needs to be correct.

An explanation of the methods of payment appropriate to an existing buyer including cash in advance, DLC or Bill of Exchange. Open account may be used if the buyer is part of the sellers trusted group

Where students went wrong

The question asked for incoterms that covered any mode of transport. FOB, CIF, FAS and CFR are strictly for the ocean voyage and so do not apply in this case.

Simply reciting the Incoterm, without saying why it could be used or what the benefits were to each party meant that you did not get the full marks.

With suggested payment terms, not many students took note of the fact that it was an established customer with many suggesting that the money up front is the best way to do the business.

Question 4. Discuss the advantages and disadvantages of appointing a charterer's nominated agent from the point of view of both the owner and charterer.

Discuss how an agent who is nominated by the charterer may have the advantage of being more experienced than an agent the owner would appoint due to the owner not knowing that particular market or even that port.

Know that this is for a voyage charter

The charterer will not wish to have an agent for his opposition knowing details of his cargo and trade

The agent would be an expert in that trade and know appropriate berth, terminal operations and so is best positioned to expedite the operation. Experienced agent helps in the process of fixing ship with berth availability, loading/ discharge rates and cost of port charges with breakdown.

Helps with reducing demurrage and possibly gaining both parties despatch.

Problem comes about when there is a conflict of interest, who is the agent looking after.

Agent may be more expensive, so clause on competitive pricing will be inserted

Financial strength of the charterers nominated agent may not be good and owner is then exposed should the agent fail to pay the port costs

Need to appoint a protecting agent to watch over owners' interests

CP clause along the lines of "Owners to appoint agents nominated by the charterer at the port of..."
Include 'provided fees not excessive.'

The agent is the agent of the owner and it is their responsibility to look after the owner's interests

In cases of conflict of interest, the agent needs to be upfront with both parties and if he is unable to continue to act for both he should advise the owners of this.

Mention what action could be taken here and what is the agent's obligation and why this may be problematic to the agent, i.e. owner may be a one off, but the charterer may give him regular work

Where students went wrong

You needed to know that this question pertains to voyage charterers and that the owner is your principal. The question was not about the functions of an agent and so listing these did not get you any marks

Question 5. Write a report to your manager outlining the main functions of shipmanagement and recommending which functions of shipmanagement may be best to outsource to an independent shipmanagement company and why.

The question asks for you to write a report outlining the various functions that a shipmanagement company can do; technical, operational, administrative, crew, and the full repertoire

Explain each one and give reasoning as to why it would be advantageous to use an independent company or to keep it in house

Technical – planned maintenance, complying with Class needs experience Master Mariners and Chief engineers, who may be difficult to come by, required to fly to all parts of the world to assist the ship, purchase of stores.

If you are not an active shipowner, you may wish to use their services to look after the ship. There are benefits here from economies of scale in the purchase of stores, bunkers and repair contracts.

Operational – employment of the ship, problem in ensuring she is actively employed at all times if the owner is not familiar with the markets, may carry cargoes owners would rather have avoided, co-ordination with technical dept with respect to drydocking etc economies of scale in arranging insurance

Administrative – accounting for each voyage, work closely with Ops and Tech departs, know outcome of each voyage. Owner may wish to keep as hands on in order to have a better understanding of the operation or may see it as a tedious time consuming task

Crewing may be one area that you would not look to keep in house. Advantage of using foreign flagged vessels and cheaper crew s to remain competitive, but of you are not in the one of these countries how do you go about securing good competent crew.

Take advantage of highly skilled personnel that you may not be able to secure yourself

If you do the functions yourself, you save on costs and are more actively involved in the operation of your vessel. This allows you to gain a better understanding of the markets and were best to position your vessels or what type of vessels you should be looking to purchase.

Where students went wrong

Firstly, not recognising that you were required to write a report.

Some answers had broken down one particular department into a number of small functions within that department and described them as individual departments.

Very few answers thought about the fact that you could subcontract out the entire operation to a shipmanagement company.

Question 6. The predating of bills of lading and the issuing of clean bills of lading for damaged cargo are two examples of maritime fraud that owners, charterers and agents need to be aware of. Discuss the dangers of issuing predated of bills of lading and the issuing clean bills of lading for damaged cargo.

You had to know that doing either of the above is committing fraud and that a LOI's will not protect you

An explanation of why predating the bill before loading is dangerous - short shipment, damaged cargo, cargo not loaded at all. Bills function with letter of credit and it being negotiated before loading is actually done. It is fraud to misdescribe the content of a bill of lading. Removal by insurers of cover.

Extra marks for students who mention this is a breach of the Hague Visby rules, article 3 and 3.7

Damaged cargo – bill of lading functions as a receipt for cargo and the fact that you have not described it is actual condition. Committing fraud, letter of indemnity not valid, letter of credit issues.

Where students went wrong

With respect to predating the bill, few answers discussed the danger of the cargo being damaged or short shipped

As well as giving the reasons why the predating and issuing of clean bills is fraud you could also have discussed what action you would take to ensure that your company is not exposed – instruct agents to immediately notify Owners and P&I if damaged goods are presented, refuse to load damaged cargo and request cargo in good condition. If it is agreed damaged cargo is to be loaded seek guidance from P&I for clausuring mates receipt and blading. Issue letter of protest to shippers. Notify charterers of action taken.

Question 7 Answer BOTH parts of the question

- a) Discuss the role of a sale and purchase broker in the secondhand ship market.**
- b) How do they ensure that their clients are able to offer suitable vessels?**

Part A was looking for you to state the following

- Acting as an agent to a principal, the seller or the buyer or both to facilitate the sale of ships on payment of a commission
- A neutral role acting impartially between the parties, offering mediation services in the event of dispute.
- Follow an ethical practice acting within authority of principal(s) and avoiding actions which bring the S&P broker into disrepute

Part B was about the tools at his disposal and how he best uses them to succeed in his role

- Specialist knowledges of the secondhand market
- A large database of information regularly updated
- A good knowledge of the markets as well as the types of vessels best suited to the market
- A well founded list of contacts

- A detailed knowledge of the documentary process in the transaction including the Norwegian Salesform 2012, Nippon Sale Form 1999 or the Singapore Sale Form 2011 contracting the deal

Where students went wrong

Some answers just discussed the tools at the S&P brokers disposal, but failed to discuss his role in the second hand sales.

Question 8. What are the benefits and drawbacks of public and private companies compared with partnerships and sole traders? Comment on the advantages and disadvantages of each type of business organisation?

Describe what a sole trader is and the advantages and disadvantages of this type of company

Describe a partnership and the advantages and disadvantages of this type of company

Compare unique features with private/public company

Describe a Private limited company and the advantages and disadvantages of this type of company

Describe a public limited company and the advantages and disadvantages of this type of company

Compare unique features with sole trader/partnership.

Where students went wrong

Generally a well answered question with few students not doing well. Those students who did struggle just described the various business options, but did not compare them or discuss the advantages and disadvantages of each option