



EXAMINER'S REPORT

JULY 2020

SHIP SALE & PURCHASE

General Comments

Two noticeable features from this exam session:

Quality of handwriting is a significant problem as well as English usage – sometimes rendering answers hard to interpret

Candidates must read the question closely and answer the actual question asked – there is too much of a tendency to just write down whatever might be known on a topic without addressing the question asked.

- 1. Your principal is buying a secondhand vessel and asks you to represent them at the closing meeting. Describe and explain what documentation you will require to demonstrate your authority to act and what risks you should be aware.**

A 2 part question which tested the following:

- The first part related to Powers of Attorney. Candidates were expected to show awareness of the function of these documents (to enable the named attorney-in-fact to sign certain identified documents, e.g. protocol of delivery or deposit release letter, on behalf of the buying company) and that Powers of Attorney should be notarised and apostilled.
- The second part related to the risks involved in acting as an attorney-in-fact - candidates were expected to show awareness that the representative could be exposed to personal liability (e.g. if he or she signs a deposit release letter at the wrong moment in the closing process or a protocol of delivery otherwise than in co-ordination with the actual physical handover of the vessel) and that such risks may not be covered, entirely or at all, by a shipbroker's professional indemnity insurance.

Extra marks were given for an understanding that a) a Power of Attorney should itself be authorised by a board resolution and b) that risks may be mitigated by an indemnity from the buyer.

This was a popular question, but results were mostly poor. Many candidates mis-read the question and either assumed it was asking for a general description of delivery documents or an explanation of implied authority of an agent.

Where candidates did understand what the question was asking for, they tended to answer the first part well but flounder on the second part – it is somewhat worrying that hardly any candidate had an appreciation of the role of professional indemnity insurance in protecting shipbrokers from negligence claims. Best marks were obtained by those candidates who not only identified and explained the requirement for a power of attorney but also showed awareness that such instrument must name the specific documents that the attorney may sign under it.

2. Shipbuilding contracts are typically supported by bank refund guarantees – explain the purpose of these guarantees and describe who usually issues them.

A 2 part question:

- Candidates were expected to explain that refund guarantees are given by financial institutions to support the builder's contractual obligations to make a refund in the circumstances described in shipbuilding contract – essentially the failure to deliver the contracted vessel on time and to specification. Candidates should have been aware that shipyard insolvency is the prime risk here as buyers do not want to be chasing administrators/liquidators to honour a refundment obligation;
- Candidates should have been aware that such refund guarantees are given by financial institutions with sufficiently strong credit ratings – these may be commercial banks or may be state owned/controlled banks or export finance institutions. Some examples should have been given.

Additional marks were given for candidates who explained the costs involved for shipyards in procuring such guarantees and how the shipyards may try to pass that cost on to buyers. Not a popular question and results were poor. Few candidates had any significant understanding of the key role of refund guarantees. Most candidates went off topic in reciting other features of newbuild contracts. Few candidates mentioned shipyard insolvency as the prime risk. In particular, the second part of the question was barely even touched on by most candidates with hardly any reference to the key issue of credit ratings.

Question 3.

3. Discuss why a shipbroker's role on a newbuild contract negotiation is fundamentally different from the role on a secondhand sale.

A general essay question. Candidates were expected to show awareness of the following differences:

- Newbuild contract negotiations are more lengthy/time consuming
- Issues of technical specification will be analysed more thoroughly in the case of a newbuild acquisition
- Commission structures will need to be different as there are multiple payments under a new build contract over potentially several years not just one balance payment out of which commission can be paid
- Commission rates are more negotiable in a newbuild context – not necessarily 1.25%
- Cultural differences will need to be accommodated – especially when negotiating with Far Eastern yards
- Newbuild acquisitions are more regularly financed by 3rd parties than secondhand sales
- The shipbroker may need to recommend other service providers (surveyors/supervisors/lawyers etc)
- The shipbroker may need to advise on choice of flag for the newbuild

Additional marks were available for good essay structure and identifying other relevant factors.

4. Ship sale and purchase transactions involve the remittance of large sums of hard currency (usually US Dollars or Euro) through the international bank payments system. Describe the problems that a shipbroker should be aware of in respect of such payments and explain how risks can be mitigated.

A two part question:

- Candidates were expected to be aware of the time criticality of payments – especially in the context of different time zones and different bank cut-off times in various jurisdictions. They should have been aware in respect of USD payments of the corresponding bank system and thus the need for the transaction to be completed in US banking hours. They should also have shown awareness of AML and sanctions type issues and the potential for payments to be blocked;
- Candidates were expected to show awareness of the standard practical measures taken to alleviate the funds transmission problems – e.g. prepositioning completion funds in escrow, agreeing to complete on verification of MT100 or Swift message rather than confirmation of funds arriving in beneficiary account.

Additional marks were available for awareness of contemporary issues such as Iranian sanctions or the CAATSA list and how they impact on particularly USD remittances.

Very few candidates attempted this question and amongst those that did the results were generally poor. In particular, candidates did not appear to be aware of standard completion procedures in terms of prepositioning funds or paying through the SWIFT system. Some candidates had a good awareness of AML/KYC issues but that was as far as it went. It is concerning that awareness of the basic practical issues around completion of ship sales appears to be so poorly understood as the shipbroker's role does not end on signature of the MOA.

5. Describe and explain the role of the Class in a secondhand vessel sale.

A general essay question.

Candidates were expected to show that they understood the role of Class:

- in compiling and allowing access to the vessel's technical records;
- under Clause 6 of Saleform 1993 and 2012 – e.g. approval of divers, attendance at drydocking and requirement of tailshaft drawing;
- in relation to delivery documentation – specifically the issuance of a Declaration of Class/Class Maintenance Certificate.

Additional marks were available at the discretion of examiner for in-depth understanding.

A very popular question. Results varied – most candidates were strong on the second bullet point above and could provide a decent summary of clause 6 NSF. Many candidates were also able to show they understood the importance of inspection of class records. However few candidates had much to say as to the role of Class in terms of delivery documentation and this often spoiled otherwise good answers. Many candidates wasted time on a general discussion of the nature of Class Societies or listed IACS members – neither of which assisted in answering the actual question.

6. Saleform 1993 and 2012 contain provisions relating to the condition a vessel is required to be in at delivery. Describe the required condition and discuss what the buyer's remedies are if the vessel is found not to be in the required condition.

A two part question:

- Candidates were expected to show detailed awareness of the terms of Clause 11 of Saleform and in particular the concepts of a) "as she was at the time of inspection", b) "fair wear and tear excepted", c) "class maintained without conditions/recommendations" and d) "certificates valid and unextended";
- Candidates were expected to show awareness of the link to the seller's default clause (14) in that the vessel will not be physically ready for delivery in accordance with the sale agreement if she is not in the required delivery condition;

Additional marks were available for discussion of other remedies than cancellation, e.g. price discount and/or allowing sellers a period to remedy the defect in condition.

A popular question. Results varied but in general most answers were acceptable – typically candidates were able to identify at least three of the concepts in Clause 11 and had a decent understanding of Clause 14. Disappointingly few candidates however went on to discuss price discounts. A few candidates mis-read the question in that it was asking about condition "at delivery" and wrote about condition issues arising at pre-delivery

7. Answer all parts of the question:

- a) Provide a detailed description of a VLCC tanker as would appear on a typical secondhand sale and purchase circular stating size, dimensions, machinery and other significant equipment and features.
- b) Draw a profile and cross-section of the vessel and label dimensions and other significant parts of the vessel.
- c) On the world map provided show THREE typical trade routes of the vessel.

The usual 3 part ship-type question.

well This standard type question was popular and, on the whole, well answered. Clearly students are being prepared for this type of question.

The vessel descriptions were mostly plausible though sometimes a little brief.

Some of the ship drawings were rather messy but most did include the great majority of the required features.

Maritime geography was improved from previous exam sessions though candidates do need to identify ports legibly.

8. Your client wants to make an offer for a Capesize bulker 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/lubes
9. Documentation
10. Condition on delivery
11. Law/jurisdiction/arbitration

This was the bare minimum. Additional marks were available for clauses that recognised that the vessel in question was a dry bulker, e.g. that the vessel will be delivered with holds swept.

A popular question and marks were generally good. Candidates were clearly well prepared for this type of question. Some included more contractual description than would be appropriate for an offer and wasted time doing so (the question was not asking for a summary of NSF terms).

A reasonable number of candidates did include provisions that recognised the nature of the vessel as a dry bulker so that was good.