



EXAMINER'S REPORT

NOVEMBER 2020

SHIP SALE & PURCHASE

1. Identify and explain the documents to be presented by sellers at the onshore completion meeting on the sale of a secondhand bulk carrier

The question was designed to test a candidate's knowledge of Clause 8 of Saleform (93 or 2012). The answer should have included a description in reasonable detail of the nature and role of the following:

- Bill of Sale
- Board and Shareholder Resolutions
- Power of Attorney
- Transcript of Registry (or equivalent certificate)
- Declaration of Class
- Certificate of Deletion (or undertaking to delete)
- CSR
- Commercial invoice for Vessel
- Commercial invoice for bunker/lubes
- Cancellation letter to sat-comms provider
- No blacklist letter

Additional marks were available at the examiner's discretion for detailed understanding or for suggesting additional documentation relevant to a bulk carrier. The question did not require a description of documents to be handed over onboard and no marks were available for mentioning such documents - although several candidates did unfortunately waste their time in discussing such documents.

This was an extremely popular question and, on the whole, it was well answered. Most candidates appeared well prepared for it but in some answers the level of detail was not satisfactory though – i.e. the relevant documents were identified but their role and nature not fully explained. Also, the requirement for shareholder resolutions was often missed and there was a general confusion about what form a board of directors' approval takes with many candidates simply referring to a "letter" or a "document" from the board as opposed to resolutions or minutes. Candidates do need to be familiar with basic corporate authorisation processes.

2. Shipbuilding contracts typically contain liquidated damages provisions in case of various failures by the builder to meet its contractual requirements – describe and explain three usual types of such provision

Candidates should have described and explained how liquidated damages operate in three of the following areas (as per Section 2 Newbuildcon):

- non-permissible delay in delivery
- speed deficiency
- excess fuel consumption
- deadweight deficiency
- cubic capacity deficiency

Additional marks were available at examiner's discretion for candidates who explained how liquidated damages interact with liability caps.

A popular question and results were generally good with candidates accurately identifying and describing the relevant LD provisions. There was however a tendency to miss the point on delays in delivery that "permissible delays" do not count. Few candidates set the provisions in the wider context of a shipbuilding contract and explained their interaction with overall liability caps. On the positive side a fair number of candidates did show awareness that LD provisions are intended to motivate performance and not just to penalise.

3. Identify and discuss four key considerations that differentiate a scrap sale from the sale of a vessel for onward trading.

A general essay question with any of the following key differences to be mentioned:

- A vessel for scrap sale may not be required to be in Class
- Scrap vessels are priced on a per-LDT basis
- Spares, especially items containing valuable metals like spare propellers, can materially affect the price of scrap vessels
- Sellers may be required to assist with vessel beaching
- Environmental concerns are increasingly key on scrap sales
- Towage may need to be arranged for vessels that are no longer capable of proceeding under their own power
- Different standard contracts apply – Demolishcon is often used not Saleform

Not a popular question and results were mixed. Most candidates could identify 4 key differences though sometimes the discussion of those differences was quite thin and in particular more analysis was required as to what LDT was and how it was calculated. Some candidates recited how each type of sale might proceed without identifying clearly the differences.

4. Describe and explain the role of the flag state of a vessel in a secondhand vessel sale.

A general essay question where candidates were required to show that they understood the role of flag state

- in maintaining the title and mortgage register of vessels
- under Clause 8 of Saleform 1993 and 2012 – provision of Certificates of Register, Transcripts of Register, Deletion Certificates
- In relation to valuation – vessels on white list flags will attract higher valuations on assumption that they are likely to be in better condition.

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

Not a popular question and results were generally poor. Particularly disappointing was a general confusion of the role of Flag and Class as well as a tendency to write in general terms about the role of the flag state in shipping generally as opposed to in a sale scenario – so some candidates wrote about crewing or tax considerations in terms of choice of flag which was not what the question was asking for.

5. Saleform 1993 and 2012 contain provisions relating to buyer's default. Choosing one such Saleform, describe and explain these provisions.

A straightforward question that tested knowledge of Clause 13 of each Saleform with its two limbs:

- Default in paying deposit as per Clause 2 Saleform – candidates should have referred to the terms of Clause 2 and deadlines therein – candidates should have explained that the seller's remedies are to cancel and claim for losses and expenses (with interest);
- Default in paying balance as per Clause 3 Saleform – candidates should have referred to the terms of Clause 3 and deadlines therein – candidates should have explained that the seller's remedies are to cancel, require return of the deposit and claim for losses and expenses (with interest) in case the deposit does not fully cover those losses/expenses;

Additional marks were available for discussion of what types of losses may be recoverable and for referring to the likelihood of arbitration.

A very popular question. Results varied but most candidates adequately recited what clauses 2 and 3 contain and how they fit with clause 13 – few candidates discussed the type and extent of compensation available or mentioned the possibility of arbitration.

6. Your principal is new to shipowning – he has asked you to advise what insurance policies he should be looking to put in place for a cargo vessel he is purchasing. Identify and discuss what policies would be relevant.

The question was testing whether the candidate had a working knowledge of marine insurance policy types and the following covers should have been mentioned and discussed in broad detail, evidencing an understanding of the types of eventuality they are designed to cover:

- Hull & Machinery;
- War Risks – especially in relation for vessels trading in Persian Gulf;
- Protection and Indemnity – and the role of P&I clubs generally.

Additional marks were available for mentioning other relevant marine insurance covers, e.g. any of following categories:

- increased value
- FD&D
- loss of hire
- piracy and terrorism
- cyber risks
- arrest/maritime lien
- drug seizure
- quarantine
- cash box.

Additional marks were also available for an awareness of the state of the insurance market and the marked increase in premiums recently.

This question was attempted by so few candidates that no conclusions can be really be drawn. Those few who did attempt this question answered adequately re the basic types of cover but left it at that.

7. Your client wants to make an offer for a chemical tanker on an outright basis. Draft a full terms offer for their approval.

The usual full terms offer question.

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

Additional marks were awarded for clauses that recognised that the vessel in question was a chemical tanker e.g. that tanks should be gas free/safe for man entry.

A popular questions and results were good, sometimes excellent. As in previous exam sessions, it is clear that candidates are being well prepared for this type of question. The only general comment to make is that again as per previous exam sessions, it is rare for candidates to include clauses specific to the vessel type – there is an element of trotting out the same offer for any type of vessel.

8. Answer all parts of the question:

- a) Provide a detailed description of a Kamsarmax bulk carrier 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 the dimensions and other significant parts of the vessel.
- c) On the world map provided show THREE typical trade routes of the vessel.

Very popular question and marks were generally good.

Part a) was well answered with almost all candidates providing a reasonable description

Part b) was mostly well answered but as in previous exams some drawings tended to sloppiness and messiness even if they contained most of the correct features

Part c) was again mostly well answered – few glaring geographical mistakes were made though at times ports were not properly labelled.

Question 7.

Discuss five different functions that a ship management company can carry out for an owner and what is involved in each?

The question required the student to know the different departments in a ship management company

- full management,
- technical management,
- operations management,
- administration management,
- crew management,
- Procurement, bunkering.

Where students went wrong

For some reason a large number of students felt the question was about justifying why you would use a ship management company and so spent a lot of their answer on this as opposed to what the question had asked.

Flags of convenience are a great topic and it was great to see how much knowledge students had on this topic. The problem was that the question was not about flags of convenience, so when you discuss the functions of the crewing department, rather just stick to what they do, not why you think they do it.

Question 8.

Compare and contrast the structures available for creating a shipbroking company and give the advantages and disadvantages for each. Discuss the one that is most appropriate to your region

Describe the different options, i.e. sole trader, partnership and private company limited. Name the advantages and disadvantages of each.

The last part of the question, which option you would pick, is dependent on the student, there is no correct answer, it is more a case of marking on the reasoning and understanding shown

Where students went wrong

For the most part this was a well answered question. A number of students felt that a public listed company was an option. The question was about creating a company, so a start up. Not too many companies start up by going straight onto the stock exchange. Who would buy their shares?