



# EXAMINER'S REPORT

## NOVEMBER 2021

### SHIP SALE AND PURCHASE

#### General Comments

Some noticeable features from this exam session:

- As in previous exam sessions candidates were on the whole well prepared for questions on Saleform and the traditional questions on vessel type/routes and writing an offer – they were much less well prepared for the questions on Newbuildcon and Demolishcon
- Quality of handwriting remains a significant problem as well as English usage – sometimes rendering answers hard to interpret
- Significant improvement in maritime geography was evident – many fewer elementary mistakes though on occasions port names were difficult to decipher
- Answers for the essay type questions were often too thin – and these questions were often left to the end of the paper by candidates who were relying on the traditional Saleform and offer writing questions to push them over the pass mark on the vessel. There are more coming to try to combat climate change.

## Question 1

**Identify and explain the documents to be presented by sellers at the onshore completion meeting of the sale of a secondhand tanker.**

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A straightforward question testing knowledge of (principally) clause 8 of NSF. Candidates should have identified and explained the exact requirements for each of the following:

- a) Bill of Sale
- b) Corporate authorisation
- c) POA
- d) Transcript of Registry/Certificate of Freedom from Encumbrances
- e) Declaration of Class/CMC
- f) Certificate of Deletion
- g) CSR
- h) Commercial invoices for vessel and lubes/bunkers
- i) Sat Comms cancellation letter
- j) No blacklist letter
- k) Protocol of Delivery and Acceptance
- l) Deposit Release Letter

Additional marks were available for candidates who suggested additional documentation relevant to a tanker – e.g. a gas free certificate – or who added a description of the closing process

The question did not require a description of the documents to be handed over onboard – e.g. plans, manuals, trading certificates etc and no marks are available for mentioning such documents

A popular question and, on the whole, well answered. However, to get the best marks it was not enough to simply recite the documents under Clause 8(a) of Saleform with no explanation. So, for instance on b) above the candidates should have shown awareness that the form that corporate authorisation takes is a written board resolution or minutes of a board meeting (supported by a shareholder resolution/minutes).

Additionally, the question was not purely restricted to the list of documents in Clause 8(a) and candidates mostly failed to mention items k) and l) – in the case of k) this was perhaps understandable on the basis that the protocol would usually be signed onboard (though not always).

## Question 2

**Shipbuilding contracts contain provisions allowing the buyer and the builder to terminate the contract in certain circumstances - explain these provisions.**

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A question testing awareness of clause 38 of Newbuildcon (or similar provisions in other contract forms). The question was in two parts:

- a) Buyer termination rights – candidates should have explained how such rights arise on, e.g.:
  - Insolvency of refund guarantor
  - Failure to perform works for a running period beyond agreed allowance
  - Delay in delivery (excepting permissible delays) beyond agreed allowance
  - Material non-compliance with specification
  
- b) Builder termination rights - candidates should have explained how such rights arise on, e.g.:
  - Insolvency of buyer's guarantor
  - Failure to make stage payments (subject grace period)
  - Buyer refusing to take delivery (in accordance with the contract)
  - Buyer's failure to provide contractual guarantees

Additional marks were available for candidates who showed awareness that termination is likely to be disputed and discussed usual dispute resolution processes or discussed contract renegotiation.

Not a popular question at all and it is hard to draw too many conclusions from the few attempts at answering this question, though clearly candidates did find it difficult. This is understandable given Newbuildcon is a dense document and its lay-out is not always clear – particularly the provisions re insolvency. However, the termination rights are a key part of any shipbuilding contract.

In general, the few answers that there were concentrated on termination for failure to build to specification or to deliver on time (allowing for grace periods) – there was little discussion of insolvency (which is a key risk in any shipbuilding project) and the role of refund guarantees on a termination was not understood.

In addition, there was a tendency to go off the question and include unnecessary detail on how the liquidated damages provisions work, rather than linking those terms clearly to a termination right.

### Question 3

**Norwegian Saleform contains a provision relating to the condition of a vessel on delivery. Using a**

**Norwegian Saleform of your choice, describe and explain this provision.**

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A question on Clause 11 of Norwegian Saleform 1993 or 2012. Candidates should have shown awareness of the following:

- Delivery is of vessel and “everything belonging to her”;
- Vessel to be delivered and taken over as she was at the time of inspection, “fair wear and tear excepted”;
- Vessel to be free of cargo;
- Vessel to be free of stowaways;
- Vessel’s Class to be maintained “free of conditions/recommendations”;
- Vessel to be free of average damage affecting Class;
- Certificates to be “valid and unextended”;

Additional marks were available for candidates who went beyond the simple words of the clause and were able to give examples of what constitutes fair wear and tear or what might be average damage affecting Class or who explained clearly how “as is where is” sales can be accommodated by amendments to Saleform.

A very popular question. Marks varied but there were some very good answers. Most candidates demonstrated a good working knowledge of the terms of Clause 11 but the best marks were available for those who showed a commercial understanding of what the terms meant in practice. It would be good if more candidates had been able to discuss what the concept of “fair, wear and tear” could be held to mean (with examples) and how disputes might arise about this.

#### Question 4

**Your clients wish to sell a vessel for scrap – they are used to selling vessels on the Norwegian Saleform contract form. Write an advice to them explaining why it might be beneficial for them, as sellers, to use BIMCO Demolishcon contract form instead.**

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This question was designed to test awareness of the advantages of the Demolishcon form over Norwegian Saleform from a seller's perspective – no marks were available for pointing out provisions that benefit the buyer.

Candidates could have mentioned the following but this was a general essay questions and the below list is by no means exclusive:

- Less onerous delivery condition requirements – “safely afloat, substantially intact”
- Moving from outer anchorage to beaching plot at Buyer's risk and expense
- Buyers to use best endeavours to assist with crew disembarkation
- Buyers undertaking to scrap and not to continue trading
- Buyer's best endeavours undertaking to comply with IMO Guidelines
- Less onerous delivery documentation
- Wider categories of items not included in sale – cutlery, linen etc

Not at all a popular question and marks were poor in the few answers that were attempted with candidates not evidencing much detailed knowledge of the terms of Demolishcon. Otherwise, it is not possible to draw many conclusions on a question that was attempted by so few candidates.

## Question 5

**Discuss and explain the advantages and disadvantages of registering a vessel with a flag of convenience as against a traditional national flag.**

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A general essay question testing candidates' knowledge of ship registration options.

In terms of positives, candidates could have mentioned e.g.:

- Manning requirements
- Tax exemptions
- Flexibility on vessel age
- Less stringent survey requirements
- Efficiency of registration processes

In terms of negatives, candidates could have mentioned e.g.:

- Reputational issues
- Paris and Tokyo white lists
- Cabotage restrictions
- Lack of anti-piracy protection
- ITF blacklisting

The above are suggestions of points that can have been made but are not exclusive and candidates were at liberty to raise and argue for other positives and negatives.

In general, candidates mentioned tax advantages and crewing issues and little else. In respect of any tax advantages of operating out of FoCs, there was confusion as to corporate taxation and tonnage based "taxes" (more properly fees) charged by registries. Few candidates seemed aware of the point that it is the ability to incorporate the vessel owning company in a low tax jurisdiction that confers the tax benefit and that FoC's facilitate this by having limited or no restriction as to the eligibility of persons from such jurisdictions (a company being a "person" for this purpose) to register. So often a logical step was missing in the argument. To an extent this is to be expected as tax structuring in shipping is a complex area.

Very few candidates mentioned the age restrictions that many flag states have – and how certain FoCs (particularly perhaps Panama) attract tonnage to their flag by allowing older vessels to be registered. Likewise, few candidates mentioned differing survey requirements between flags.

## Question 6

**Your client wants to make an offer for a LR2 tanker on an outright basis. Draft a full terms offer for their approval.**

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The typical 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 available as per usual for candidates who mentioned offer terms specific to vessel type – e.g. gas-freeing.

A popular question and marks (on the whole) were good to very good. Candidates are clearly well prepared for this question and there is little to add to comments on previous exam sessions. More candidates on this occasion did mention vessel specific terms – which is gratifying to see.

Some candidates in attempting to write a “full terms” offer (which is laudable) probably wrote a little too much – putting in additional detail in areas like spares, bunkers etc which while often very impressive may have caused them timing issues when they went onto other questions. A couple of paragraphs for item 8 is sufficient to show knowledge of the issues.

In addition, some candidates missed the point in the question that the offer was to be an “outright” one – i.e. vessel inspected and accepted.

### Question 7

**Answer BOTH parts of the question.**

**a) In addition to the purchase price for the vessel, buyers will need to pay for bunkers and lubricating/hydraulic oils onboard – describe the usual alternative ways of calculating the price for these.**

**b) What other additional items may the buyer be required to pay for?**

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A two-part question:

a) Candidates should have described the two alternative pricing methods – actual invoiced net prices or net market price at port of delivery (or nearest bunkering port)

Candidates should also have shown awareness as to why the two methods may generate quite different prices

b) Candidates should have noted that (i) spares on order are excluded from the spares included in the sale price and that (ii) third party owned equipment onboard could be excluded (if so listed) from the sale and buyers may need to negotiate its purchase or continued hire separately with third parties

Additional marks were available for candidates who showed good commercial understanding of the issues.

A moderately popular question. Results varied considerably. Most candidates performed better at the first part of the question and in particular knowledge of the two usual methods for pricing bunkers was good though it would have been good if candidates had explained in more cases how such methods may result in widely differing prices.

On part b) there was less knowledge in detail of what Saleform actually says and some candidates did not seem to understand what a hire contract for equipment actually is (and that it is necessary to negotiate with a third party to either purchase such equipment or continue the hiring of it – e.g. to “novate” the hire contract or to enter into a new one).



## Question 8

**Answer ALL parts of the question**

- a) Provide a detailed description of a Supramax 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.**
- c) Label the dimensions and significant parts of the vessel.**
- d) On the world map provided show THREE typical trade routes of the vessel.**

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The usual ship-type question except that on this occasion the requirement to label the vessel drawing was stressed by having this as a separate sub-section of the question.

A popular question and marks were good to very good. Almost all candidates successfully provided a description of a Supramax. The vessel drawings and labelling were on the whole quite good (even if in a few cases rudders were missing or not attached to the hull!).

As mentioned above maritime geography was much improved and there were few obvious blunders – clearer labelling of ports was needed sometimes however.