

## Examiners' Report

SSP November 2024

### General Comments:

Students should take note that the questions set are drawn from the syllabus and not the book – which whilst a valuable resource is not by itself comprehensive. The examiners are looking for knowledge and understanding of the subject matters covered in the syllabus, and the ability to communicate it well, in English, in writing.

In all areas of shipping business – not the least ship sale and purchase – the ability to understand and answer queries comprehensively and concisely, in writing, in a way that can be understood and acted on immediately is a core skill for all professionals. This is what is being examined, not only what has been memorised.

It is not possible to pass this exam without answering the questions being set. The way students should approach this is:

- Do I have the knowledge to answer this question?
- Do I understand what the question is asking of me?
- How should I plan and then write the answer?

Students should consider these points before attempted to answer questions. They should – if they need or desire – use the exam booklet to make notes and plans before beginning to write. As long as these notes and plans are crossed out after use, they will have no effect on the final mark, but by thinking a little bit about the structure and content of the answer before writing, the student will have a far better chance of gaining further marks. Good presentation (including good handwriting) and structure makes an offer or potential contract easy to read and understand, and easy to engage with. This is also true of answers in professional examination.

**1. Sellers and Buyers have agreed a Memorandum of Agreement to sell a panamax bulk carrier, and the deposit has been lodged.**

**The Sellers' Financiers have registered a mortgage against the ship to secure a loan to the Sellers. It is the Sellers' intention to pay off the loan with the proceeds from the sale.**

**Answer BOTH parts of the question:**

- a) **Explain the purpose and function of the registered mortgage as far as the Sellers' financiers are concerned.**
- b) **Describe the delivery documentation the Sellers would have to provide Buyers on delivery that prove that the vessel is free of encumbrances, and suggest ways the Sellers can provide delivery with clean title in these circumstances.**

This question was a variation of the usual delivery documentation question, asking for students' in depth knowledge of the function of a mortgage, the concept of clean title and freedom of encumbrances, the documentation proving this, and asking for practical suggestions as to how the closing can take place when funds are needed to pay off the loan. This meant that by simply repeating NSF 2012 clause 8 learnt by memory for example, would not lead to a pass.

The examiners were looking for:

- A) In the above scenario the function of the registered mortgage is to prevent the sale or transfer of the ownership of the vessel to other parties without the approval of the financiers, who would normally be satisfied by the paying-off of the loan. Without releasing the mortgage, the vessel has an encumbrance, and therefore a Freedom of Encumbrance certificate or equivalent from the Vessel's registry would not be forthcoming, and therefore the title on the vessel could not be cleanly transferred.
- B) The delivery documentation needed to provide evidence of clean title are:
  - Bill of Sale

- Transcript of Registry showing the vessel is free of encumbrances

Other documentation may support the issuing of the Bill of Sale, like Powers of Attorney and Board and Shareholder Resolutions, but they cannot by themselves evidence clean title.

Without describing these documents fully, and how and who issues them, together with practical suggestions on how to provide clean title, students would struggle to pass.

Where students went wrong:

The temptation to simply regurgitate Clause 8 of NSF 2012 was simply too strong for many, as even though the information may have been correct it did little to answer the question being asked.

In general a popular question, and where students did well they showed that they not only understood the purpose and function of a registered mortgage, but were also to suggest practical procedures during closing, for example:

The buyers to agree to pre-position the funds with the escrow agent or the Sellers' bank and prepare payment instructions of the deposit and the balance, and for these to be tabled and held until the Sellers' financiers are happy that the funds exist and are ready to pay off the loan. The financiers then instruct the Registry to release the mortgage immediately, and a Transcript of Registry can then be provided to the closing meeting, and then the payment instructions can be released and executed.

## **2. Answer ALL parts of the question.**

- a) Provide a detailed description of a 20-25,000 dwt IMO II chemical tanker as would appear on a typical secondhand sale and purchase circular stating size, dimensions, machinery and other significant equipment and features, including appropriate cargo carrying 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 this vessel for THREE different cargoes.**

A standard ship type question, which when answered correctly can bring the students many marks.

What the examiners were looking for:

- a) A written description including dwt, dimensions, engine, tank configuration, coatings, material of coils, pumps, class survey position:

26,000 DWT ON 10.M Draft

BLT 2011 Japan

Class: NK

Loa: 160 M / Beam: 27 M

18 Cargo Tanks ABT 27,560 CBM

All cargo tanks Stainless Steel / Stainless Steel Heating Coils

IMO 2

Cargo Pumps: Deepwell 18x300 m<sup>3</sup>ph

Mitsubishi 6UEC45LSE 10,156 BHP @ 130 RPM

- b) An acceptable ship drawing showing profile and cross section with all relevant spaces identified. Top marks given to those also showing dimensions. It is recommended that students use the graph paper on either side of the centre pages.

- c) Relevant trading routes for 3 different cargoes, clearly drawn (it is recommended to use the larger map in the centre pages of the examination booklet).

Where students went wrong:

Students not using a ruler, pencil and making drawings to scale cannot show the examiner that they know and understand what a ship looks like, and how it functions. Likewise maps missing the exact location of ports, or making vague and inaccurate trade routes will lose marks.

**3. Discuss the parties who would require a written ship valuation from a sale and purchase broker and explain the reasons why they would need such a certificate.**

What the examiners were looking for:

The parties who would need valuations certificates and why:

- Financing banks: to assess the value of the security against the loan
- Auditors: for presenting full accounts to financiers and shareholders amongst others
- Shipowners: for private records and shareholder information
- Tax authorities: for assess liability depending on the jurisdiction
- H&M insurers: to assess a casualty claim against insured value
- P&I clubs: to assess cover against claims
- Arbitrators: to independently assess the value of the vessel in dispute resolution
- Stock exchange authorities such as the SEC for merger and acquisition and other corporate activity
- Lawyers: in litigation
- Other disputes including inheritance disputes and divorce proceedings

Those who achieved better marks were able to present more convincing discussions of the reasons why valuation certificates were needed.

Where students went wrong:

By spending too much time on how ships are valued and the methods used, which is not what the question asked, some students lost valuable time and marks. Always answer the question being asked.

**4. Using a Saleform of your choice, explain the importance of the Notice of Readiness to the delivery of the vessel, describing the Sellers' obligations prior to and at the time of tendering a written Notice of Readiness for delivery.**

What the examiners were looking for:

This question required an depth knowledge of Clauses 5, 3, 11 and 14 of NSF 2012, for example.

The importance of the NOR is:

- The written NOR is when the clock starts ticking for the three banking days the buyers have to pay for and take delivery of the ship as per Clause 3
- It is given within the dates in Clause 5a ONLY when the vessel is within the stated delivery range
- The sellers should give prior notices of when and where they intend to give NOR as per clause 5b) and then the NOR when the vessel is physically ready for delivery as per clause 11
- If the NOR cannot be given within the cancelling date, the Sellers have to request an extension as per clause 5 c).
- If the NOR is not given then clause 14 applies

Those that scored the highest marks covered all of the above points in a well-structured and well-written answer.

Where students went wrong:

By concentrating on Clause 5 only, students were restricting the opportunity of further marks for themselves. A Saleform is not a chronological or sequential document, and Clauses cannot be memorised and analysed in isolation. Knowledge a great many different issues – and other partes of the MOA – was required.

5. **A Shipyard and prospective Buyers have agreed and signed a Letter of Intent for two newbuilding MR tankers which includes price, payment terms and delivery dates. Describe and briefly explain what other terms and conditions the parties will have to negotiate and agree before a full newbuilding contract can be signed and become fully effective.**

This was a question testing students' general knowledge and understanding of the process of the formation, content and execution of a newbuilding contract.

The other terms and conditions that need to be agreed are:

- Specifications including extras
- Liquidated damages
- Permissible delays
- Buyers' performance guarantees
- Sellers' refund guarantees
- Buyers predelivery supplies and obligations
- Sellers' post delivery warranties and guarantees
- Effectiveness of contract

The best marks were gained by those students who addressed all the above points and showed an understanding that signing itself does not necessarily make the contract effective.

Where students went wrong:

Simple regurgitations of NEWBUILDCON without explanations of the clauses were not enough to show an understanding of how a newbuilding contract is constructed and effected.

6. **Explain how the price of a ship being sold for recycling is calculated. Identify and briefly describe the documentation needed to be provided by the Sellers as evidence of the description of the ship.**

This was a question testing knowledge of the difference between secondhand and scrap sales.

What the examiners were looking for:

The price is calculated by:

- a) The light displacement tonnage (ldt) of the vessel
- b) The type of vessel and the materials and equipment of the vessel on board

The explanation should have included explanation of what the ldt actually is, and why the materials and equipment on board – stainless steel tanks/coil, spare propeller, type of main engine etc – can affect the price of the vessel.

The documents required were:

- a) A stamped trim and stability book and/or a capacity plan with deadweight scale for the ldt
- b) A signed and agreed makers/equipment list

Where students went wrong:

The examiners were not looking for a commentary on the current state of the recycling market, or factors affecting the price itself. Likewise those who commented on how a ship is scrapped lost valuable time as the question did not ask for this information.

- 7. Your client has shown interest in buying a modern secondhand kamsarmax bulk carrier and has asked for your opinion of the advantages and disadvantages of investing at this time. Write a report for your client, concluding it with your own personal recommendations.**

This question examined

- Knowledge of the current market conditions
- Ability to write a coherent market report

What the examiners were looking for:

The report should have included:

- The current state and prospects of the dry bulk carrier market for kamsarmaxes
- Recent trends in secondhand kamsarmax bulk carrier S&P market including price direction
- The demand for dry bulk commodities, especially grain, coal and bauxite and the subsequent tonne mile demand
- Geopolitical situation
- The structure of the fleet and the newbuilding orderbook
- Decarbonisation trends
- New technology and innovations

Those who gained the highest marks had accurate market knowledge and convincing recommendations. What was paramount was that the report was written in a format that allowed the reader to understand the issues in a well-structured and argued way.

Where students went wrong:

A knowledge of the modern secondhand kamsarmax bulk carrier market was essential to answer this question – including that of the freight and newbuilding markets should not be given a pass. Writing a report without such knowledge was unlikely to gain a pass.

- 8. Using a Saleform of your choice, describe the obligations of the buyers when lodging the deposit, and discuss the remedies available to the Sellers should the Buyers fail to do so.**

This was a standard Saleform question, and as per NSF 2012 revolves around the provisions of Clauses 2 and 13.

What the examiners were looking for:

The Buyers' obligations are:

- Lodging the deposit within three banking days of signing the MOA and the deposit holder has confirmed in writing the account is open
- Providing the Deposit Holder with all necessary documentation to open and maintain the account without delay.

The remedies available to Sellers are should the deposit to be lodged as per Clause 2:

- the Sellers have the right to cancel this Agreement, and they shall be entitled to claim compensation for their losses and for all expenses incurred together with interest.

Those that gained the highest marks produced well-structured and -written essays, pointing out that the minimum damages of failure to lodge the deposit is an amount equivalent to the deposit, and also that Buyers failure to sign the MOA once it has been agreed is the same as failure to lodge the deposit, and therefore the same damages apply.

Where students went wrong:

Simply repeating the wording of the NSF 2012 clauses could not produce a pass as the wording does include a discussion of the remedies available.