

EXAMINER'S REPORT

Shipping Business

November 2023

General comment

The Institute exams are set at a professional level and this means that if you have not properly prepared yourself, you will fail. Answers of half a page or in some cases a paragraph, are simply not enough to warrant a pass mark. You must put in the work prior to the exam. Do past papers, send in assignments, set up study groups, attend any revision opportunities and read up on the events affecting our industry. Sadly, it is evident in the papers presented for marking, that in a lot of cases, insufficient preparation had been put in.

Q1. Using the World Map in the centre of your answer booklet clearly identify by marking the position and name of the following ports and state what major commodity it exports:

1. Balikpapan Indonesia
2. Vancouver Canada
3. Saldanha Bay South Africa
4. Ras Tanura Saudi Arabia
5. Buenos Aires Argentina
6. Maputo Mozambique
7. Tubarao Brazil
8. Bonny Nigeria
9. Odessa Ukraine
10. Adelaide Australia

What we were looking for

The correct location of the port and then the below details on the major commodity. We did give some leeway where students named more than one as long as it was a major export.

1. Balikpapan – coal
2. Vancouver – grain
3. Saldanha Bay – iron ore
4. Ras Tanura – oil
5. Buenos Aires – grain
6. Maputo – coal
7. Tubarao – ore

8. Bonny – crude oil
9. Odessa – grain
10. Adelaide - grain

All of these ports and the commodities are shown in the textbook.

What students could have improved

Very poor geography was the main failure here. If you think Maputo is up by the Artic Circle, then you really need to have a longer look at the world map.

Naming all of the major commodities for the port. This was viewed as simply guessing or trying to cover your bases and resulted in no mark being awarded. If you did mention more than one of the major commodities and it was correct, then we awarded you the mark.

Not naming a major commodity, but instead listing timber or pulp or cars etc. The major commodities we were looking for are as per the textbook, grain, coal, ore, crude oil.

A number of answers failed to mention the major commodity and only marked the port. If you did this it was only possible to get a maximum of 10 marks

A very clear indication of how many students fail to properly read the question was the number of papers where the map at the front or the back of the exam booklet was used for this answer. You were not marked down for not using the map in the center of the booklet, but it is worrying that on the very first question students were already not paying attention to what the question asked.

Q2 Discuss the role of the seller in the sale of a second-hand ship.

What we were looking for

Fundamentally, the main duty of the seller is the delivery of the ship in accordance with the agreed terms, conditions and warranty of the contract. The time of delivery may or may not be an essential part of the contract. If the time of delivery is an essential part of the contract, the buyer can have the option to cancel the contract, where delivery has not been correctly undertaken.

The seller also has the obligation to avoid misrepresentation. Although there is no general duty of disclosure and the buyer is free to investigate the ship intended to be purchased, the seller should not induce the other party to enter the contract by making material representations, which are not true. Statements or assurances made during negotiations, leading to a contract may be either "terms" which form the express terms of the contract, or just the statements, which do not intend to be part of the contract, but help to induce the contract. Even the statement is untrue "Misrepresentation", it is difficult for the buyer to claim for remedies if this misrepresentation does not become a contractual terms.

The right to payment - under the Sale of Goods Act 1979 s.41, the seller is entitled to exercise a possessory lien on the vessel until payment has been made by the buyer. Also, the seller is also entitled to resell the vessel to another buyer should the buyer fails to settle the payment in time. An unpaid seller may bring an action to recover the price where the purchaser has acquired the property in the ship but refused or failed to pay the price. Under clause 13 of the Norwegian Saleform 2012, should the deposit not be paid or if the purchase price is not paid, then the seller has the right to cancel the contract.

What students could have improved

The question very clearly said a second-hand ship. What we got instead, was a lot of detail on scrapping of ships and trying to avoid your competitor buying your ship.

Many answers decided that the question was to discuss what a broker did and whilst they were correct in detailing a broker's functions, this was not what was asked.

Q3 Explain how you would go about ensuring your new company secures a positive cash flow while maintaining a good working relationship with principals and service providers.

What we were looking for

Mention the importance of maintaining a positive cash flow and the dangers of ending up bankrupt if you are not managing your debtors.

How will you handle debtors – do credit checks, send estimated disbursement accounts promptly and send the final account promptly. If you offer credit terms, check that the company you are awarding credit to have a good track record. Send statements, send reminders, call the principal and ask why payment has been delayed, offer discounts for prompt payments, look to arrest vessels if Principal fails to respond or to pay.

Creditors – treat them as you would wish to be treated. Negotiate terms upfront and stick to them, ask for discount for prompt payment, be careful not to gain a reputation as a poor payer as this will result in service providers not wanting to work with you and this in turn will affect your level of service.

These were all points that would have secured you marks. We wanted you to show that you understood that a positive cash flow was a full-time function of the company and they need to have these type of steps in place to ensure they stay on top of it. It is after all possible to be a great company and have lots of clients, but if they don't pay and you do not chase, well you will end up bankrupt and out of business.

What students could have improved

The discussion of tools such as budgets, monthly or even weekly debtors meetings and planning for times when cash flow might become constrained, were not mentioned by a large number of students.

A number of answers focused on the disbursement account and getting it out quickly, but then did not mention that you should have looked to get funds upfront and having sent out the final disbursement account, you need to chase to get the funds in. If the principal failed to pay you upfront, the chances are he is not going to promptly pay you now that you have sent the final DA.

A discussion on Incoterms was given in a number of answers. Incoterms are more relevant to when risk and property pass and which party is responsible for the various stages of the transportation. They do not guarantee payment.

Similarly, discussions on different payment methods to avoid currency exchange losses, were not part of the question. You still need to make sure that the money is paid to you. If they do not pay you, it doesn't really help what currency fluctuation protection measures you have put in place, you are still out of pocket.

Very little was mentioned of looking after your service providers and what the impact of not paying them promptly could have on your level of services.

Q4. To ensure a consistent standard of performance and customer service companies may look to introduce quality management systems. Describe the benefits of an ISO 9001 system and explain how this is achieved and the potential problems that may be encountered?

What we were looking for

Know that it is a documented process that records the company's administrative functions, processes and operational procedures.

It demonstrates quality, it tries to ensure that the same level of service is given every time. Anyone coming into the company should be able to comply with the requirements by reading the ISO manual.

It is independently audited usually by classification societies.

It is an adaptive system designed for continuous improvement.

Problems are cost, resistance to change, staff buy in, the negative impact of losing the accreditation.

What students could have improved

Too many students focused on the manufacturing industry and whilst the system originated from factories, the course you are studying is about shipping. So, using shipping examples might have been easier in your effort to get your points across.

There was not a lot of discussion on the problem with losing your ISO accreditation and the knock-on effect that may have to the company's reputation.

The fact that the company is the one who puts in writing its policies and procedures and that these should be developed by the staff and management team, was missed with a lot of answers suggesting that the policy manual was bought off the shelf and applied to the company.

Q5. Give three examples of maritime fraud can be committed and explain what steps your company can take to protect themselves against maritime fraud.

What we were looking for

Discussions on any of the below examples and the ability to state why they were fraudulent.

Insurance fraud – scuttling ships for the insurance, over insuring vessels and cargo

Documentary fraud – the bill of lading typing up and releasing a false bill of lading. Letters of credit

Under measuring cargo in an effort to reduce freight charges

Cyber fraud

Letters of indemnity – fraudulent attempts to issue a LOI to allow clean bills of lading to be produced for loading damaged cargo.

Smuggling

Bribery – another form of fraud

What action can you take to protect your company?

Check the credentials of the customers and clients, do credit checks, credential checks within the industry, chamber of commerce, BIMCO and IMB and staff training.

What students could have improved

The question asked for three different types of fraud, but a number of answers simply gave three examples of the same type of fraud.

A failure to mention why something was a fraudulent act or how in fact fraud was committed, meant that whilst you received a mark for mentioning documentation fraud, you didn't get any additional marks

Many answers missed the last part of the question or did not appreciate what was in fact being asked. It stated what steps can your company take to protect themselves against maritime fraud.

Q6. The term Shipbroker encompasses a wide variety of activities. Discuss two of the following, explaining the main business function and the relationship between the practitioner and the principal

- **Liner Agency**
- **Ship Operations and Management**
- **Ship Sale and Purchase**
- **Dry Cargo Chartering**
- **Tanker Chartering**

What we were looking for

Liner agent – dealing with the ship, dealing with outward cargo, dealing with inward cargo, dealing with the Principal. Agency offices remote from ports

Agency contract in place, agent may be restricted to only servicing one liner principal, contract must be of a reasonable duration as he has to employ a large team to look after the principal. FONASBA Liner Agency contract. How are they paid

Ship Operations and Management – describe the services- full management, technical management, operations management, admirative management crew management.

Mention SHIPMAN 2009 and CREWMAN 2009. How are they paid.

Ship Sale and Purchase – New builds, secondhand and demolition. Describe the process of selling/buying a ship with secondhand discuss the need to drydock, MoA between buyer and seller.

Contracts such as SALEFORM 2012, Nippon Sale Form 1999 and Singapore sale form 2011

Role as valuator and ability to arrange financing for the purchase, how are they paid.

Dry cargo chartering – describe the role of the 3 types of brokers -in house, exclusive and competitive. Concerned with the carriage of bulk raw materials (iron ore, coal, grain). Mention Baltic Exchange

Tanker chartering – specialist sector, separate specialisations crude oil, petroleum products, chemicals and liquified gas. Market dominated by the oil majors, (ExxonMobil, Chevron, Total, Shell, BP etc).

Charter in from independent ship owners. Majors now have inhouse brokers. Only one broker involved in the deal. How are they paid.

What students could have improved

All of these are examples of shipbrokers, but many felt that the shipbroker was in fact an intermediary between the principal and these named parties.

Of concern was the number of answers on liner agency that only detailed the functions of a port agent.

Ship operations and management was not attempted by many, but again there was a general lack of understanding of the breadth of functions covered by this broker.

Ship Sale and Purchase broker. There are three distinct branches that could have been discussed, but answers tended to fixate on just one of them and so marks were lost.

Tanker and dry bulk chartering answers focused on giving description of the types of ships, which is really immaterial to the function of the broker.

Q7. Discuss the various entities that a ships agent must work with to ensure that the port call and the cargo work are undertaken promptly.

What we were looking for

Ships captain and his role in keeping the agent updated as to ETA, ensuring the vessel has ISPS clearance, contacted port health and that the stow plan has been properly prepared.

Port Authorities, to ensure that a suitable berth is available on arrival.

Tug company- to arrange tugs on arrival.

Stevedores- that they are well aware of the type of cargo and have the proper gear ready for the operation.

Customs – they are on board as early as possible to clear the vessel and that the documentation for the clearance of the cargo has been presented to them. Name the documentation, i.e shipping order for export cargo, manifest and bill of lading for import cargo.

Harbour revenue, to ensure that the cost for the cargo operation and the ship have been paid so there is no delay.

Clearing and forwarding company to make sure they know which berth the cargo has to go to and that they have properly cleared the cargo.

Bunker brokers for the delivery of bunkers for the forthcoming voyage

Ship chandler for the supply of stores

Lashing company – cargo properly secured or unlash on arrival.

Crew company for any signing on or off that may be necessary in your port.

What students could have improved

The question did not ask you to discuss the functions of a ship's agent or the relationship between the agent and his principal. You needed to discuss the parties you would contact and meet with in order to ensure the port stay was quick and efficient and give a brief description of their function and what you would need to discuss with them.

There was also a lot of focus on the preparation of the final disbursement account. This is very much an after the port stay event and so was not what was required.

Q8. Discuss 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

What we were looking for

Compare the unique features of the first two with those of the second two.

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.

Describe a private limited company and the advantages and disadvantages of this type of company.

Describe a public listed company and the advantages and disadvantages of this type of company.

What students could have improved

A public company is not a government company and a private company is not a sole trader or a partnership.

Many answers felt that if you were a sole trader, you were not allowed to have any staff and had to do everything yourself. Some felt that a partnership was strictly two of you. These answers suggest a lack of comprehension as to what the makeup of different companies are and whilst each country may have their own titles for these different entities, the structure of each is very much the same.

Some answers grouped partnerships and sole traders together in their explanation and did the same with public and private companies. The danger with doing this is you missed marks that you could have gotten by discussing each one individually before discussing them in unison. Stating Public and private

companies have shareholders, have limited liability got you two marks, but had you said that the private company shareholders held all of the shares, whilst the shares of a public company were traded on the stock market, you would have gotten a mark for each point.