

*EVERGREEN MARINE (UK) LTD V
NAUTICAL CHALLENGE LTD (THE
ALEXANDRA 1 & THE EVER
SMART) [2021] UKSC 6*

**DANIEL JACKSON
SOLICITOR, OCEAN LAW**

Collision off Jebel Ali, UAE

- *Ever Smart* just left narrow channel out of the port
- *Alexandra 1* waiting to pick up pilot and enter narrow channel

Radio confusion

- *Alexandra 1's* master overheard Port Control telling a tug to go 1 mile astern of it
- Thought Port Control was talking to *Ever Smart*
- Therefore didn't turn to starboard towards the narrow channel

Disaster

- *Alexandra 1* saw *Ever Smart 2* mins before collision
- Wasn't turning to port as expected based on misunderstood conversation
- Attempts to avert collision were too late

Ever Smart's failures

- Didn't keep proper visual/radar lookout
- Excessive speed
- Didn't keep to starboard side of narrow channel

Everyone at fault

- *Alexandra 1* at fault for not keeping good aural lookout
- But *Ever Smart* much more culpable and causally potent
- Liability 80% *Ever Smart*, 20% *Alexandra 1*

Collision Regulations

- International treaty
- Set out rules about navigation designed to prevent collisions

Crossing rules – Rule 15

“When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.”

Crossing rules – Rule 17(a)(i)

“Where one of two vessels is to keep out of the way the other shall keep her course and speed.”

Risk of collision – Rule 7(d)(i)

“such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change”

Narrow channel rule – Rule 9(a)

“A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.”

Two issues

- Must the putative give-way vessel be on a steady course before the crossing rules can be engaged?
- Are the crossing rules inapplicable where an outbound vessel is navigating within a narrow channel and has a vessel on her port (or starboard) bow on a crossing course approaching the narrow channel with the intention of and in preparation for entering it?

Judicial disagreement

- Admiralty Court and Court of Appeal answered “yes” on both issues
- Supreme Court answered “no” on both

Interpreting the Regulations

- International character of Collision Regulations
- Must be interpreted in practical way that can be applied by mariners of all nations and types

Purpose of the Regulations

- VCLT art 31(1) – object and purpose of treaty
- Regulations designed to “promote safe navigation and specifically the prevention of collisions at sea”

Lord Wright in *The Alcoa Rambler*

- “[W]herever possible” the crossing rules “ought to be applied and strictly enforced because they tend to secure safe navigation”
- It had “been found advantageous” for a “wider scope to be given to the crossing rule” in cases of doubt on a strict application of the rules.

Atkin LJ in *The Ulrikka*

- “I desire to say as has already been said over and over again here and in the Admiralty Court, that it is of extreme importance strictly to maintain the enforcement of [the crossing rules]. These two rules are a bright light to navigators; and I suppose day by day and hour by hour they operate to prevent collisions at sea. It appears to me of the highest importance to enforce them and enforce them strictly.”

Heading, course and bearing

- “The heading of a vessel is the direction (expressed as a point or number of degrees on a compass) in which she is pointing at a particular moment in time.”
- “The course of a vessel is the direction, again expressed by reference to the points or degrees of a compass, in which she is moving.”
- Bearing “is the direction in which one vessel appears when viewed from another at a particular moment in time, expressed again in terms of the points or degrees of a compass.”

Steady bearing and steady course

- The crossing rules apply if an approaching vessel is on a steady bearing
- But a vessel can be on a steady bearing with being on a steady course

SC: no steady course requirement

- r 15 makes no mention of “course”, much less “steady course”
- the rules are generally very clear and precise about the requirements for them to be engaged
- the risk of collision does not depend on vessels being on a steady course
- it may be difficult to observe whether another vessel is on a steady course
- a steady course requirement would undermine the simplicity and certainty of the rules

Lord Wright in *The Alcoa Rambler*

- “The ordinary idea of a course is a sufficiently constant direction of a ship on the same line or heading.”
- “...the manoeuvre would not have shown that she was keeping a steady course”

SC's response

- Lord Wright was using heading, course and bearing interchangeably
- Was just saying that a crossing course was necessary

Problems with this

- Lord Wright distinguishes between on 'a crossing course or on a "course" at all'
- Must have meant a steady course since ever non-stationary vessel had a course
- Can't have meant steady bearing because that would involve a crossing course

The narrow channel rule and the crossing rules

- Crossing rules don't apply to vessels proceeding in different directions along narrow channel
- But do apply where a vessel is crossing the narrow channel or where two channels meet

Disapplying the crossing rules

- Crossing rules are disappplied where they would conflict with the narrow channel rule
- But both rules apply in situations where there isn't a conflict

The crossing rules outside the entrance to a narrow channel

- Crossing rules apply to vessels heading across the entrance to a narrow channel and not entering it
- Don't apply to vessels on their final approach to the channel
- But what about those waiting to enter?

SC: crossing rules still apply

- Crossing rules should only be disapplied where absolutely necessary
- Vessel's course not determined by the narrow channel rule until it is shaping to enter
- Clearer and easier to apply than whether vessel is intending and preparing to enter

Comment

- Striking difference of view between SC and lower courts
- Lower courts focussed too much on statements in prior authorities
- SC focused on Regs' safety purpose and need for clear rules that left no gaps, as well as their status as an international treaty

**FREEING YOU TO
FLOAT YOUR BOAT**



OCEANLAW.CO.NZ