



SEMAPHORE

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Jebel Ali Collision Prompts Focus on Crossing Rules

A case involving an Evergreen ship has shown that vessel Crossing Rules should only be disapplied where absolutely necessary and a vessel's course is not determined by the narrow channel rule until it is shaping to enter.

Those were two of the main points to come out of the *Evergreen Marine (UK) Ltd v Nautical Challenge Ltd (the Alexandra 1 and the Ever Smart)* [2021] UKSC 6 decision, presented as a case note to conference by Oceanlaw solicitor Daniel Jackson.

The collision between the two vessels occurred off Jebel Ali in the United Arab Emirates. The Ever Smart (sister ship of the Ever Given) had just left a narrow channel out of the port and the Alexandra 1 was waiting to pick up the pilot and enter the narrow channel.

Radio confusion arose when the Alexandra 1's master overheard Port Control telling a tug to go one mile astern of it. The master thought Port Control was talking to the Ever Smart and therefore did not turn to starboard towards the narrow channel.

Disaster occurred when the Alexandra 1 saw the Ever Smart only two minutes before the collision, with the accident occurring as a result of the misunderstood conversation. Attempts to avert collision were too late.

The Ever Given was guilty of failing to keep proper visual/radar lookout, excessive speed and did not keep to the starboard side of the 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

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A misunderstanding over a radio communication led to a ship-to-ship collision

The Alexandra 1 was also at fault for not keeping good aural lookout, but the Ever Smart was much more culpable and causally potent (due to its excessive speed). Liability was deemed 80% Ever Smart and 20% Alexandra 1.

Mr Jackson quoted the international rules about navigation designed to prevent collisions. Crossing Rule 15 states: “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 Rule 17(a)(i) states: “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) states: “Such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change.”

Narrow Channel Rule 9(a) states: “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.”

Mr Jackson said two issues arose in this case:

- must the putative giveaway 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?

There was judicial disagreement on these issues. The Admiralty Court and Court of Appeal answered “yes” on both issues, whereas the Supreme Court answered “no” on both.

The Supreme Court said the international character of Collision Regulations means they must be interpreted in a practical way that can be applied by mariners of all nations and types. Their purpose is to promote safe navigation and specifically the prevention of collisions at sea.

Turning to past interpretations by judges, Lord Wright in *The Alcoa Rambler* case said: “[W]herever possible the crossing rules ought to be applied and strictly enforced because they tend to secure safe navigation”; and 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* case stated: “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.”

The Supreme Court explained: “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.”

The Supreme Court found that there was no need for a vessel to be on a steady course for the Crossing Rules to apply. The Crossing Rules apply if an approaching vessel is on a steady bearing – but a vessel can be on a steady bearing without being on a steady course. Rule 15 makes no mention

of “course” or “steady course” and the risk of collision does not depend on vessels being on a steady course. Indeed, a steady course requirement would undermine the simplicity and certainty of the rules.

Lord Wright in *The Alcoa Rambler* case stated: “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.”

The Supreme Court found that Lord Wright was using “heading”, “course” and “bearing” interchangeably, and was just saying that a crossing course was necessary for the application of the rules.

Mr Jackson said the problem with this was that Lord Wright does not distinguish at all between being “on a crossing course” or just being on a “course”. He must have meant a “steady course” since every non-stationary vessel has a course and cannot have meant “steady bearing” because that would involve a crossing course.

Turning to the application of the Narrow Channel Rule and the Crossing Rules, Mr Jackson said the Crossing Rules do not apply to vessels proceeding in different directions along a narrow channel but do apply where a vessel is crossing the narrow channel or where two channels meet.

Crossing Rules are disapplied where they would conflict with the Narrow Channel Rule – but both rules apply in situations where there is not a conflict. Outside the entrance to a narrow channel, Crossing Rules apply to vessels heading across the entrance and not entering it, but do not apply to vessels on their final approach to the channel.

This leaves the question “what about those waiting to enter?” The Supreme Court ruled that Crossing Rules should only be disapplied where absolutely necessary. A vessel’s course is not determined by the Narrow Channel Rule until it is shaping to enter. Until that point there is no conflict. This makes the rules clearer and easier to apply than deciding whether a vessel is intending and preparing to enter.

In conclusion, Mr Jackson said there was a striking difference of view between the Supreme Court and lower courts. The latter focused too much on statements in prior authorities, whereas the Supreme Court focused on the safety purpose of the regulations and the need for clear rules that left no gaps, as well as their status as an international treaty.

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