



19 February 2021

PRESS SUMMARY

Evergreen Marine (UK) Limited (Appellant) v Nautical Challenge Ltd (Respondent)
[2021] UKSC 6
On appeal from [2018] EWCA Civ 2173

JUSTICES: Lord Lloyd-Jones, Lord Briggs, Lady Arden, Lord Hamblen, Lord Burrows

Nautical Assessors: Captain Nigel Palmer OBE MNM, Commander Nigel Hare RN

BACKGROUND TO THE APPEAL

On 11 February 2015, the appellant’s large container vessel, Ever Smart, and the respondent’s VLCC (very large crude carrier), Alexandra 1, collided at sea. The appeal raises two important questions of construction of the International Regulations for Preventing Collisions at Sea 1972 (the “**Collision Regulations**”). The Collision Regulations are of great importance to mariners and help prevent collisions at sea worldwide. This is the first appeal in a collision case to come before the Supreme Court.

The collision occurred just outside the entrance/exit channel to the port of Jebel Ali in the United Arab Emirates (the “**channel**”) at night. Ever Smart was outbound from Jebel Ali and had been navigating along the channel. At collision, her speed over the ground was 12.4 knots. Alexandra 1 was inbound to Jebel Ali but had not entered the channel as she was waiting in the pilot boarding area to pick up a pilot. She was moving over the ground very slowly, approaching the channel but with a varying course. At collision, her speed over the ground was 2.4 knots. Although it was night time, there was good enough visibility for the vessels to have seen each other from about 23 minutes before the collision. For the whole of that period, the two vessels were approaching each other on a steady bearing.

To determine the liability of each vessel for the collision, the High Court assessed each vessel’s faults, applying the Collision Regulations. A principal dispute between the owners of Alexandra 1 and Ever Smart was whether the “**crossing rules**” in the Collision Regulations applied. Ever Smart’s owners argued that the crossing rules applied as Ever Smart and Alexandra 1 were power-driven vessels “crossing so as to involve risk of collision” (rule 15) and therefore Alexandra 1, as the vessel which had the other on her starboard side (the “**give-way vessel**”), should have kept well clear of Ever Smart (the “**stand-on vessel**”), which was required to keep her course and speed.

The High Court disagreed with Ever Smart’s owners. First, it held that the crossing rules did not apply as Ever Smart was navigating within a narrow channel and Alexandra 1 was approaching the narrow channel, intending and preparing to enter it, so that the “**narrow channel rules**” applied and displaced the crossing rules (*Issue 1*). Second, the crossing rules were not engaged in any event as Alexandra 1 was not on a steady course, despite being on a crossing course and on a steady compass bearing from Ever Smart (*Issue 2*). The High Court held Ever Smart 80% liable for the damage caused by the collision and Alexandra 1 20% liable. The Court of Appeal agreed on both issues and on apportionment. Ever Smart’s owners appealed to the Supreme Court.

The High Court, the Court of Appeal and the Supreme Court were each assisted by Elder Brethren of Trinity House, as Nautical Assessors. Nautical Assessors provide the court with advice on navigation

and seamanship matters, but the court is not bound by that advice and must interpret the Collision Regulations as a matter of law [36].

JUDGMENT

The Supreme Court unanimously allows the appeal. Lord Briggs and Lord Hamblen give the judgment, with which the other members of the Court agree.

REASONS FOR THE JUDGMENT

The Collision Regulations are an International Maritime Organisation Convention designed to promote safe navigation and prevent collisions at sea worldwide. They must be interpreted in a practical, uniform manner to provide clear navigational rules for all mariners, whether professional or amateur, and for all vessels, large and small [38-42]. The interpretation of the crossing rules should have due regard to the well-known statement of Lord Wright in *The Alcoa Rambler* [1949] AC 236 (Privy Council) that “*wherever possible*” the crossing rules “*ought to be applied and strictly enforced because they tend to secure safe navigation*” [43-44].

The focus of the appeal is the crossing rules, but it is important to read them in context. A risk of collision between two powered vessels can arise in three different ways and the Collision Regulations establish rules for each: overtaking vessels; vessels approaching each other head-on; and vessels crossing so as to involve risk of collision. “Crossing” means that the vessels’ courses are not parallel but intersecting. “So as to involve risk of collision” may be determined in a variety of ways, but if the vessels are approaching each other on a steady bearing, there will be a deemed risk of collision (rule 7(d)(i)) [55-57]. The crossing rules lie at the heart of the scheme for avoiding collisions where two vessels are approaching each other on a steady bearing (other than overtaking or head-on) and are thereby at risk of collision [68].

Issue 2: will the crossing rules only engage if the putative give-way vessel is on a steady course?

This question is considered first because it determines whether the crossing rules are even engaged. The Supreme Court finds that there is no ‘steady course’ requirement.

First, from a practical perspective, there may be many reasons why a vessel which is moving over the ground may not be on a steady course but nevertheless crossing with another vessel on a steady bearing, as demonstrated by this collision [76, 80, 84]. Also, it may not be easy to assess if the other vessel is on a steady course as changes in the heading or course of another vessel may not be readily apparent from a careful visual watch, whereas an appreciable change in the bearing of the other vessel is observable using a compass, which almost all vessels will have, or with radar [71-74, 81].

Second, the language and context of the crossing rules shows that there is no steady course requirement [82-83].

Third, if the crossing rules did not apply then there would be a gap in the Collision Regulations. *Alexandra 1* submitted that the principles of good seamanship enshrined in rule 2 could fill the gap. However, it is inherently safer for two vessels crossing at risk of collision to know which must keep clear of the other by applying the crossing rules, than for each to have to take seamanlike but otherwise unspecified avoiding action without knowing what the other vessel is likely to do [85].

Fourth, although there are cases which have been interpreted as meaning that at least the stand-on vessel must be on a steady course, the case law does not require the give-way vessel to be on a steady course before the crossing rules are engaged [86-106]. The key case is *The Alcoa Rambler*. When properly understood, the Privy Council held that the crossing rules did not apply because the putative give-way vessel (the vessel which would be required to keep out of the way if the crossing rules applied) could not determine that she was on a steadily crossing course with the putative stand-on vessel, as the putative stand-on vessel was concealed behind other anchored vessels until the last moment before the collision.

Importantly, there was no opportunity for the putative give-way vessel to take bearings of the putative stand-on vessel [90-97].

Alexandra 1 was approaching Ever Smart on a steady bearing for over 20 minutes before the collision, on a crossing course. This was sufficient to engage the crossing rules even though she was not on a steady course [109, 115]. Although it does not arise on the facts, for the same reasons the stand-on vessel need not be on a steady course to engage the crossing rules either [112-114].

Issue 1: the interplay between the narrow channel rules and the crossing rules

The narrow channel rules require vessels proceeding along the course of a narrow channel to keep as near to its starboard side as is safe and practicable (rule 9(a)). In some scenarios, they displace the crossing rules – for example, where two vessels are approaching each other in a narrow channel, proceeding along it in different directions. In other scenarios, the crossing rules may still apply – for example, where one vessel is crossing the channel. The critical question in relation to Issue 1 is which rules apply when one vessel is proceeding along a narrow channel towards its exit and the other vessel is approaching its entrance with a view to proceeding along it. The courts below considered that the narrow channel rules displaced the crossing rules, relying on *The Canberra Star* [1962] 1 Lloyd’s Rep 24 and *Kulemesin v HKSAR* [2013] 16 HKCFA 195. However, these cases concerned a vessel intending to enter and on her final approach to the entrance, shaping her course to arrive at the starboard side of it [129-135]. They do not apply where the approaching vessel is waiting to enter rather than entering. The crossing rules should not be overridden in the absence of express stipulation, unless there is a compelling necessity to do so [136-137].

In this case, Alexandra 1 was the approaching vessel, intending and preparing to enter the channel but, crucially, waiting for her pilot rather than shaping her course for the starboard side of the channel, on her final approach. In this scenario, there is no necessity for the crossing rules to be overridden as the narrow channel does not yet dictate the navigation of the approaching vessel [136-138]. She can comply with her obligations under the crossing rules, whether she is the give-way vessel or the stand-on vessel. Similarly, there is no need to disapply the crossing rules from the perspective of the vessel leaving the channel [139-140]. The crossing rules are only displaced when the approaching vessel is shaping to enter the channel, adjusting her course so as to reach the entrance on her starboard side of it, on her final approach [141, 145].

Therefore, the crossing rules applied and Alexandra 1, as the give-way vessel, was obliged to take early and substantial action to keep well clear of Ever Smart. As a result, the High Court will need to redetermine the apportionment of liability between the two parties [146-148].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<http://supremecourt.uk/decided-cases/index.html>