



## **Evergreen wins landmark collision case in UK's Supreme Court**

On 19 February 2021 the United Kingdom Supreme Court handed down its decision in the first collision case to reach the UK's highest court in nearly 50 years, in the *The "EVER SMART" and The "ALEXANDRA 1"* [2021] UKSC 6. Faz Peermohamed of Stann Law gives his reflections on the case.

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Written by Faz Peermohamed

It was a clear February night off the port of Jebel Ali, UAE in 2015. The conditions were benign, and visibility was good. *EVER SMART*, a large container ship owned by Evergreen and insured by Gard, was proceeding up a narrow channel which connects the port with the open sea, in order to exit the port. *ALEXANDRA I*, a VLCC, was outside the narrow channel in the pilot boarding area. She intended to pick up the outbound *EVER SMART*'s pilot and enter the port via the narrow channel. At 2342 local time the two vessels collided outside of the narrow channel.

Prior to the collision *EVER SMART* was navigating slightly port of centre within the narrow channel. Rule 9 (the Narrow Channel Rule) of International Regulations for Preventing Collisions at Sea 1972 (the COLREGs) requires vessels navigating within a narrow channel to keep to starboard.

Mariners and those familiar with navigation will know of the primacy of another Rule, namely Rule 15, known as the Crossing Rule. The importance of the crossing rules to the COLREGs is captured by the well-known words of Lord Wright in *The Alcoa Rambler*: “*wherever possible [the Crossing Rules] ought to be applied and strictly enforced because they tend to secure safe navigation*”.

Although *EVER SMART* proceeded slightly port of centre of the narrow channel, the collision occurred outside of the narrow channel.

Prior to the collision *EVER SMART* had *ALEXANDRA I* to her port. The Crossing Rules of the COLREGs provide that where two vessels are crossing so as to involve the risk of collision then the vessel which has the other on her own starboard side shall be the ‘give-way’ vessel, and keep out of the other vessel’s way, and the vessel which has the other on her port side shall be the ‘stand-on’ vessel and maintain her course and speed. If the Crossing Rules applied, then *ALEXANDRA I* would have been required to give-way to *EVER SMART* by taking early and substantial action to keep well clear, and *EVER SMART* would have been required to maintain her course and speed.

All would argue that in a crossing situation in the middle of the ocean the Crossing Rule should apply. Likewise, all would argue that where two vessels encounter each other in a narrow channel then Narrow Channel Rule should apply. The difficulty comes in cases where a narrow channel meets the open sea, particularly where one vessel is inside the channel, and the other is outside of it. English law has grappled with this issue for over a century. It is established law that in cases where the first vessel was exiting a narrow channel, and the second was on its very final approach to the entrance of the Channel, adjusting her course to enter it, then in that case the Narrow Channel Rule and not the Crossing Rules would apply.

*ALEXANDRA I*, however, was not on her final approach to the channel. She was waiting to enter, rather than actually entering.

*ALEXANDRA I* argued before the Admiralty Court and Court of Appeal, that where a vessel outbound from a narrow channel is on a crossing course with a vessel approaching a narrow channel with the intention of and in preparation for entering it (but not actually adjusting her course so as to enter it), then in such circumstances the Narrow Channel Rule would govern the encounter and not the Crossing Rules (this became “Issue 1” in the appeal to the Supreme Court). She also successfully argued before the same two Courts that although she was on a crossing course with *EVER SMART* involving a risk of collision, her course was not “steady” enough to engage the Crossing Rules (this became “Issue 2” in the appeal to the Supreme Court).

*EVER SMART*'s side felt strongly that these two propositions were wrong and tended to undermine, rather than promote, safety at sea.

On Issue 1 extending the principle that the Narrow Channel Rule can overrule the Crossing Rules to situations where the inbound vessel was outside the narrow channel and was not

shaping to enter it but was merely waiting to enter, was a recipe for uncertainty as to which rule would apply. Anyone who has conned a ship will know how difficult it is to read the intentions of another vessel in these situations. There may be all kinds of reasons why a vessel might be navigating in the vicinity of but outside a narrow channel, and to make the master of the outbound vessel responsible for guessing what that reason might be is to place them in an impossible situation.

On Issue 2, we return to the words of Lord Wright. The Crossing Rules ought to be given as wide a scope as possible because they tend to secure safe navigation. All mariners know that where two vessels are approaching on a constant bearing then that is the tell-tale sign that a risk of collision exists. To apply an extra hurdle on top of this such that the vessel that has the other on its starboard side (in our case *ALEXANDRA I*) must also be on a steady course, simply adds to the burden of bridge teams and introduces uncertainty as to the application of one of the most fundamental rules of navigation.

Evergreen and Gard took the view that the issues at stake for the maritime community and safety at sea were too important not to appeal the decision. On Friday, 19 February their decision was vindicated: in the first collision case to reach to UK's highest court since 1976, the Supreme Court handed down a judgement in which all judges agreed with *EVER SMART*'s case on all points unanimously.

On the Issue 1 the Court held that in cases where one vessel is outbound from a narrow channel and the other is approaching the narrow channel and a crossing situation exists, then the Crossing Rules will apply. In the Court's words:

*"Where an outbound vessel in a narrow channel is crossing with an approaching vessel so as to involve a risk of collision, the crossing rules are not overridden by the narrow channel rules merely because the approaching vessel is intending and preparing to enter the narrow channel. The crossing rules are only overridden if and when the approaching vessel is shaping to enter, adjusting her course so as to reach the entrance on her starboard side of it, on her final approach."*

On Issue 2 the Court held that it is not necessary to be on a steady course to engage the Crossing Rule:

*"if two vessels, both moving over the ground, are crossing so as to involve risk of collision, the engagement of the crossing rules is not dependent upon the give-way vessel being on a steady course. If it is reasonably apparent to those navigating the two vessels that they are approaching each other on a steady bearing (over time) which is other than head-on, then they are indeed both crossing, and crossing so as to involve a risk of collision, even if the give-way vessel is on an erratic course."*

The navigation of large merchant ships is literally a matter of life and death, and as such clarity and consistent application of the Rules is of vital importance. The judgment provides clarity to seafarers as to which rule applies. The judgment should be welcome reading for bridge teams across the world [and not least to the ex-Master of *EVER SMART*]. The judgment emphasises that the Crossing Rules ought to be widely applied and strictly enforced because they tend to secure safe navigation.

In the original judgment, *EVER SMART* was held to be 80% responsible for the collision. In light of the Supreme Court's decision, the case will now be remanded for re-determination of the allocation of fault.

*Gard insures Evergreen for Hull and Machinery and P&I liabilities. We thank Faz Peermohamed of Stann Law and Ince Gordon Dadds for acting for Gard and our Member and we also thank Simon Rainey QC and Nigel Jacobs QC who represented Evergreen before the Supreme Court*