



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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ALEXANDRA 1 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 the issue 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

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~~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 1*) 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.”

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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

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