



The crossing rules revisited

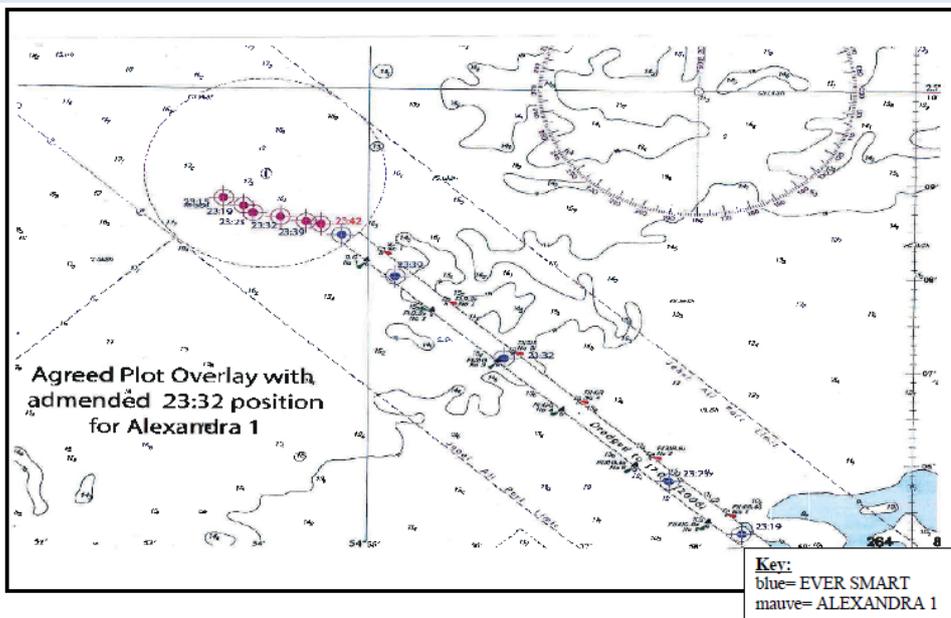
A Supreme Court decision referring the collision of ALEXANDRA 1 and EVER SMART back to the Admiralty Court continues deliberations over vessel crossing rules, the limited circumstances where a rule can be overridden and how the crossing and narrow channel rules can apply at the same time. [Andrew Gray](#), Director and Mariner, and [Evgenia Kanellopoulou](#), Trainee Solicitor, both from CJC's London office, provide an update.

Nautical Challenge Ltd -v- Evergreen Marine (UK) Limited (The "Alexandra 1" and "Ever Smart") [2022] EWHC 206 (Admlty)

Introduction

On 8 February 2022, Sir Nigel Teare handed down his revised determination of liability for the 2015 collision between VLCC ALEXANDRA 1 and container vessel EVER SMART, following the Supreme Court's decision in *The "Alexandra 1" and "Ever Smart"* [2021] UKSC 6 to refer the case back to the Admiralty Court to re-determine the apportionment of liability.

This is a significant case which considers and applies the Supreme Court's decision on 1) when vessels might be considered to be crossing so as to involve risk of collision, 2) the limited circumstances where the crossing rule can be overridden and 3) how the crossing and narrow channel rules can apply at the same time.



As Teare J states in the opening of his revised judgment, *"This case has had a long and unusual history"*. On 11 February 2015, the two vessels collided just to the north of the entrance to the dredged channel which leads into and out of the port of Jebel Ali in the UAE. Following a trial in January 2017, Teare J handed down his first instance judgment in March 2017; [2017] EWHC 453 (Admlty). He held that the crossing rules did not apply to this case and apportioned

liability at 80/20 in favour of ALEXANDRA 1. In October 2018, the Court of Appeal dismissed an appeal from Teare J's judgment by the owners of EVER SMART. However, the Supreme Court subsequently granted permission to appeal the Court of Appeal decision and on 19 February 2021 held that the crossing rules did in fact apply. The Supreme Court then referred the matter back to the Admiralty Court to re-determine apportionment.

Background facts

The collision took place on the late evening of 11 February 2015, within the pilot boarding area (PBA) just to the north of the dredged entrance channel into Jebel Ali as shown on the attached plot. It was a clear night, and the weather conditions were benign, with good visibility of about 10 to 12 miles. ALEXANDRA 1 was initially at anchor to the north-west of the channel entrance, waiting to enter the port. At 22:00, Port Control instructed her that a pilot would board at 23:15 and she should be at buoys no.1, which mark the northern end of the entrance channel, at that time to embark a pilot. She weighed anchor and at 22:47 was underway at slow speed, heading towards the PBA. At 22:54, Port Control advised ALEXANDRA 1 that the pilot was on board the outgoing container vessel EVER SMART and would disembark once she was clear of the channel before boarding ALEXANDRA 1.

At 23:15 or C-27, ALEXANDRA 1 was at the PBA and close to buoys no.1. At C-24 her engine was stopped, and her speed was about 2.3 knots and falling. She was, however, moving ahead very slowly, waiting for the pilot. Meanwhile, EVER SMART was navigating outbound from Jebel Ali along the channel, with the pilot embarked. It was common ground that the vessels were in sight of one another from about 23:19 or C-23. By about 23:27 or C-15, the speed of ALEXANDRA 1 had fallen to about 1.3 knots over the ground. She was then proceeding in a generally east-south-easterly direction. Those onboard EVER SMART would have seen that she was displaying a green starboard hand light and shaping to cross the entrance to the dredged channel.

At 23:26 or C-14, the master of ALEXANDRA 1 overheard a conversation between Port Control and another vessel, which he incorrectly thought was a conversation with EVER SMART. As a result, he mistakenly believed that EVER SMART was intending to turn to port when she reached the northern end of the channel. At 23:32 or C-10, the speed of ALEXANDRA 1 was 1.8 knots over the ground and she was about 9 cables west-north-west of buoys no.1. Meanwhile, EVER SMART continued to proceed outbound. Her engines had been at full ahead (manoeuvring) but, in preparation for dropping her pilot, were reduced at 23:33 or C-11 to half ahead and at 23:32 or C-10 to slow ahead. EVER SMART was then slightly to port of mid-channel and was passing buoys no.3. Her speed at C-9 was 12.2 knots over the ground (and falling). Before leaving the bridge, the pilot advised the master that there was a vessel to port and that he should take care. At C-8, the engine of EVER SMART was reduced to dead slow ahead. By 23:36 or C-6, the pilot had disembarked and was proceeding towards ALEXANDRA 1. The EVER SMART never regained the starboard side of the channel. Teare J held that from shortly after the pilot left the bridge, there was an absence of any lookout by the master of EVER SMART, who ceased to keep ALEXANDRA 1 under observation, assuming the vessels would pass safely port to port once ALEXANDRA 1 entered the dredged channel. A good visual or radar lookout would have revealed that this assumption was mistaken.

By 23:37 or C-5, the speed of ALEXANDRA 1 was 2.1 knots. At 23:38 or C-4, her engines were put to slow ahead. At about this time she should have turned to starboard towards the channel entrance but did not do so because of her master's mistaken understanding of EVER SMART's intentions. Instead, she continued to head very slowly across the approach to the channel. At about this time, the main engine of EVER SMART was put to half ahead, followed by full ahead (manoeuvring), and she began to increase speed. At 23:38½ or C-3.5, the speed of EVER SMART was 9.9 knots and her engine was increased to full ahead sea speed.

At C-1, the speed of EVER SMART was 11.8 knots over the ground. At C-0.5, both Port Control and the pilot (then onboard ALEXANDRA 1) advised EVER SMART to turn hard to starboard. Her helm was put hard to starboard but at 23:42 the port bow of EVER SMART struck the starboard bow of ALEXANDRA 1. The collision took place slightly to the north of the dredged channel.

The relevant collision rules

From the facts of the case, it can be seen that, prior to the collision, EVER SMART was navigating within the dredged channel, which was held to be a narrow channel within the meaning of Rule 9 (Narrow channels) of the International Regulations for Preventing Collisions at Sea, 1972 (as amended) (the Colregs). ALEXANDRA 1 was navigating outside of and to the north of the channel.

On the face of it, the two vessels were in a crossing situation, with ALEXANDRA 1 shaping to cross ahead of EVER SMART. It might then appear that the crossing rules (Rules 15, 16 and 17 of the Colregs) would apply. If Rule 15 (Crossing situation) applied, ALEXANDRA 1, *being “the vessel which has the other vessel on her own starboard side”*, was the give-way vessel and should have kept out of the way of EVER SMART. Under Rule 16 (Action by give-way vessel), she should have taken early and substantial action to keep well clear of EVER SMART. It would follow that EVER SMART was the stand-on vessel under Rule 17 (Action by stand-on vessel). Under Rule 17(i), she should have kept her course and speed. Under Rule 17(ii), she was permitted to take action as soon as it became apparent that ALEXANDRA 1 was not taking the action required to keep out of the way. Under Rule 17(b), she was required to take such action as would be best aid to avoid collision if she had found herself so close that collision could not be avoided by the action of the ALEXANDRA 1 alone.

At first instance, however, Teare J found that the crossing rules did not apply where one vessel was navigating along a narrow channel and another was navigating towards the narrow channel with a view to entering it. He also held that ALEXANDRA 1 was not on a sufficiently defined course for the crossing rules to apply. Rather, he held that the navigation of ALEXANDRA 1 was governed by the requirements of good seamanship, essentially under the application of Rule 2 (Responsibility) of the Colregs, while that the navigation of EVER SMART was governed by Rule 9 (Narrow Channels).

Teare J concluded that EVER SMART failed to keep to the starboard side of the channel in breach of Rule 9, kept a defective radar and visual lookout under Rule 5 (Look-out), made assumptions based on scanty information in breach of Rule 7 (Risk of collision) and proceeded at an excessive speed in breach of Rule 6 (Safe speed), this being a direct consequence of her failure to keep a good lookout. ALEXANDRA 1 was at fault for failing to keep a good aural lookout on VHF, leading to her mistaken assumption about the intended actions of EVER SMART. This in turn led her master to not turn to starboard into the channel but instead cross the approach to the channel. In terms of causative potency, which takes into account both the relative faults leading to the collision and the contribution of each vessel to the damage resulting from the collision, Teare J found the causative potency of EVER SMART to be greater than ALEXANDRA 1 and apportioned liability at 80% to EVER SMART and 20% to ALEXANDRA 1. The Court of Appeal took the same view as Teare J.

However, the Supreme Court on appeal held that the navigation of ALEXANDRA 1 was governed by the crossing rules while the navigation of EVER SMART was governed by both the crossing rules and the narrow channel rule.

The Supreme Court set out three fundamental principles to clarify the law on these points. **First**, they held that for two vessels to be crossing so as to involve risk of collision, it is sufficient that they are approaching each other on a steady bearing even though the give-way vessel is not on a steady course but on an erratic course. They also held that it does not matter if the give-way vessel is waiting for a pilot, so long as she is moving ahead. They considered a number of cases including the much-cited *The Alcoa Rambler* [1949] AC 236 and concluded, *“If it is reasonably apparent to both vessels that they are approaching each other on a steady bearing (over time) which is other than head-on, they are indeed both crossing and crossing so as to involve risk of collision, even if the give-way vessel is on an erratic course.”* They added that it follows that the stand-on vessel need not be on a steady course either, until the crossing rules are engaged, when she must keep her course and speed.

Secondly, the Supreme Court held that there were limited circumstances where the crossing rules could be overridden or disapplied even though two vessels were approaching one another so as to involve risk of collision. There could be a *“compelling necessity”* to disapply the crossing rules where, for example, one vessel is navigating in a narrow channel and another vessel is *“preparing and intending to enter it, and already shaping (i.e. adjusting her course and speed to do so) on her final approach”*. In such a case, the crossing rules might be disengaged because the latter is already by then having to comply with Rule 9 and keep to the starboard side of the channel. This was contrasted with a vessel approaching a narrow channel and intending to proceed along it, and therefore not *“shaping on her final approach”*, to which the crossing rules would in fact still apply. In the present case, ALEXANDRA 1 was waiting to embark a pilot and not yet shaping on her final approach to enter the channel. The crossing rules therefore still applied.

Thirdly, the Supreme Court held that both the crossing rules and the narrow channel rule could apply to a vessel such as the EVER SMART. They recognised that this might create a tension between the obligation of the stand-on vessel under the crossing rules to keep her course and speed and the obligation of that vessel to comply with the narrow channel rules. The Supreme Court resolved this by holding that the obligation to maintain course and speed was “*moulded for the purpose of permitting compliance with*” the narrow channel rule. In other words, the duty to keep course and speed under the crossing rules should be followed while remaining in compliance with the narrow channel rule.

Therefore, the case was remitted to Sir Nigel Teare to re-apportion liability for damage caused by the collision in the light of the decision of the Supreme Court that the crossing rule applied.

The faults of each vessel and re-apportionment of liability

In reaching his revised decision, Teare J found that ALEXANDRA 1 was in breach of Rules 15 and 16 of the crossing rules, in that she failed to make a substantial turn to starboard at 23:29 or C-13, when the vessels were about three miles apart. This fault was causative of the collision and resulted in a close-quarters situation developing. This failure was, however, mitigated by the fact that ALEXANDRA 1 had been requested by Port Control to proceed to buoys no.1. Further, her master failed to keep a good aural look out, as described above, and mistakenly thought EVER SMART was intending to turn to port when she reached the end of the dredged channel. Therefore, he did not alter course to starboard towards the channel at C-5 to C-4 but instead headed across the entrance to the channel and the path of EVER SMART.

EVER SMART was obliged to follow both the crossing rules and the narrow channel rule, as held by the Supreme Court, with her Rule 15 obligation to maintain course and speed being “*moulded for the purpose of permitting compliance with*” Rule 9, the narrow channel rule. In breach of this, she failed to keep to the starboard side of the channel as required by Rule 9 from 23:32 or C-10 onwards, for which there was no mitigation. From 23:36 or C-6 onwards, the master of EVER SMART failed to keep any lookout. He assumed ALEXANDRA 1 would pass clear to port. In consequence of this, he increased speed from dead slow ahead to full ahead sea speed. Teare J found that if EVER SMART had kept to the starboard side of the channel, maintained a good lookout and applied hard starboard helm by C-2, after passing no.1 buoys, the vessels would have passed clear of one another.

Teare J held that ALEXANDRA 1 made the greater contribution to the fact that the collision took place. However, EVER SMART’s contribution to the extent of damage caused by the collision, particularly through her high speed on collision, was by far the greater. Taking both factors into account, he determined that the causative potency of EVER SMART’s faults exceeded the causative potency of those of ALEXANDRA 1. Similarly, the blameworthiness of EVER SMART, particularly in the absence of lookout and her consequent failure to return to the starboard side and reduce speed substantially at C-4, instead increasing speed, meant that her fault was much greater than that of ALEXANDRA 1.

In apportioning liability under the crossing rules, Teare J addressed the fact that typically a give-way vessel will often bear the greater share of blame for a collision. However, this is not always the case. The present case is one in which EVER SMART as the stand-on vessel was not just in breach of Rule 17(a)(ii) or (b) but also in breach of the narrow channel rule and failed to keep any lookout from C-6. Taking into account causative potency and blameworthiness, Teare J held that EVER SMART should bear 70% and ALEXANDRA 1 should bear 30% of the damage caused by the collision.

CJC Perspective

This is a significant case for a number of reasons, in which Teare applied both the Supreme Court’s ruling that vessels approaching each other on a steady bearing (over time) are crossing so as to involve a risk of collision and the Supreme Court’s decision on the circumstances under which both the crossing rules and the narrow channel rules would apply at the same time, and how any tensions between the two rules should be resolved. No doubt these decisions will be considered and applied in future collision cases. Indeed, Teare J has already considered these issues in the *The Wilforce and the MV Western Moscow* [2022] EWHC 1190 (Admlty). No doubt others will follow, and we will be following these developments with interest in future issues of CJC Currents.

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