

Admiralty Court ruling on the application of the 'narrow channel rule' and the 'crossing rule'

In a recent decision, the Admiralty Court has agreed with *'Alexandra 1'* interests on the application of rule 9 of the Collision Regulations (Colregs) - the narrow channel rule. In *'Alexandra 1' and 'Ever Smart'* [2017] EWHC 453 (Admlty) the Court considered which of two rules, the narrow channel rule (rule 9) or the crossing rule (rule 15), applied in circumstances where one vessel was exiting a narrow channel and the other vessel was navigating towards that channel in preparation for entering it. Both rules presenting different requirements, their simultaneous application would be unsafe and the Admiralty Judge has confirmed that on the facts of this case, the narrow channel rule applied and the crossing rule did not apply. In the circumstances *'Ever Smart'* was ordered to bear 80% of the liability for the collision. *'Alexandra 1'* interests were represented by Clyde & Co (Irvine Marr, Partner, David Owens, Senior Associate, Martyn Haines, Master Mariner).

Facts

On 11 February 2015, a collision occurred between the laden VLCC *'Alexandra 1'* owned by Nautical Challenge Ltd, and a laden container vessel, *'Ever Smart'*, owned by Evergreen Marine (UK) Ltd, just outside the dredged entrance and exit channel to the port of Jebel Ali in the UAE. *'Ever Smart'* had been in the process of departing the port via the channel and shortly prior to the collision had disembarked the Pilot and was about to exit the channel. *'Alexandra 1'* had been waiting to enter the port at anchorage when she was instructed by Port Control to wait "at buoy no.1" where the pilot (the same pilot due to disembark from *'Ever Smart'*) would board for inbound passage through the entrance channel. As *'Ever Smart'* exited the channel her Master called to increase the engines to full sea speed so that at the time of the collision, just outside the channel, she had a speed over the ground of 12.4 knots. *'Alexandra 1'* had her engines at slow ahead while awaiting the pilot in the vicinity of buoy no.1. The port bow of *'Ever Smart'* struck the starboard bow of *'Alexandra 1'* at an angle of about 40 degrees leading aft on *'Ever Smart'*.

Application of the Narrow Channel Rule and the Crossing Rule

The parties were able to agree largely on the navigational facts, but a more substantial dispute remained regarding liability, and more particularly the relevance and applicability of the narrow channel rule and the crossing rule under rules 9 and 15 of the Colregs in this situation.

Rule 9 of the Colregs, entitled Narrow Channels, provides at rule 9(a):

"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"

Rule 15 of the Colregs, entitled Crossing Situation, provides:

"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."

On behalf of *'Ever Smart'* it was argued that at the time when she was proceeding along the dredged channel heading towards the exit (and entrance) point and *'Alexandra 1'* was near to the channel entrance, *'Ever Smart'* was positioned on the starboard side of *'Alexandra 1'* so that, pursuant to rule 15, it fell on the latter to keep out of the way of the former.

'Alexandra 1' interests disagreed and submitted that the crossing rules had very limited application to questions of navigation in and around a narrow channel and, in particular, did not apply to a vessel in a narrow channel and a vessel navigating in preparation for entrance to the channel, as in the case at hand. Also, the 'Alexandra 1' was not on a suitably constant direction or heading to ever be on a course for rule 15 to apply.

There was no dispute that the dredged channel was a narrow channel for the purposes of rule 9 of the Colregs.

The Admiralty Judge, Teare J, reviewed a number of English authorities dating back to 'The Leverington' (1886) in which the application of the crossing rules in the vicinity of a narrow channel had been considered. Some of the statements of principle (particularly in 'The Canberra Star' (1962) supported the case of 'Alexandra 1'.

Teare J derived assistance not only from 'The Canberra Star' but also from a decision of the Final Court of Appeal of Hong Kong which examined the relationship between the crossing rules and the narrow channel rule in circumstances (similar to, but not identical to the present case) where one vessel was navigating along a narrow channel and another was preparing to enter the channel. In *Kulemesin v HKSAR* (2013) 16 HKCFA 195 Lord Clarke considered the issue, as well as the previous English authorities, before noting at paragraph 225 of his judgment:

"...vessels approaching a narrow channel and intending to proceed along it are not bound by the crossing rule but must enter the channel and, as they do so, keep as near to the starboard side as is safe and practicable in accordance with r.9. It seems to me to follow that a vessel shaping to enter the channel should, as a matter of good seamanship, navigate in such a manner that, when she reaches the channel, she is on the starboard side of the channel in accordance with r.9."

Teare J summarised matters as follows:

"I have therefore concluded that rule 15 of the Collision Regulations, the crossing rule, did not bind ALEXANDRA 1 when she approached the dredged channel leading to Jebel Ali and so she was not under a duty to keep out of the way of EVER SMART. Her duty, as a matter of good seamanship, and as formulated by Lord Clarke, was to navigate in such a manner that, when she reached the channel, she would be on the starboard side of the channel in accordance with rule 9."

Having reached this conclusion it was not strictly necessary for the Judge to deal with the other submissions by 'Alexandra 1' as to why the crossing rule did not apply on the facts of the present case, but helpfully he did. In particular he considered whether 'Alexandra 1' was on a 'course' for the purposes of rule 15. The Judge noted that 'Alexandra 1' had been proceeding at slow speed and variable heading while proceeding in the vicinity of buoy no.1 while awaiting the pilot and commented:

"At such a slow speed ALEXANDRA 1 was not very manoeuvrable. Nevertheless she made progress in a broadly east south easterly direction towards the entrance of the channel as she waited to embark the pilot. Was she on a sufficiently constant direction or heading to be on a course? I do not consider that she was. Her "course made good" varied between 81 and 127 degrees (and her heading varied between 84 and 112 degrees). It is difficult to describe that as "a course" (though her preliminary act describes her as being on an east south easterly course). I would describe her as maintaining a broadly east or east south easterly heading as she waited for the pilot vessel to approach. That required her to have some, but not very much, way on. I would describe ALEXANDRA 1 as waiting for the pilot vessel to arrive rather than being on a course. Had a good lookout been kept on board EVER SMART from C-21 until collision it would have been apparent that ALEXANDRA 1 had moved less than a mile. It would or ought to have been obvious that she was waiting to embark a pilot."

The finding on this point, although not necessarily determinative in the case, is nevertheless a helpful reminder that in order for the crossing rule to apply, each vessel must be on a sufficiently defined course (*'The Alcoa Rambler'* [1949]). On the facts of this case, the finding that *'Alexandra 1'* was not 'on a course' provided an alternative basis to show that the crossing rule did not apply.

Having determined the principal issue between the parties, the Judge went on to assess the conduct of each vessel and to apportion liability.

Apportionment of Liability

The Judge found *'Ever Smart'* to be in breach of the narrow channel rule (failure to keep to the starboard side of the channel) and also of failure to keep a good visual and radar lookout. The *'Ever Smart'* was found to have proceeded at an unsafe speed, having put her engines to full sea speed, and also of failing to take avoiding action prior to the collision. In terms of culpability the Judge described these faults as "very serious".

'Alexandra 1' was found to have failed to keep a good aural lookout to the extent that her Master had misunderstood VHF conversations between another vessel and Port Control that had hindered his assessment of the situation. However, whilst this was held to be a significant error which affected her navigation, the errors of *'Ever Smart'* in her lookout were, in the Judge's view, "much worse".

Having considered all the evidence Teare J concluded that *'Ever Smart'* should bear 80% of the liability for the collision and *'Alexandra 1'* should bear 20% of the liability for the collision.

Conclusion

The decision of the Admiralty Judge is a very helpful illustration of the application of the narrow channel rule, and why that rule is not necessarily displaced merely because it is alleged two vessels are crossing, and also provides a useful assessment of the policy underlying different rules within the Collision Regulations. As the Judge put it:

"To have two sets of rules with different requirements applying at the same time is of course unsafe and cannot have been intended by those who drafted the Collision Regulations. Similarly, where one vessel is within a narrow channel and has a vessel on her port bow on a crossing course outside the channel but proceeding towards it in preparation for entering it, the vessel in the narrow channel cannot be under a duty (pursuant to the crossing rules) to maintain her course and speed and at the same time under a duty (pursuant to the narrow channel rule) to keep to the starboard side of the channel since the two duties may, depending upon the circumstances, require different action."

The findings of the Judge in this case will be of considerable interest to the maritime community and will assist in avoiding confusion regarding the application of the Collision Regulations in similar cases in the future.



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