

36
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**Despite the controversy and hullabaloo,
what are the practical and legal implications
of the Ever Smart collision litigation?**

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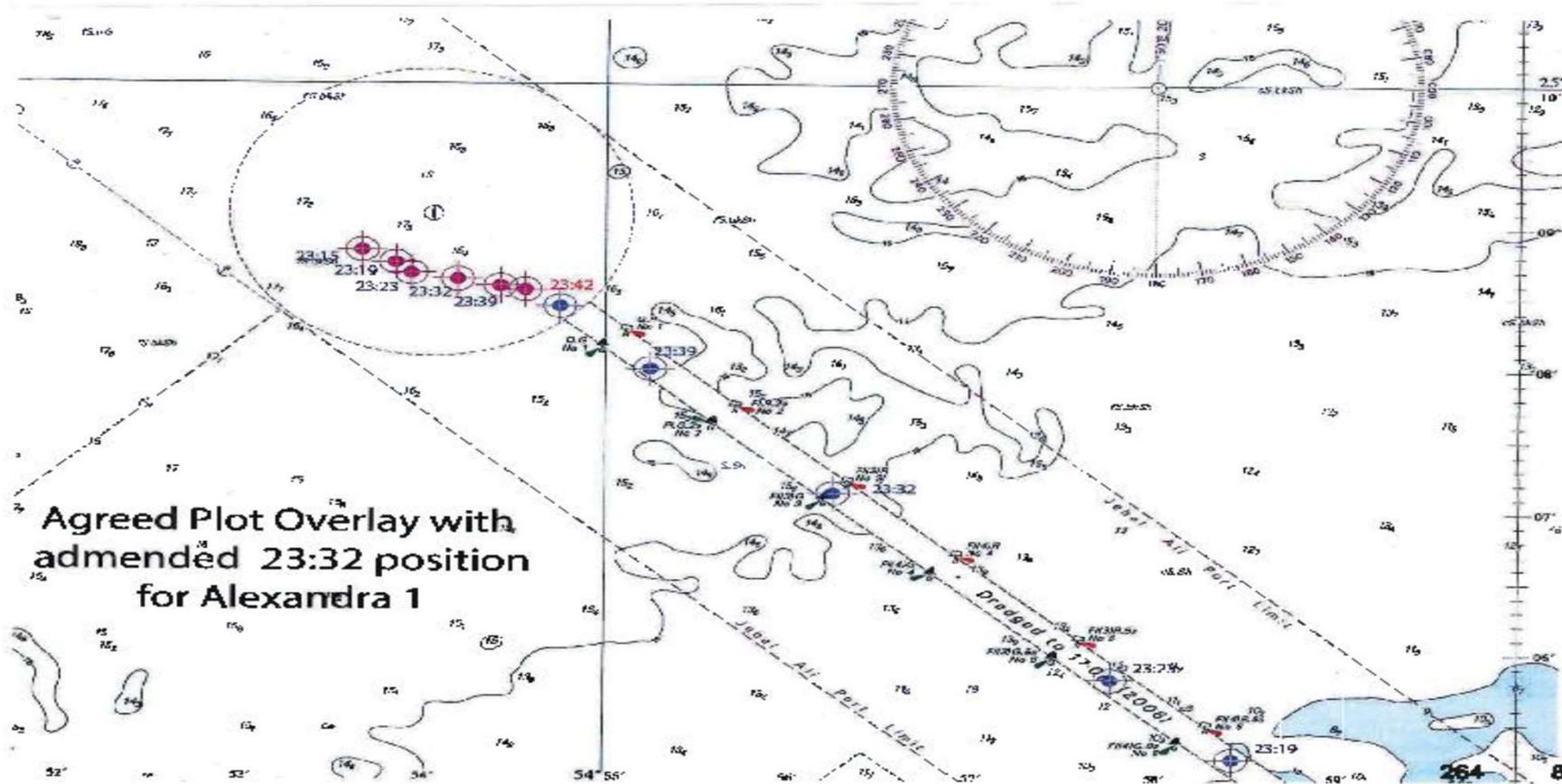
Despite the controversy and hullabaloo, what are the practical and legal implications of the Ever Smart collision litigation?

Evergreen Marine (UK) Limited v Nautical Challenge Ltd [2021] UKSC 6

First collision liability appeal to be heard by the Supreme Court or House of Lords in almost 50 years.

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TWO QUESTIONS OF CONSTRUCTION RELATING TO THE APPLICATION OF THE CROSSING RULES

1. WHETHER THE CROSSING RULES ARE INAPPLICABLE, OR ARE TO BE DISAPPLIED, WHERE AN OUTBOUND VESSEL IS NAVIGATING WITHIN A NARROW CHANNEL AND HAS A VESSEL ON A CROSSING COURSE APPROACHING THE NARROW CHANNEL WITH THE INTENTION OF AND IN PREPARATION FOR ENTERING IT?
2. WHETHER IT IS NECESSARY FOR THE PUTATIVE GIVE-WAY VESSEL TO BE ON A STEADY COURSE FOR THE CROSSING RULES TO BE ENGAGED?

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THE TEXT OF THE CROSSING RULES

Rule 15 – Crossing Situation

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.

Rule 16 – Action by Give-Way Vessel

Every vessel which is directed to keep out of the way of another vessel shall so far as possible take early and substantial action to keep well clear.

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THE TEXT OF THE CROSSING RULES

Rule 17 – Action by Stand-On Vessel

- (a) (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.
- (a) (ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.
- (b) When from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give way-vessel alone, she shall take such action as will best aid to avoid collision.
- (c) A power-driven vessel which takes action in accordance with sub-paragraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.
- (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

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The Narrow Channel Rule

Rule 9 – Narrow Channels

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

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Other relevant Rules

Rule 7 - Risk of Collision

(a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

....

(d) Such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;

Rule 2 – Responsibility

(a) Nothing in these Rules shall exonerate any vessel ...from the consequences of any neglect or failure to comply with these Rules or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

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THE QUESTIONS ANSWERED:

- (1) 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 OVERRIDEN IF AND WHEN THE APPROACHING VESSEL IS SHAPING TO ENTER, ADJUST HER COURSE SO AS TO REACH THE ENTRANCE ON HER STARBOARD SIDE OF IT, ON HER FINAL APPROACH.

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THE QUESTIONS ANSWERED:

- (2) IF TWO VESSELS, MOVING OVER THE GROUND, ARE CROSSING SO AS TO INVOLVE RISK OF COLLISION, THE ENGAGEMENT OF THE CROSSING RULES IS NOT DEPENDENT UPON EITHER THE GIVE-WAY VESSEL OR THE STAND ON VESSEL, BEING ON A STEADY COURSE.

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Outcome: The Crossing Rules applied to the whole of the relevant period of just under half an hour before the collision

SC paragraph 147:

“But it by no means necessarily follows that this should result in some different apportionment of liability for the damage or even responsibility for the collision having occurred ...”

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Practical and Legal implications