

DOCUMENT ID: **RSCVD - Ship - definition - Merchant Shipping Act 1995**

LENDER: **SNU :: (Borrowing) Swansea University**

BORROWER: **TRKHU**

BORROWER ADDRESS: ic.ill@khas.edu.tr

CROSS REF ID: 187960

Processed by RapidX: 6/2/2020 8:01:47 AM



This material may be protected by copyright law (Title 17 U.S. Code)

The Journal of International Maritime Law/Volume 12/Issue 2, 1 April 2006/Articles/Ship — Definition — Merchant Shipping Act 1995 — Negligent Navigation — Criminal Proceedings — Sea-Going – JIML 12 (2006) 2, 99–103

Journal of International Maritime Law

JIML 12 (2006) 2, 99–103

1 April 2006

Ship — Definition — Merchant Shipping Act 1995 — Negligent Navigation — Criminal Proceedings — Sea-Going

Analysis and Comment

R v Goodwin
[2005] EWCA Crim 3184, [2006] 1 Lloyd's Rep 432
English Court of Appeal (Criminal Division)

BS

© Lawtext Publishing Limited 2006

Company/Commercial Law

Facts¹

While riding a jet ski in the sea off Weymouth on 15 May 2004, the appellant collided with another jet ski which was stationary in the water. The rider of the other jet ski was seriously injured. The appellant was charged under section 58 of the Merchant Shipping Act (MSA) 1995, which provides:

- (1) This section applies –
 - (a) to the master of, or any seaman employed in, a United Kingdom ship; and
 - (b) to the master of, or any seaman employed in, a ship which –
 - (i) is registered under the law of any country outside the United Kingdom; and
 - (ii) is in a port in the United Kingdom or within United Kingdom waters while proceeding to or from any such port.

(2) If a person to whom this section applies, while on board his ship or in its immediate vicinity –

- (a) does any act which causes or is likely to cause –
 - (i) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment, or
 - (ii) the loss or destruction of or serious damage to any other ship or any structure, or
 - (iii) the death of or serious injury to any person, or

JIML 12 (2006) 2, 99–103 at 100

- (b) omits to do anything required –
 - (i) to preserve his ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged, or
 - (ii) to preserve any person on board his ship from death or serious injury, or
 - (iii) to prevent his ship from causing the loss or destruction of or serious damage to any other ship or any structure, or the death of or serious injury to any person not on board his ship, and either of the conditions specified in subsection (3) below is satisfied with respect to that act or omission, he shall (subject to subsections (6) and (7) below) be guilty of an offence.

(3) Those conditions are

- (a) that the act or omission was deliberate or amounted to a breach or neglect

of duty;

(b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.

(4) If a person to whom this section applies –

(a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a) above, or

(b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things, he shall (subject to subsections (6) and (7) below) be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both ...

The appellant applied to have the indictment quashed on the basis that the jet ski was not a 'ship' within section 58 of the MSA 1995 and the extended definition in section 313 of the same Act, which provides that 'ship' includes every description of vessel used in navigation. When that application failed, the appellant pleaded guilty on the basis that he was the master of the jet ski, since he had command or charge of it within section 58, and that he had been in breach of duty in failing to keep a proper lookout. On 5 August 2005, at the Crown Court at Salisbury, the appellant was sentenced to six months' imprisonment. He appealed against the conviction and sentence.

Decision

The Court of Appeal held that the judge had been wrong to hold that section 58 of the MSA 1995 applied. The judgment of the Court was based on the finding that the jet ski was not a 'ship' within the scope of the MSA 1995 as it was not 'used in navigation'. The Court also expressed the view that a sea-going vessel was a vessel which set out to sea on a voyage and a jet ski was not such a vessel. It was also held that section 58 of the MSA 1995 did not apply to the master as he was not employed as master of the jet ski.

Comment

It is probably the first time that a judgment of the Criminal Division of the Court of Appeal has been given an extensive coverage in the JIML but readers will be quick to realise that it has serious implications on maritime law in terms of mapping the meaning of the term 'ship'. Identifying which types of craft/object fall under the definition of the term 'ship' has been a rather challenging task for the judiciary over the years. What transpires from the vast amount of case law in this area is that there is no uniform definition of the term 'ship' in maritime law and the meaning of the concept may vary depending on the interpretation of the legislation under which the inquiry is conducted. In the present case, the status of a jet ski was scrutinised from the perspective of the MSA 1995.

JIML 12 (2006) 2, 99–103 at 101

The definition of the term 'ship' can be found in section 313 of the MSA 1995, which indicates that it includes every description of vessels used in navigation. A close reading of the relevant section reveals that when assessing whether a craft/object falls under the definition of the 'ship' under the MSA 1995 one needs to bear in mind the following three points. First, the use of the word 'includes' is a clear indication that the definition is not exhaustive and can be flexible to accommodate new types of craft. Secondly, factors such as the shape or construction of the craft/object in question are not decisive in defining what a 'ship' is. Last but not least, the definition of ship under this section is restricted to vessels which are 'used in navigation'. The case law also makes clear that an object can be regarded as a ship even though it does not have its own means of propulsion and direction (*The Mac* (1882) 7 PD 126, *The Mudlark* (1911) P 116 and *The Harlow* [1922] P 175).

The jet ski, which was the subject matter of this appeal, had a concave hull that gave it sufficient buoyancy to enable three riders to sit astride the saddle. It is fair to suggest that the craft bore a resemblance to a boat in terms of its construction. However, it was not possible to conclude that the jet ski in question was a ship within the meaning of the MSA 1995 based on its construction alone. The counsel for the Crown had also to convince the Court of Appeal that the jet ski was used in navigation. This was the most difficult part of the case as the authorities where this issue was considered seemed to go against the case of the prosecution.

The most significant authority in this context is the decision of Sheen J in *Steedman v Scofield* [1992] 2 Lloyd's Rep 163. That case involved a collision between a jet ski and a speedboat. The owner of the latter brought a claim in negligence and the defendants sought to have it struck out as time barred under section 8 of the Maritime Conventions Act (MCA) 1911 (repealed). The time limit under that section related to any claim against a 'vessel'. Section 10 of the MCA 1911 provided that the term 'vessel' was to be construed as one with the Merchant Shipping Acts. Section 742 of the MSA 1894 (repealed) provided that a 'vessel' includes any ship or boat, or any description of vessel used in navigation' and a 'ship includes every description of vessel used in navigation not propelled by oars'. Against this background, it was then held that the jet ski did not fall within the definition of the 'ship'. Sheen J concluded on the matter as follows, at p 166:

Navigation is the nautical art or science of conducting a ship from one place to another. The navigator must be able (1) to determine the ship's position and (2) to determine the future course or courses to be steered to reach the intended destination ... "Navigation" is not synonymous with movement on water. Navigation is planned or ordered movement from one place to another. A jet ski is capable of movement on water at a very high speed under its own power, but its purpose is not to go from one place to another. A person purchases a jet ski for the purpose of enjoying 'the thrills of waterskiing without the ties of a boat or towrope' and the exhilaration of high speed movement over the surface of the water. The heading of the craft at any particular moment is usually of no

materiality... Indeed part of the thrill of driving a jet ski appears to come from frequent alterations of heading at high speed.

Accordingly, Sheen J was able to overcome the time bar defence of the defendants by making the claimant's case subject to the time bar limit allowed for the tort of negligence under general law (Limitation Act 1980) rather than endorsing the shorter period, two years, afforded by the MCA 1911.

A similar outcome followed when Henry J was asked in *Curtis v Wild* [1991] 4 All ER 172 to determine whether a sailing dinghy was a ship within the meaning of section 8 of the MCA 1911. Having decided that a dinghy was not a ship, Henry J went on to say, at p 175:

There was no evidence before me that there was any navigation in the sense of proceeding from an originating place A to a terminus B for the purpose of discharging people or cargo at the destination point. It was simply used for pleasure purposes by people who were messing about in boats.

One should not, however, place too much emphasis on this case as the dinghy in question was used on a reservoir. It is possible that the outcome might have been different if the dinghy had not been operated in a self-contained sheet of water.

JIML 12 (2006) 2, 99–103 at 102

The prosecution's case was that Sheen J was in error as he equated navigation with controlled travel over water. In making his case, the counsel for the Crown relied heavily on the decision of the Irish Supreme Court in *The Von Rocks* [1998] 2 Lloyd's Rep 198, which seemed to cast some doubt on the judgment of Sheen J in *Steedman v Schofield*. There, the issue was whether a backhoe dredger was a ship for the purposes of the Convention on the Arrest of Sea-Going Ships 1952 (which adopts a very similar definition to the one in the MSA 1995). The nature of the craft was that when not in operation it was a floating platform comprising 10 individual pontoons bolted together. When in use, it was held in a position on the seabed by three spud legs which were capable of being hydraulically lowered and raised. When the legs were lowered to the seabed at the site of dredging the platform became a rigid structure, that is, it was jacked-up to form a rigid platform and would so remain until the legs were withdrawn and the structure floated again. The dredger had no bow, no stern, no anchors, no rudder nor any means for steering, and no keel or skeg. It had no means of self-propulsion, mechanical or otherwise, and it had no wheelhouse. It had a steel cabin fixed on the platform which contained an office and a toilet. It did not have an ability to carry cargo, spoil or personnel other than those engaged in the dredging operation. Having decided that the dredger was a ship, Keane J made the following observation at pp 207–8:

The finding in [*Steedman v Schofield*] that a jet ski was not a 'ship' within the meaning of the Merchant Shipping Acts is hardly surprising, but it is questionable, with respect, whether, to come within the category of a 'ship' the purpose of a craft must be 'to go from one place to another'. In the case of non-commercial craft, it seems somewhat unreal to regard their purpose as being a journey from one point to a specific destination. Yachts which take part in the America's Cup are designed and constructed with a view to testing the excellence of their technology and the seamanship of their crews rather than transporting people

from one place to another. On a less exalted level, people will for long continue to derive enjoyment from being on the sea, not because they are accomplishing a journey to an intended destination but simply for the pleasure of — in the well worn phrase from the *Wind in the Willows* — 'messaging about in boats' ... so long as 'navigation' is a significant part of the function of the structure in question, the mere fact that it is incidental to some more specialized function, such as dredging or the provision of accommodation, does not take it outside the definition ... 'navigation' does not connote anything more than 'movement across water'; the function of conveying persons and cargo from place to place [in the words of Sheen J] is not an essential characteristic.

There were two possible courses of action available to the Court of Appeal: either, by strictly following a technical approach, to confine 'vessels used in navigation' to vessels which are used to make ordered progression over the water from one place to another (as advocated in *Steedman v Schofield*) or, by adopting a more liberal approach, to regard vessels which are simply used for having fun on the water without the object of going anywhere as 'vessels used in navigation' (as indicated in *The Von Rocks*). The Court of Appeal opted for the former and held that the jet ski in the present case was not a ship. There is no doubt that the context in which the definition of the ship is set, the MSA 1995, was a significant factor in this outcome. Having identified the primary concern of the MSA 1995 as commercial shipping, the Court felt unease in making some of its stringent requirements in relation to manning and safety applicable to the rider of a jet ski, whose primary concern is to have fun by making aimless moves on the surface of the sea.

In the light of this decision, it is probably safe to assume that provisions of the MSA 1995 do not apply to jet skis (note that on 6 March the House of Lords rejected the prosecution's request to give leave to appeal). However, this does not mean that a jet ski will never be regarded as a 'ship' under other statutes dealing with maritime law. It is clear that whether a jet ski is a ship or not will depend on the context in which the issue of the meaning of a 'ship' arises. For instance, an opposite outcome to the one in the present case should not come as a surprise to anybody if the issue at stake is whether a jet ski is a vessel for the purposes of the Convention on the Arrest of Sea-Going Ships 1952, especially if the claimant attempting to arrest a jet ski is a fisherman whose fishing nets were destroyed by the rider of the same jet ski. In similar vein, it is highly likely that a jet ski will be regarded as a ship under a maritime legislation which adopts a more flexible approach to the requirement of being used in

JIML 12 (2006) 2, 99–103 at 103

navigation. For instance, Rule 3(a) of the International Regulations for Preventing Collisions at Sea 1972 stipulates:

The word 'vessel' includes every definition of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transport of transportation on water.

It must also be stressed that the Court of Appeal's view that the jet ski is not sea-going as 'it does not set out to sea on a voyage' is a rather curious one. There is authority indicating that the region in which the ship operates is the main factor taken into account in determining whether she is sea-going or not. For instance, in *Salt Union Ltd v Wood* [1893] 1 QB 370, a steamer used to carry salt upon the rivers Weaver and Mersey from Windsor to Liverpool was held to be a non sea-going vessel. This is a rational decision, particularly in the light of the fact that the steamer never set out to go anywhere other than inland waters. However, this

case is not authority for the proposition that a ship which remains in the coastal waters is not sea-going. With due respect, the Court of Appeal's view that jet skis would probably not be seaworthy in heavy weather is confusing as it takes the current debate out of its context. Whether a ship is sea-going or not does not depend on what she encounters while away from land or her general seaworthiness. That said, we must remind ourselves that the observations of the Court of Appeal on this point were merely obiter. The appeal was allowed on the ground that the jet ski in question was not a 'ship' under the MSA 1995.

¹ See also R Shaw Editorial (2005) 11 JIML 247–49.