

# A JET SKI; VESSEL, BOAT OR SHIP? *R V GOODWIN* [2006] 1 Lloyd's Rep 432

Megan Ashford\*

*R v Goodwin*<sup>1</sup> concerns an appeal by the accused to the Criminal Division of the United Kingdom Court of Appeal from a plea of guilty in the Crown Court of Salisbury. The accused originally pleaded guilty to a single count of doing an act that caused or was likely to cause serious injury to a person under section 58(2)(a) of the *Merchant Shipping Act 1995* (UK). The appeal was successful.

The case is noteworthy because the court gave a detailed discussion of whether a jet ski could be considered a ship or a vessel capable of navigation.

## The Facts

The appellant, Mr Goodwin, was riding a Yamaha 'Waverunner' jet ski ('the Waverunner') in Bowleaze Cove, Weymouth when he collided with another stationary jet ski. Mr Facer, who had been sitting on his jet ski, was seriously injured.

## The Issues

Section 58 of the *Merchant Shipping Act 1995* (UK) (*MSA*) applies to a master or employee of a United Kingdom ship or a foreign registered ship in United Kingdom waters, who does any act that causes or is likely to cause serious injury to a person, or omits to do any act that would prevent serious injury to a person. Consequently, the court addressed a number of issues; whether mere entitlement to registration was sufficient to satisfy section 58 *MSA*, whether Mr Goodwin was technically the Master of his Waverunner, and most importantly for our purposes, whether the Waverunner constituted a ship or a vessel used in navigation.

## Registration

It is clear from the facts that the Waverunner was neither registered in the United Kingdom nor anywhere else.<sup>2</sup> The respondents argued tortuously<sup>3</sup> but successfully that mere entitlement to registration was sufficient to satisfy this element of section 58, relying on a combination of section 17(2)(a) and (b) of the *Interpretation Act 1978* (UK) and regulation 4 of Statutory Instrument 1991 No 1366. By this, section 58 extends to sea-going ships (excluding fishing ships) wholly owned by United Kingdom residents and which are *entitled* to be registered.<sup>4</sup> The Waverunner was jointly owned by Mr Goodwin and a friend, both United Kingdom residents. The Waverunner was capable of registration; the operations manager of the register of ships established under section 10 *MSA* gave evidence that numerous 'wet bikes' are registered.<sup>5</sup> Consequently, the court decided that this was sufficient to satisfy section 58.<sup>6</sup>

Having addressed the matter of registration, the court went on to hold that the Waverunner failed to pass two essential elements of section 58. First, the court accepted the appellant's arguments that the

---

\* Megan Ashford holds a BA(Hons) in Classics and Ancient History. She will complete her LLB in 2006 before joining the State Solicitor's Office as Articled Clerk in 2007. Megan is a student editor for A&NZ Mar LJ in 2006.

<sup>1</sup> [2006] 1 Lloyd's Rep 432.

<sup>2</sup> *Ibid.*, 434.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*, 435. In the register, the term 'wet bike' is used in preference to jet ski for copyright reasons.

<sup>6</sup> *Ibid.*, 435.

Waverunner was not a *sea-going* ship. Sea-going was interpreted to mean ‘a ship that goes to sea.’<sup>7</sup> The Waverunner was not a sea-going ship because it did not set out to sea on a voyage, rather it remained close to land. The court considered that even if it had set out to sea, it would not be seaworthy for such a voyage.<sup>8</sup> Secondly, section 58 applies only to the Master or seamen employed as such on the ship. Secondly, the court found that as a part owner of the Waverunner, Mr Goodwin was neither a Master, nor employed as a seaman on it.<sup>9</sup>

Fortunately, as obiter, the court proceeded to discuss the nature of a vessel and a ship.

### *A Ship?*

The central question concerned the nature of the Waverunner. Section 58 applies only to *ships*. The definition of ship in *MSA* is extremely broad and is held to be inclusive and non exhaustive.<sup>10</sup> It states that a ‘ship includes every description of vessel used in navigation’ and a vessel is defined to include a ship.<sup>11</sup> Unfortunately its breadth also means it is imprecise and somewhat circular. Neither ship, vessel nor navigation has yet been definitively defined in either case law or statute.

### *A Vessel?*

In deciding whether the Waverunner was a vessel the court primarily considered the decision in *Steedman v Scofield*<sup>12</sup> because of the similarity of facts. In addition the court considered other cases, of which the most relevant are *The “Von Rocks”*<sup>13</sup> and *Perks v Clark*.<sup>14</sup>

In *Steedman v Scofield* the plaintiff brought an action for negligence under the *International Regulations for Preventing Collisions at Sea 1972*. The plaintiff was injured while riding his Kawasaki jet ski (‘the Kawasaki’) when a negligently driven speed boat collided with it.

In that case, the defendants argued that the limitation period had expired, citing section 8 of the *Maritime Conventions Act 1911* which referred to ‘vessels’. Section 10 stated that the Act should be construed in accordance with the *Merchant Shipping Acts 1894* through to 1907. Section 742 of the *Merchant Shipping Act 1894* defined ship and vessel in terms almost identical to *MSA*; a vessel includes any ship or boat or any description of vessel used in navigation, and ship includes every description of vessel used in navigation not propelled by oars. Sheen J concluded that if the Kawasaki had been proved a ‘vessel’ it would also have been proved a ‘ship’ because it was not propelled by oars.<sup>15</sup>

In *R v Goodwin* the court accepted the elements identified in *Steedman v Scofield* that may go towards defining a craft as a vessel; the physical makeup and the intended function or purpose of the craft.<sup>16</sup>

First, the physical construction of the craft is important. In *Steedman v Scofield* it was considered determinative that both boats and vessels were craft that were used or were capable of being used to carry

---

<sup>7</sup> Ibid, 439.

<sup>8</sup> This raises the question of whether a vessel that goes to sea must be seaworthy in order to be defined as a ship.

<sup>9</sup> Ibid, 440.

<sup>10</sup> *The “Von Rocks”* [1998] 2 Lloyd’s Rep 198, 200, 206.

<sup>11</sup> *Merchant Shipping Act 1995* (UK) s313(1)(c).

<sup>12</sup> [1992] 2 Lloyd’s Rep 163.

<sup>13</sup> [1998] 2 Lloyd’s Rep 198. This case concerned a backhoe dredge that was damaged when it capsized while being towed. The plaintiffs arrested the dredge under the *Jurisdiction of Courts (Maritime Convention) Act 1989* (UK) which gave effect to Article 2 of the *International Convention Relating to the Arrest of Sea-Going Ships, 1952* which provided for the arrest of a ship flying the flag of a contracting state in respect of any maritime claim. At trial the Judge held that the dredge was not a ship and should be released from arrest. The plaintiff appealed and was successful.

<sup>14</sup> [2001] 2 Lloyd’s Rep 431. The Revenue appealed against a decision that a mobile oil rig was a ship for the purposes of the *Income and Corporation Taxes Act 1998* (UK). The decision that the rig was a ship allowed certain tax payers to take advantage of more generous tax regimes because they were earned from employment as ‘seafarers’.

<sup>15</sup> *Steedman v Scofield* [1992] 2 Lloyd’s Rep 163, 164.

<sup>16</sup> *R v Goodwin* [2006] 1 Lloyd’s Rep 432, 436.

goods or persons by water.<sup>17</sup> Only size distinguished a boat from a vessel, the vessel being larger than a rowing boat.<sup>18</sup> The Kawasaki fell into neither category. It had a fibre glass hull with a pole supporting handlebars. The rider lay flat on the craft until it reached a certain speed when he could stand up. People could not sit in the Kawasaki while it was stationary. It lacked the essential element of being capable of carrying good or persons.<sup>19</sup>

By contrast, the Waverunner was described as having:

...a length of 3.2 meters and a beam of 1.2 meters. It has a boat like deep ‘V’ planning type hull, and mention is made of a keel. It has seats, not one but three, and inferentially can accommodate a rider (and I use the term loosely) and 2 passengers. A person can sit in it when it is stopped in the water as one can in a boat.<sup>20</sup>

Essentially, the court distinguished the Waverunner from the Kawasaki because it possessed the element of carriageability that the Kawasaki lacked and was simply more ‘boat like’.<sup>21</sup> Consequently the Waverunner could not be immediately excluded from the definition of a vessel. It potentially satisfied the first part of the definition of ship as defined by *MSA*.

The court expressly noted that the Waverunner was capable of carrying persons. In *The “Von Rocks”* Keane J decided that this element was important but not decisive,<sup>22</sup> and the court in *R v Goodwin* appears to agree with him.<sup>23</sup>

### *Navigation*

As the Waverunner was not excluded from the category of ‘vessels’ it could potentially be considered a ship under section 313(1)(c) if it was ‘used in navigation’.

The court in *R v Goodwin* examined the definition of navigation given in *Steedman v Scofield*. In that case it was held that navigation is the nautical art or science of ‘planned or ordered movement from one place to another’ with an intended destination. ‘Navigation is not synonymous with movement on water’.<sup>24</sup>

In *R v Goodwin* the court departed from the decision in *Steedman v Scofield* in holding that whether a craft is used in navigation does not depend on the intended function of the craft. A craft that is designed merely for pleasure, distinct from designed to transport goods and persons from one place to another, will not be excluded from the definition of a vessel used in navigation.<sup>25</sup>

Regardless of that decision, in both *R v Goodwin* and *Steedman v Scofield*, the jet skis fell short of the mark; according to the courts, neither craft was used in navigation. In *Steedman v Scofield* the court following *Polpen Shipping Company Ltd v Commercial Union Assurance Company Ltd*<sup>26</sup> decided that the Kawasaki had the potential to be used in navigation, but in actuality was not. The capability alone was insufficient. In *R v Goodwin*, the court decided that the Waverunner was constructed as a pleasure craft designed for the ‘exhilaration of high speed movement over the surface of the water’ rather than ordered travel or navigation.

<sup>17</sup> *Steedman v Scofield* [1992] 2 Lloyd’s Rep 163, 165.

<sup>18</sup> *Ibid.* *R v Goodwin* [2006] 1 Lloyd’s Rep 432, 436.

<sup>19</sup> *Steedman v Scofield* [1992] 2 Lloyd’s Rep 163, 166.

<sup>20</sup> *R v Goodwin* [2006] 1 Lloyd’s Rep 432, 435.

<sup>21</sup> *Ibid.*, 436.

<sup>22</sup> In contrast the trial judge concluded that the dredge was not capable of transporting goods or persons and this went towards his decision that the dredge was not a ship, *The “Von Rocks”* [1998] 2 Lloyd’s Rep 198, 201.

<sup>23</sup> *R v Goodwin* [2006] 1 Lloyd’s Rep 132, 437.

<sup>24</sup> *Ibid.*, 438.

<sup>25</sup> *Ibid.* The court appears to agree with Keane J’s obiter in *The “Von Rocks”*. He questioned this criterion, stating that many yachts and other boats do not engage in ordered travel from one place to another. Rather, their purpose is pleasure; ‘messing about in boats’ or ‘testing the excellence of their technology and the seamanship of their crews’.

<sup>26</sup> (1942) 74 Lloyd’s Law Reports 157, 159.

However, because the Waverunner was not excluded from the category of vessel or boats as was the Kawasaki, it is possible to contemplate a situation where a jet ski of the same physical type could be considered a vessel used in navigation and also a ship if it were demonstrably engaging in ordered travel, rather than simply having fun.

## An Australian Comparison

*R v Goodwin* is interesting because it offers new thoughts on actions against negligent riders of water craft. For residents of Australia and New Zealand, this has potential significance because of the prevalence of jet skis and similar craft used in rivers and in the sea. In contrast to the United Kingdom, Australia has a two tiered legislative system. Potentially, both the Federal and State acts could address a similar set of circumstances, although in different ways.

I consider that Australian courts would be likely to reach similar conclusions as their British counterparts particularly if they were dealing with Federal legislation. Without doubt, Mr Goodwin would certainly be captured by provisions in the *Admiralty Act 1988* (Cth) (the *Admiralty Act*). Section 4(3)(d) of the *Admiralty Act*, roughly equivalent to section 58 *MSA*, expressly extends liability for negligent acts or omissions with regard the navigation of a ship to owners and persons in possession or control of the ship.<sup>27</sup>

In its definition of a ship in relation to a vessel used in navigation, the *Admiralty Act* is very similar to the *MSA*. However, an Australian jet ski would be even less likely than a British one to be classified as a ship under the *Admiralty Act*.<sup>28</sup> This is because the *Admiralty Act* expressly excludes certain classes of craft from the definition of ship; specifically *inland waterways vessels* will not be ships.<sup>29</sup> Inland waterways vessels are defined as those ‘used or intended to be used wholly on inland waters’,<sup>30</sup> which potentially captures jets skis used on lakes and river systems. This lays open the potential argument that a jet ski is a sea-going ship particularly in light of the decision in *Gibbs v Mercantile Mutual Insurance (Australia) Ltd*.<sup>31</sup> A majority of the High Court of Australia, confirming a decision of the Full Court of the Supreme Court of Western Australia, held as obiter that estuarine waters of the Swan River affected by tidal flow and salinity were part of the sea.<sup>32</sup>

In the event that a jet ski rider escaped the embrace of the *Admiralty Act*, it likely that he would be captured by State legislation. The State legislation is an entirely different style of scheme to that contained in the *Admiralty Act* or *MSA*. As an example, the *Western Australian Marine Act 1982* (WA) contains a Part specifically devoted to the regulation of pleasure vessels.<sup>33</sup> By section 98 a pleasure vessel is defined in part as a ‘a vessel held wholly for the purpose of recreational or sporting activities and not for hire or reward...’.<sup>34</sup> Section 99 provides for the regulation of various aspects of navigation and operation of pleasure craft including by prescribing for safety regulations in respect of navigation.<sup>35</sup> The advantage of a two tiered legislative scheme is that it offers the opportunity for one to capture an event that is excluded by the other.

---

<sup>27</sup> *Admiralty Act 1988* (Cth) s4(3)(d)(i) and (ii).

<sup>28</sup> This similarity arises because both Acts are aimed at regulating large craft.

<sup>29</sup> In addition the *Western Australian Marine Act 1982* (WA) excludes pontoons or floating jetties used only for walking or storage or that are not towed or moored away from the shore.

<sup>30</sup> *Admiralty Act 1988* (Cth) s1.

<sup>31</sup> (2003) 199 ALR 497.

<sup>32</sup> *Gibbs v Mercantile Mutual Insurance (Australia) Ltd* (2003) 199 ALR 497, 502, 546. Gleeson CJ, Hayne and Callinan JJ (McHugh and Kirby JJ dissenting). I note that this case relates to the specific context, of marine insurance.

<sup>33</sup> Part IV *Western Australian Marine Act 1982* (WA). Other Australian States have enacted similar legislation, for example the *Marine Act 1988* (Vic) which likewise legislates for recreational vessels and goes so far as to define ‘personal watercraft’ vessels distinct from other recreational vessels, section 113.

<sup>34</sup> Section 98(1)(a) *Western Australian Marine Act 1982* (WA). Consequently the definition of a ship in section 3(1) of this Act would not apply to a jet ski proved to be used solely for pleasure, despite the fact that this definition is extremely similar to those contained in the *Admiralty Act* and *MSA*.

<sup>35</sup> Section 99(1)(j) *Western Australian Marine Act 1982* (WA).

#### 4. Conclusion

*R v Goodwin* concluded that the Waverunner jet ski was not a vessel used in navigation and therefore not a ship for the purposes of criminal prosecution for negligent navigation causing personal injury under *MSA*. In reaching this conclusion, the Court considered in great detail the characteristics that go to prove a craft as a ship or a vessel used in navigation. The Court's conclusions mean that a far wider range of sailing craft than previously thought may be considered ships for the purposes of prosecution for negligent navigation, in the United Kingdom and other parts of the world.