

25/85

IN THE PRIVY COUNCIL

No. 65 of 1984

O N A P P E A L
FROM THE COURT OF APPEAL IN HONG KONG

B E T W E E N :

KONG CHEUK KWAN

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS - PART I
VOLUME I - Pages 1 to 591

CAMERON MARKBY,
Moor House,
London Wall,
London, EC2Y 5HE

MACFARLANES,
10 Norwich House,
London,
EC4A 1BD

Solicitors for the
Appellant

Solicitors for the
Respondent

O N A P P E A L

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INDEX OF REFERENCE

No.	Description of Document	Date	Page No.
<u>IN THE HIGH COURT OF HONG KONG</u>			
1	Indictment	26th November 1982	1-3
2	Arraignment and Pleas		4-5
3	Prosecution's Opening Address	7th March 1983	5-32
4	Prosecution's Evidence	7th March 1983	32
	P.W.1 Ng, Chun-wai Examination		32-36
	P.W.2 Choi, Chung-fai Examination		35-41
	Cross-examination		42-45
	Re-examination		45-46

No.	Description of Document	Date	Page No.
P.W.3	Cheuk, Yee-yue Examination Cross-examination Re-examination		47-50 50-54 54-55
P.W.4	Tsang, Sik-yiu, Edmund Examination Cross-examination Re-examination		55-59 59-65 66
P.W.5	Ho, Ngau Examination Cross-examination Re-examination		67-72 72-83 83-87
P.W.6	Marriott, Lawrence John Examination Cross-examination Re-examination		88-95 95-100 100
P.W.7	Marriott, Sandra Examination Cross-examination		100-104 104-105
P.W.8	Chan, Shek Examination Cross-examination		105-110 110-112
P.W.9	Young, George Examination Cross-examination Re-examination		112-122 122-123 123-126
P.W.10	Woo, Tat-Chung Examination Cross-examination Re-examination		126-133 133-147 147-148
P.W.11	Tin, Dr. Ohn Examination		148-150
P.W.12	Lo, Kam-shing Examination Cross-examination Re-examination		150-169 169-198 199-203
P.W.13	Tang, Chung-keung, Raymond Examination		203-213

No.	Description of Document	Date	Page No.
P.W.14	Kwok, Sum Examination Cross-examination		214-216 216-218
P.W.13	Tang, Chung-keung, Raymond Examination (continued) Cross-examination		218-238 238-265
P.W.15	Ling, Hung-hay, John Examination Cross-examination		265-279 279-297
P.W.16	So, Pak-kan Cross-examination Examination Further cross-examination		297-298 298 298-299
P.W.15	Ling, Hung-hay, John Cross-examination (continued) Re-examination		299-318 318-321
P.W.17	Lo, Kei Examination Cross-examination		321-326 326-328
P.W.18	Leung, Pui Examination Cross-examination Re-examination		328-330 330-332 332-334
P.W.19	Pyrke, Allan Charles Examination Cross-examination Re-examination Further cross-examination		334-434 434-567 567-587 587-591

PART I - VOLUME II - DOCUMENTS

5	Submission by Counsel of No Case to Answer		592-704
6	Ruling by Court	24th March 1982	704-710
7	Prosecution's Closing Address		711-751
8	Defence's Closing Address		752-769
9	Judge's Summing-Up		770-799

No.	Description of Document	Date	Page No.
10	Verdict and Sentence		800-805
11	Particulars of Trial		806
12	Declarations		807-812
	<u>IN THE COURT OF APPEAL OF HONG KONG</u>		
13	Notice of Application	16th April 1983	813-814
14	Provisional Grounds of Appeal	11th April 1983	815-817
15	Grounds of Appeal	20th April 1983	818-819
16	Judgment of the Court of Appeal	9th March 1984	820-849
	<u>IN THE PRIVY COUNCIL</u>		
17	Order Granting Leave to Appeal to H.M. in Council	25th June 1984	850

RECORD OF PROCEEDINGS - EXHIBITS PART II

<u>Exhibit Marking</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page No.</u>
P.10	Sketch showing the angle of collision		1
P.17	Official log of "Flying Flamingo" together with typed transcript		2
P.18	Deck log of "Flying Flamingo"	11th July 1982	6
P.18A	Typed transcript from entry made between Columns 3 to 8 in the deck log of "Flying Flamingo"	11th July 1982	7
P.19	Rough deck log of "Flying Flamingo"	11th July 1982	8

Exhibit Marking	Description of Document	Date	Page No.
P.20	Engine log of "Flying Flamingo"	11th July 1982	9
P.21	Official log of "Flying Goldfinch" together with typed transcript	11th July 1982	10
P.22	Deck log of "Flying Goldfinch"	11th July 1982	13
P.23	Rough deck log of "Flying Goldfinch"	11th July 1982	16
P.24	Engine log of "Flying Goldfinch"	11th July 1982	17
P.40	A statement of Mr. KONG Cheuk-kwan with a certified English translation	3rd August 1982	18
P.41	A statement of Mr. John Coull with a certified English translation	4th August 1982	28
P.42	A statement of Mr. Ho Yim-pun with a certified English translation	4th August 1982	35
P.43	A statement of Mr. Ng Yui-kin with a certificate English translation	1st August 1982	56
P.44	Further statement of Mr. Ng Yui-kin with a certified English translation	16th August 1982	62
P.45	One graph		67
P.46	One graph		68
P.47	One graph		69
P.48	Admiralty chart with plotting made by Captain Pyrke		70

PART III

DOCUMENTS TRANSMITTED TO THE PRIVY COUNCIL
BUT NOT REPRODUCED

Exhibit marking	Description of Document	Date
P.1(1-31)	One set of 31 photographs	
P.2(1-14)	One set of 14 photographs	
P.3	A radar hood	
P.4	Master's seat pedestal of "Flying Goldfinch"	
P.5	Chief Officer's seat pedestal of "Flying Goldfinch"	
P.6	Sketch 1: Sketch of the outboard profile	
P.7	Sketch 2: Sketch of the forward foils of "Flying Goldfinch" and "Flying Flamingo"	
P.8	Sketch 3: Sketch of the foward foil of "Flying Goldfinch"	
P.9	Sketch 4: Sketch of starboard bowfoil outboard end and top view of starboard bowfoil outboard end	
P.11	Dynamic oil plant scheme plan of "Flying Flamingo"	
P.12	Dynamic oil plant scheme plan of "Flying Goldfinch"	
P.14	General plan of "Flying Flamingo"	
P.15	General plan of "Flying Goldfinch"	
P.25	Certified true copy of transcript of registration of "Flying Flamingo"	

Exhibit marking	Description of Document	Date
P.26	Certified true copy of transcript of registration of "Flying Goldfinch"	
P.27	Admiralty chart No.341 (Upper Portion) with plotting made by Captain Young	
P.29	Certified true copy of deck log of "Flying Albatross"	
P.30	Certified true copy of deck log of "Flying Condor"	
P.31	Certified true copy of deck log of "Flying Egret"	
P.32	Certified true copy of deck log of "Flying Ibis"	
P.33	Certified true copy of deck log of "Flying Sandpiper"	
P.34	Certified true copy of deck log of "Flying Skimmer"	
P.35	Certified true copy of deck log of "Sao Jorge"	
P.36	Certified true copy of deck log of "Flores"	
P.37	Radio log of "Flying Goldfinch"	
P.38	One photograph showing the starboard side bridge	
P.39	Radio log of "Flying Flamingo"	

O N A P P E A L

FROM THE COURT OF APPEAL IN HONG KONG

B E T W E E N :

KONG CHEUK KWAN

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS

No.1

In the
High Court
of Hong Kong

10

INDICTMENT

Case No. 292 of 1982

No.1
Indictment
26th November
1982

IN THE HIGH COURT OF HONG KONG

The Queen

v.

KONG Cheuk-kwan (1st Accused) (on bail)
NG Yui-kin (2nd Accused) (on bail)
HO Yim-pun (3rd Accused) (on bail)
John Coull (4th Accused) (on bail)

charged as follows:-

20

First Count (against 1st and 2nd
Accused)

STATEMENT OF OFFENCE

Common Law,
Cap.212,
sec.7

Manslaughter, contrary to
Common Law and section 7 of the
Offences against the Person
Ordinance, Cap.212.

PARTICULARS OF OFFENCE

30

KONG Cheuk-kwan and NG Yui-kin,
on the 11th day of July, 1982 on
board "the Flying Goldfinch", a

In the
High Court
of Hong Kong

No.1
Indictment
26th November
1982

(continued)

Common Law,
Cap.212,
sec.7

Hong Kong registered vessel,
unlawfully killed WU Yuk-ngan.

Second Count (against 3rd and
4th Accused)

STATEMENT OF OFFENCE

Manslaughter, contrary to
Common Law and section 7 of the
Offences against the Person
Ordinance, Cap.212.

PARTICULARS OF OFFENCE

10

BO Yim-pun and John Coull, on
the 11th day of July, 1982 on
board "the Flying Flamingo", a
Hong Kong registered vessel,
unlawfully killed WU Yuk-ngan.

Sd: M Lucas
(M.Lucas, Q.C.)
Crown Prosecutor
for Attorney General

Date: 26th November, 1982

20

To: KONG Cheuk-kwan (1st Accused) (on bail) -
13, Village House, Ping Kong
Tsuen, Sheung Shui, New
Territories, Hong Kong;

NG Yui-kin (2nd Accused) (on bail) -
Hon Kung Court, 15/F, Block C,
Taikoo Shing, Shauiwan,
Hong Kong;

HO Yim-pun (3rd Accused) (on bail) -
Room 2214, Tai On Building,
Shauiwan, Hong Kong; and

30

John Coull (4th Accused) (on bail) -
Flat 8B, 8/F, No.88, Nathan
Road, Kowloon, Hong Kong.

Take Notice that you will answer to the
Indictment whereof this is a true copy at the
High Court, Jackson Road, Central, on the
7th day of March 1983.

N.J.Barnett
Registrar
1 DEC 1982

40

IN THE HIGH COURT OF HONG KONG

In the
High Court
of Hong Kong

The Queen

Indictment for
(1) and (2)
Manslaughter

No.1
Indictment
26th November
1982

v.

KONG Cheuk-kwan
(1st Accused) (on bail)

(continued)

NG Yui-kin
(2nd Accused) (on bail)

HO Yim-pun
(3rd Accused) (on bail)

10 John Coull
(4th Accused) (on bail)

WITNESSES

- | | |
|--------------------------|-------------------------|
| (1) NG Chun-wai | (18) NG Chi-hung |
| (2) CHOI Chung-fai | (19) CHING Kwok-tai |
| (3) KWOK Sum | (20) NG Kwai-wing |
| (4) CHEUK Yee-yue | (21) SIT Cheung-kan |
| (5) Edmund TSANG Sik-yiu | (22) CHEUNG Chun-chung |
| (6) L.J.Marriott | (23) LAU Kwok-iu |
| (7) Sandra Marriott | (24) P.R.Owen |
| (8) LUK Siu-kei | (25) Raymond TANG |
| 20 (9) LAI Sheung-yin | Chung-keung |
| (10) CHAN Tin-choi | (26) Allan C.Pyrke |
| (11) Dr. Tin Ohn | (27) TING Lee-wah |
| (12) Dr. MAH Peh-yong | (28) M.M. de A. Junior |
| (13) Dr. YAN Kin-wing | (29) MAK Kwong-meng |
| (14) M.D.Cutler | (30) J.A. de A.Clemente |
| (15) George Young | (31) LING Hung-hay |
| (16) IP Ting-on | (32) WOO Tat-chung |
| (17) LEE Shun-yau | (33) LO Kam-shing |

Detective Senior Inspector LING Hung-hay i/c case

30 (Telephone No. : 3-692261 Ext. 33)

Attorney General's Chambers,
Hong Kong.

In the
High Court
of Hong Kong

No. 2

ARRAIGNMENT AND PLEAS

No.2
Arraignment
and Pleas

IN THE HIGH COURT OF JUSTICE
CRIMINAL JURISDICTION

Case No.292 of 1982

Transcript of the shorthand notes taken
by the Court Reporters at the trial of
Regina v. KONG Cheuk-kwan and three
others, charged with Manslaughter, before
the Honourable Mr. Justice Penlington.

10

Date: 7th March, 1983 at 10.10 a.m.

Present: Mr. D.W.Steel, Q.C., and Mr.K.M.Chong
(instructed by P.T.Yeung) for 1st
accused.

Mr.N.Aiken (Sinclair Roche) for 2nd
accused

Mr.A.Corrigan (Deacons) for 3rd and 4th
accused

Mr. M.Lucas, Q.C., Crown Prosecutor,
and Mr.J.R.W.Jenkyn-Jones, Crown
Counsel, for the Crown.

20

CLERK: Case No.292 of 1982, in the High Court
of Hong Kong, the Queen against KONG Cheuk-
kwan, 1st accused, NG Yui-kin, 2nd accused,
HO Yim-pun, 3rd accused, John Coull, 4th
accused. You are charged as follows:
First count against 1st and 2nd accused.
Statement of offence: manslaughter, contrary
to Common Law and Sect on 7 of the Offences
against the Person Ordinance, Cap.212.
Particulars of offence: KONG Cheuk-kwan and
NG YUI-kin on the 11th day of July, 1982,
on board the 'Flying Goldfinch', a Hongkong
registered vessel, unlawfully killed WU Yuk-
ngan. How say you, 1st accused KONG Cheuk-
kwan and 2nd accused NG Yui-kin, are you
guilty or not guilty?

30

1ST ACCUSED: I plead not guilty.

2ND ACCUSED: I plead not guilty.

CLERK: Second count against 3rd and 4th accused. 40
Statement of offence: manslaughter, contrary
to Common Law and Section 7 of the Offences
against the Person Ordinance, Cap.212.
Particulars of offence: HO Yim-pun and John
Coull on the 11th day of July, 1982 on board

the 'Flying Flamingo', a Hong Kong registered vessel, unlawfully killed WU Yuk-ngan. How say you, 3rd accused HO Yim-pun and 4th accused John Coull, are you guilty or not guilty?

In the
High Court
of Hong Kong

No.2
Arraignment
and Pleas

3RD ACCUSED: I plead not guilty.

4TH ACCUSED: Not guilty.

(continued)

10 MR. LUCAS: My Lord, I appear for the Crown
with my learned friend Mr. Jenkyn-Jones.
Mr. David Steel appears with Mr. Chong
for the 1st accused Capt.Kong. My
learned friend Mr. Aiken appears for the
2nd accused and my learned friend Mr.
Corrigan appears for the 3rd and 4th
accused. My Lord, there are two
preliminary matters, if I may: notice of
additional evidence has been given in
relation to four seamen and the court has
20 already received that notice. It was done
at such a late stage that it was never
translated, or the translation certified.
So I now tender those statements, translated
and certified. It would also appear, my
Lord, that unfortunately when serving the
additional statement of Capt.Pyrke, attached
to it and mentioned in it were some
questions of Vector diagrams which the
court never received nor, I am sorry, did
30 my learned friends. I am not quite sure
how that happened, but I do apologise.

COURT: Yes, thank you.

JURY EMPANELLED.

JURORS SWORN OR AFFIRMED.

CLERK: Members of the jury, these four accused
stand indicted for the following offences:
1st count against 1st and 2nd accused.
Statement of offence: manslaughter contrary
to Common Law and Section 7 of the Offences
against the Person Ordinance, Cap.212.
40 Particulars of offence: KONG Cheuk-kwan and
NG Yui-kin on the 11th day of July, 1982,
on board the 'Flying Goldfinch', a Hongkong
registered vessel, unlawfully killed WU
Yuk-ngan. 2nd count against 3rd and 4th
accused. Statement of offence: manslaughter,
contrary to Common Law and Section 7 of the
Offences against the Person Ordinance, Cap.
212. Particulars of offence: HO Yim-pun and
50 John Coull on the 11th day of July, 1982,
on board the 'Flying Flamingo', a Hongkong

In the
High Court
of Hong Kong

No.2
Arraignment
and Pleas

(continued)

registered vessel, unlawfully killed
WU Yuk-ngan. To this indictment they
have pleaded not guilty. It is therefore
your duty to say, having heard the
evidence, whether they be guilty or not
guilty.

No.3
Prosecution's
Opening
Address
7th March
1983

No.3

PROSECUTION'S OPENING
ADDRESS

MR. LUCAS: My Lord, may the jury first be 10
given copies of the photographs, exhibit
P.1.

May it please you, my Lord, members
of the jury, before we really start these
proceedings, I have the privilege of
addressing you and telling you something
about the Crown case. Before I do that
perhaps I should introduced myself and the
other parties in this case so that you
know who we are and what we are doing. 20
I appear with Mr. Toby Jenkyn-Jones for
the Crown. I appear to prosecute. My
learned friends Mr. Steel and Mr. Chong
sitting behind me appear for Capt.Kong.
Now Capt.Kong is the 1st accused. He is
the gentelman sitting on your right closest
to his Lordship. For the 2nd accused, my
learned friend Mr. Nigel Aiken appears.
The 2nd accused is Mr. Ng and he is the 30
second one along. And my learned friend
Mr. Corrigan appears for both 3 and 4. 30
The 3rd accused is Mr. Ho and the 4th
accused is Capt. Coull.

Now members of the jury, on the 11th
day of July, 1982, two hydrofoils belonging
to the Hong Kong Hydrofoil Company, that
is a British company registered in Hongkong,
two hydrofoils from the same company
collided with each other in the middle of
the open sea between Lantau and Macau. As 40
a result of that collision were that four
people died, and others were injured.
One of the persons who died was a lady, a

25-year-old lady, called WU Yuk-ngan. She is the lady mentioned in the indictment.

In the
High Court
of Hong Kong

Now as a matter of common sense we don't prove all the injuries, all the deaths. There is no point in it. What we are seeking to establish in this particular case is the gravamen of the offence - what these men actually did.

No.3
Prosecution's
Opening
Address
7th March
1983

10 In order to set the scene, members of
the jury, I will take you through in a moment
some plans and some maps of the general area.
But, members of the jury, may I make this
preliminary remark and that is this: you really
don't have to be, as some of my learned friends
and certainly his Lordship is, an expert in
navigation or nautical matters to understand
this case. You don't have to be a ship's
captain or a trained seaman, or even a week-end
20 sailor. It is our submission that at the end
of the day we will be calling upon you to use
the common sense that you use in your everyday
affairs. You don't have to be an expert
mariner to understand what is going on.

(continued)

30 I am delighted to say that of course
because I have got no idea in this particular
area at all. My learned friend Mr. Jenkyn-Jones
has been trying to teach me desperately over the
last couple of weeks something about these
matters. I now know that the left hand side is
the port side because you use the phrase "who
left the red port". But apart from that, not
a great deal of knowledge. But I don't need it,
I submit, nor do you. I come armed with little
bits of paper which tell me how long a cable is,
what a knot is and what points are on a compass.

We will be calling experts to assist you
at some stage in the proceeding, but basically
it is my submission to you, members of the jury,
that this is good solid common sense.

40 Now first of all, members of the jury, bear
this in mind; these are two hydrofoils travelling
between here and Macau. One of them is supposed
to be going to Macau and the other one is
supposed to be coming to Hongkong. If you look
at the photographs you will see the two ships are
called the 'Goldfinch' and the 'Flamingo'.

50 The 'Flying Flamingo', if you look at the
photographs, P.1 - now they are marked in this
sort of order, you see, you have P.1 as the
number of the whole exhibit and then you have

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

P.1(1) thereafter - P.1 is the 'Flying Flamingo' and it shows you where the impact occurred on that particular ship. If you look at photograph P.7, go down seven, you will see a close-up of that particular damage. If you go to P.8, another close-up -- I beg your pardon, it is not numbered, I have numbered them myself. If you count 1, 2, 3, 4, 5, 6, 7 from the top you will see this photograph. Now that is the Flamingo and that clearly shows where it was struck. 10

The next one on is photograph No.8, a close-up of the same scene. Photograph 9, the same - another close-up. Photograph 10, another close-up. And photograph 13, three more further down, you will see inside the cabin where the impact took place, and in fact that's where the deceased - in fact there were two deceased in this particular cabin, and one of our witnesses actually was sitting next in this particular cabin when the impact took place. 20

In relation to the other boat, which is the Goldfinch, if you look down to the photograph No.18, that is a photograph, a front-on shot of the Goldfinch, and three on from that, another one taken from the side showing where the damage to the Goldfinch was. And if you care to go back you will see yet another one, No.15, which is a close-up to that one.

You don't need to be an engineer or a nautical man to realise that the Flamingo was struck by pretty much the front of the Goldfinch pretty much amidships. At what angle we will go into later. But that is clearly the point of impact. 30

The Flamingo, the boat that you see on the top of your photographs, was heading towards Macau. The Goldfinch, the one that struck the Flamingo, was in fact coming from Macau heading for Hongkong. 40

The personalities involved, members of the jury, are Capt. Kong was at the helm of the Goldfinch, the one that struck. Sitting next to him in the deck officer's chair was Mr. Ng, the 2nd accused. Helming the Flamingo was Mr. Ho, the third gentleman along that row and sitting in the side seat next to him at the time of the impact was Capt. Coull.

Now the other thing that we should make clear about this particular incident, members of the jury, is this: it happened on a day where 50

visibility was described as 12 miles, one of those magic days that we get in Hongkong - flat, calm seas, and in the middle of a vast expanse of sea this collision took place.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

10 Now I would like to show you something of the area, and in order to do that I have to go and use this machine with the help of a police officer. Now over on this side of the map you see Macau. These various figures by the way, and these various lines which caused me so much confusion are depths of water and shelving below the water. So in order to help me out, and I'll help the jury out, these marks were made around the land so that we can distinguish bits of land from the seas so that we would not be confused by this, or these marks along here.

(continued)

20 You will see from Macau there is the island of Ching Chau, San Chau, Niu Tou. There is here a point called Fan Lau and a point here on Lantao called Bluff Point, and through here to Cheung Chau. Now Tsing Yi Island is here. So if you know anything about the particular travelling routes to Macau you come out of Hongkong Harbour, normally come down here, through this passage-way here and across to Macau and vice versa, 30 although it is possible to go up north, towards the Brothers, down here and in through there.

So just to get you, Lantao here, the approximate position of the collision is the red dot there.

40 I demonstrate this, members of the jury, because I think it is very important for you to bear in mind that we are not talking about a collision between two motor vehicles at an intersection: we are not talking about bumping into each other in a crowded area or pushing someone in Causeway Bay. What we are talking about are two vessels which collide with each other in that spot one hitting the other.

50 Now these vessels, members of the jury, travel at 32 knots. They carry 125 passengers when full, and on the particular morning in question the Flamingo which was going from Hongkong and heading towards Macau was in fact full. The lady, Mrs. Wu, that we are talking about, who died, was one of the party of people

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

from a Mitsui branch of works here and they were going off on a company outing. It was so full that not all the people from that company got on board, and Madam Wu and her husband were two of the people who did get on board, and eight people were left off so that when we are talking about this craft we are talking about a craft which is 100 odd feet long approximately, it carries 125 people when it is full.

10

(continued)

It has a crew of four people. Those four people sit -- there is an engineer who sits on the right hand side - and I will show you this in a moment on the plans of the particular hydrofoils. There is the helmsman who sits in the middle. There is the first officer or deck officer who sits on the left and a radio officer who sits either behind, one or other side, it depends on the boat. But the first three sit in the same order in both boats.

20

The helmsman can be either the captain or the deck officer. It is the Crown case that both these people are responsible for the safety of this particular boat and have the responsibility to keep an eye, a proper look-out, because these boats travel so fast and there are in the waters in this area so much in the way of traffic, and more particularly so much in the way of debris etc. that it is the Crown's submission, and will call an expert along these lines to tell you that it requires two people to properly control, run and see to the safety of the persons on those boats.

30

Now the boats themselves of course travel on foils. That's why they are called hydrofoils. They travel, as I said, at 32 knots. One of the interesting things about these things is this, that if you stop them or slow down, and they go down to the hull, they slow down very quickly, and the stopping distance of one of these things is about 250 feet so that we are talking about a craft that is both fast and therefore by definition manoeuvrable. We are also talking about a craft which can stop in relatively quick distances.

40

We are also talking, members of the jury, of a vast expanse. Picture the scene, members of the jury, because this is what we will ask you, through the witnesses, to do; picture the scene: Hongkong magic days; weather; flat, calm; two boats, one extensibly going in this direction and one extensibly coming in this

50

direction, who managed to collide at full force. You can see from the side of those photographs that they collided when they were on their foils - the experts will demonstrate this, but the photographs themselves certainly do - when they were on their foils at full speed.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

10 Now members of the jury, I will come to why we consider this a case of manslaughter in a minute because it is my submission it fits the law in the context of that sort of collision.

(continued)

20 The question of going north, members of the jury, in relation to coming to Hongkong - the normal course is along here, backwards and forwards. There are occasions when people do travel north from Macau over through the Brothers and down that way. The normal sort of situation for that is bad weather, fog, rough seas, in other words, passenger comfort or navigation safety, or it can be the will of the captain. But in relation to the short quick route and on a day like this, that is the route.

30 So the red spot, collision point - notice how far it is from land. I mean this is the whole of Lantao. Let's get this into perspective, and that island after all is bigger than Hongkong Island. That area here is where the collision took place. Two boats, full speed, collide without getting off their foils and clearly, on the evidence, making no great effort to avoid each other.

40 Now the next plan that we have which demonstrates more clearly the route. I think, members of the jury, that you all have a long map. I am just putting it up here to sort of show you. Now that is a larger one. This is the bottom of Lantao. This is the route that comes around the south of Lantao heading towards the point that we saw earlier called Fan Lau Point which is the corner - the bottom corner of Lantao is called Fan Lau. There it is there.

Now in here, that is the island Siu Ah Chau and it is a beacon here - Siu Ah Chau beacon. And you will notice that there are marks here which indicate beacons here. Those black exclamation marks apparently on your maps are signs of beacons.

50 So the normal course of that is you stay, if you are helming one of these boats, you stay

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

on the starboard side and you drive on this side of the track, and the chap who is coming on the other direction going towards Hongkong also stays on the starboard side. That is one of the rules of the road, and this is a sort of separation area, a channel which is provided so that people can within the channel head in either direction.

The boats leave Fan Lau and go from there, if they are going on a direct route, across all the way to Macau, and you will see beacons No.21 and 22 which are mentioned by some of the witnesses in their evidence. They are the last beacons. As you come out of Macau you drift along this line here, come to beacons 21 and 22 and then you are off, as it were, straight across the sea to Hongkong Island.

Now it is impossible to get all this plan in, but going across you will see the close-up of Ching Chau, San Chau, Niu Tou and once again the bottom end of Lantao, Fan Lau Point. Bear in mind, if you would be good enough to remember, Bluff Point is further up here, and this is Fan Lau. The approximate area of collision is about there.

Now members of the jury, to make the point again if I may; I have taken yet another transparency and we set up here the approximate area of the accident. You notice the size now in this transparency of Niu Tou and compare it with the size of the islands on your particular map. In order to demonstrate, and I will do this through the expert later, to demonstrate the size and scale of this - because we tend, unfortunately, to get involved in thinking in terms of these things as being 100 feet long and therefore quite long. I want you to put them in perspective in relation to this accident. What we have done is we have taken another transparency and we have marked it with the approximate size of those two boats as they are in that sort of area, and there they are - Flamingo, Goldfinch. That, members of the jury, in my submission, gives you some idea of the factual situation we are talking about when we are talking about this collision.

We that know nothing about the sea, and we that know nothing of nautical matters must somehow - and I found it difficult, hence this little exercise - somehow understand what we are talking about - we are not talking about

narrow channels. And although the boat is 100 feet long, members of the jury, 100 feet long in an area of this size you disappear into that sort of size. And when we talk in terms of those two things colliding in that sort of area, quite honestly, members of the jury, it is uneasy, with respect. It is not an easy thing to do to actually collide one with the other in those sort of circumstances.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

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Bear in mind this also: if you have two boats travelling towards each other at an angle like so -if they are at 45° with each other they can't do like this because if they do one will go here and the other will pass underneath. In order for them to be at 45° and they come in like this at a collision point they would be within the view of each other for a considerable margin of time. If one of those boats does this sort of thing then he will be in view even further and farther back to the bloke who is sitting there watching and driving the boat - forget the watch-keeping man who should be keeping an eye throughout.

(continued)

20

So if I can demonstrate first of all and get into your minds the scope of the subject, as it were, what we are actually talking about, then we can get down to particularise why. You see, members of the jury, it is the Crown's submission that as a matter of fact and of law these four accused persons are guilty of manslaughter of Madam Wu. As a question of fact they are guilty of the death and as a question of law, members of the jury, they are responsible in law and guilty of manslaughter.

30

Now manslaughter as a concept to discuss by itself is not a simple one and so it is a lot easier to sort of think of it in homicide terms and work it out. Get that into perspective as well. Homicide, members of the jury, is the taking of a human life where there is a penalty involved. That is a pretty broad definition, but that will do for our purposes.

40

Homicide basically is divided into murder and manslaughter. Murder, members of the jury, if I take a knife intending to do serious bodily harm to someone -- well, let's start from the top. If I take a knife and stab someone intending to kill that person and the person dies, that is murder. If I take a knife intending to do serious harm to a person, not intending to kill, but the person dies, I am still guilty of murder because the fact that I did not intend death does not matter

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In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

if I intended serious bodily harm.

Now manslaughter comes in below that, well below that. In the context of this we have manslaughter which can be voluntary manslaughter. In other words, if the reason I took the knife and stabbed someone is because that person so provoked me that I lost control of myself and the jury agrees that it was reasonable I should do so, that is manslaughter. So that's a gradation.

10

But then we have what we call involuntary manslaughter. If I do an unlawful act which could cause injury and in fact causes death, but I did not intend that death nor was I realised it was possible or did I intend to do any harm, notwithstanding that I am guilty and can be guilty of manslaughter. In other words, if I do an unlawful act, if I punch someone in the jaw, that is an assault, it is an unlawful act. The person dies as a consequence not intended, completely outside my scope of thought, that, members of the jury, is manslaughter and I am guilty of that offence.

20

There is another sort of manslaughter as well. If I am grossly negligent and if as a result of my gross negligence a person dies, then I am also guilty of manslaughter, if I failed in the duty of care. If I have a duty of care, responsibility towards someone, and I fail to exercise that duty of care, in fact I am grossly negligent in relation to that duty of care and someone dies, then I am responsible for that person's death.

30

Now let us take it slowly. A person must have a duty of care, responsibility towards someone. In other words, I am the captain of a hydrofoil and I have the responsibility of the lives of the people on board to exercise that duty of care towards them. If I don't exercise that duty of care it may be manslaughter if it is gross negligence.

40

Now gross negligence has been described as all sorts of things. It has been described as being wicked negligence, criminal negligence, gross negligence, culpable negligence, but gross negligence, members of the jury, is a matter for you.

50

"Have the people in this particular case,"

may well be the question asked, "been grossly negligent?" They can be grossly negligent in two ways. A person can be negligent if he sees a particular dangerous situation, assesses it - so I see that there is a risk - I am doing something, I see that there is a risk, but I carry on doing it and ignore the risk, and I have neither regard or heed to the risk, in other words I decide - I see that there is a risk, I go ahead and proceed on the basis and just ignore the risk, and a reasonable hydrofoil officer would not have done that, then that, in my submission, would be grossly negligent.

In the High Court of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

Now there are occasions when you don't see the situation at all, in other words, if you have not bothered to even assess the situation.

So if you grossly negligently take the risk, that is manslaughter if someone dies, or alternatively, you don't even bother to look and that act in itself is grossly negligent, that is also manslaughter.

What the law says basically - the law really is, members of the jury, a very sensible sort of thing. There comes a time, members of the jury, where negligence goes beyond mere civil responsibility. There comes a time when you look at an act of negligence and you say this is some conduct that warrants something more than civil responsibility, it has reached the point where they show such a disregard for the life and safety of others that it converts itself to a crime against the state and conduct deserving punishment. That is what we are talking about, members of the jury, gross negligence. You assess the situation and decide grossly negligently to take a chance or, alternatively, you don't take any notice at all, you miss the whole game, as it were, and that act in itself is grossly negligent.

Now, members of the jury, questions of negligence are for you. You will be advised and assisted during the course of this case by experts, and experts are entitled to give you opinions. But that is what they are. They are opinions which you may or may not rely. You are called into this court, members of the jury, not as experts. You are called in here to bring your reasonable common sense, to bring to this court the same sort of care in the situation you are dealing with as you would do so in your own private affairs. If you look at the situation and

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

say to yourselves, "Look either these people in this particular case" -- because here we have, members of the jury, two hydrofoils which collide at full speed after holding, - must have been holding a collision course which was apparent to civilians - and I'll come to that in a minute - were holding a collision course which should have been apparent to those who were keeping a look-out. If a proper look-out was being kept then the collision should have been apparent and efforts could have, and should have been made by both these boats to avoid this collision; or they just weren't looking. Given that situation, members of the jury, either way, when you have that sort of situation, in my submission, those persons are grossly negligent and responsible in manslaughter. 10

So if two hydrofoils collide at full speed after holding a course during which the danger of collision was apparent, (and we will show that that's certainly the case), or certainly would have been apparent if a proper look-out was maintained by those in control of the vessels and both vessels, remember this, both vessels could have done something to avoid this collision. There is not a great deal of need to be done if you are travelling at these sort of speeds - a slowing down. You see, the thing is 100 feet long. 50 feet, or half way down the thing, say, or 60 feet, whichever way you like, is where the collision took place. All that requires is a slowing down to miss completely. All that needs is a deviation of course. Now if you deviate more than 10° or 11°, I understand, on these things too quickly you come down off your foils anyway. So there were things that both sides could have done. 20 30

Because the fascinating thing about this case is this: we seem to have contrasted an air of tranquility and absolutely no sign of danger at all in the cockpits of both, whatever they are called, the wheelhouses of both these boats, whereas on board amongst the civilians there it was clear warning from all sorts of people that something drastic was going to happen. In other words, those on board who are not trained were able to see in some cases that a collision was going to occur. There is some conflict in the evidence, I will come to this in a moment. 40 50

So you see, it is not a situation, as I say, of something happened unexpectedly. There

was in this particular case at considerable distances apart, and the distances vary, an awareness in people not trained that a collision was imminent or could have happened.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

10 Now bear in mind, members of the jury, this: these men in the dock are trained, fully qualified seamen. The captains hold a certificate not just to drive hydrofoils, or helm hydrofoils, whatever it's called, they are sea-going sailors. They are trained. They have to pass exams. They have to go through their exams and they are people with background. (continued)

20 The civilians in this case, we will be calling, members of the jury, all sorts of witnesses, but basically we can divide them into this sort of group: I will be calling witnesses who were on- civilian witnesses, if I may use that expression, who were on both boats; I will be calling seamen, ordinary seamen, two on each boat, who will tell you what they saw and felt; and I will be calling a radio officer about another matter. But in relation to the accident I will be calling civilians and they do to some extent, as all honest witnesses do from time to time, conflict with each other in details. But what does come through loud and clear was an awareness by a number of these people that something untoward was happening and doing something about it.

30 The witnesses I propose to call in this particular category start with a Mr Ng. Now Mr. Ng in fact is the husband of the lady who died in this accident. He will tell you that they got on board the Flying Flamingo and he and his wife sat upstairs on the top deck of the boat. After they had been going for a while what happened was this apparently: the Flamingo actually did stop prior to the collision south of Lantao because it had on its foil some rubbish of some sort, and because it had been fouled in that way it stopped, backed off and moved on. So there was a stop before it got on to Lantao, and then it set off in what appears to be a direct course for Macau.

40 And Mr Ng will tell you that he and his wife had seats on the top. He left his wife for a moment, went downstairs to speak to some of his colleagues when he heard a noise, a 'loong', a bang, the collision occurred. He went upstairs. He found his wife had been thrown across the top of the vessel. She was unconscious, in a comma, her head was bleeding and eventually she was taken

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

to hospital and she died.

Mr. Choi is the man who was sitting next to that lady, who survives of this. He was sitting between two women. He suddenly looked up and saw a hydrofoil coming at him through the window. 'When I looked through the window,' he said, 'I saw a hydrofoil approaching at high speed and then it crashed onto the place where we were sitting. At that time I made a shout and heard a loud sound.' Now he is the man who is sitting with his back to the potential impact who has time, turns round, looks out, shouts and then the bang occurs. 10

There is a Mr. Kwok. Now he is also on the Flying Flamingo. Now Mr. Kwok says this, "At about 9.20 in the morning I first spotted a hydrofoil heading towards the starboard midship of our vessel about 300 yards away. At that time I thought there must be a mistake, so I paid attention to the opposite vessel and in less than one minute I saw the opposite vessel crashing amidship of ours. Before the collision I did not notice any alteration of course or speed of the opposite vessel, nor did I feel any change of course or speed of our vessel." 20

So he says that at a distance of 300 yards he saw this thing coming towards him. He is not an expert. His reaction was there must be some mistake, and sure enough there was a major mistake throughout because it collided back into the side of his ship. But notice the distance at which he was seeing - according to him he saw it at 300 yards. 30

Mr. Cheuk who was also on the boat says this: "About 10 to 15 minutes after the Flying Flamingo resumed its speed I saw a hydrofoil approaching her at 90° from the starboard. And when the two vessels were about 400-500 yards apart I spoke to another man and he thought they were making mistakes." And he said both vessels were remaining on full speed and approaching, as far as he was concerned, at the same angle. After he had spoken to his friend he saw it reaching the starboard midship of the off side of the Flamingo. He shouted that it was going to collide and "I grasped onto a railing. The vessel then collided." And then he went onto the upper deck after the event. Once again he says "400 or 500 yards away I was aware that something odd was going on." And he's standing up there on the deck as 40 50

a passenger, as a civilian.

In the
High Court
of Hong Kong

10 Mr. Tsang is another gentleman who
having been on board the boat for about
half an hour felt that it was a bit stuffy
and he went upstairs and they stood on the
starboard side of the deck near the stern
of the vessel. He remembers that the
Flamingo stopped at one stage for a couple
of minutes and then it re-started again and
he says, "We remained on the deck and were
looking at the surrounding scenery. A
moment later, while we were looking around
and chatting, I noticed another hydrofoil
at about 500 yards off our vessel on the
starboard side heading at our own. It was
travelling at high speed on its foils. At
this juncture my friend said something to
me about the vessel. By this time the
approaching vessel is already about 200 yards
20 off."

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

So he watches it and is concerned about
it from a point 500 yards away. Remember the
stopping distances of these vehicles when you
think in terms of these boats.

30 "We realised that there would be an
imminent collision between both vessels,
so we both held tight onto the handrail and
ducked down. Immediately followed then was
a big 'bang'. I was thrown back and forth on
the deck for several times with my back
hitting on the bench."

So he sees this coming a long distance
away. No deviation from either boat. They
both continued to head on into a situation where
it was clear to those who are not trained that
something untoward was going to happen.

40 There is a Mr. Marriott. Now Mr. Marriott
says that when he was on deck, he was up there
with his wife and child, he first saw a hydrofoil
coming towards him about 5 or 6 miles off the
starboard side of the bow heading east-north-east.
It is interesting, members of the jury, because
east-north-east is, as I understand it, in this
direction. Now I will come back to this in a
moment, members of the jury. At the time he
did not pay attention to it. A moment later
when he caught sight of the same hydrofoil again
"it was already about 100 feet abeam of our
hydrofoil coming at full speed of foilborne
50 without slowing down or altering course. There
was no alarm of warning given out by the 'Flying
Flamingo' nor did I feel any swing significantly
prior to the collision. I immediately grabbed

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

hold of my son and by this time a collision took place."

Now members of the jury, he was able to look out, see what he thought was an imminent collision and try and make some effort to get his son. So he had time to do things.

You'll notice the civilians had time to do something and that is the important thing to bear in mind - the civilians had time to do something, whatever the distances are. And remember, members of the jury, when you talk in terms of witnesses who are involved in something like this, don't expect a mathematical formular type of situation. What they give you is an impression of what they saw. The fact is, and bear this in mind, that the clear impression they all give is they had time to do something - those who saw. Some of them had time to do something about it.

10

Now in relation to that Mrs. Marriott, his wife, was up there. Now by the way, Mr. Marriott has some sail boat experience; he has a certificate, I think, and he has some idea of navigation, and he took the view as I say and tried to protect his son. He had time to try and pare off and grab his son before the accident.

20

Mrs. Marriott who was also there says she saw it heading towards them. "After 3 or 4 seconds", which in these terms is quite a long time, "it crashed into our midship." So we are talking there in relation to her an awareness of something untoward was going to happen." As a result of the impact, I was thrown to the floor. The scene was chaotic". And she got up and went over to the other vessel.

30

Now on board these boats, apart from the deck officers, are sailors, ordinary sailors. Four of those sailors are going to be called: two of them, a Mr. Ho and Mr. Chan, from the Flying Flamingo and two of them, Mr. Lo and Mr. Leung, from the Flying Goldfinch.

40

Now Mr. Ho of the Flying Flamingo - now bear in mind he is the one who says he came over - Flamingo is the one that comes across from Hongkong heading for Macau, the one that stays in a straight non-deviating line. He says that he was sitting on the bow on the upper deck midship looking over - he was sitting up here, looking over the stern. He is on the Flamingo, if you recall, watching the wake. Suddenly he heard someone shouting and much - about something.

50

He turned around, looked through the starboard window and he saw another vessel coming towards the Flying Flamingo at high speed.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

10 He says it was heading towards them at a slightly curved angle, slightly curving to the right as it came towards him. Now, here is what Mr. Ho did - he shouted "How can it be like this" six or seven times according to him, then he lay down on the deck floor, then he held onto the handrail and then, members of the jury, one or two seconds after that the collision occurred.

(continued)

20 Now, forget how much time that takes and let's not put a stop-watch to this sort of situation. Bear in mind what he had time to do. He heard other people attract his attention, he turned and looked because of the noise he heard, he looked out the window and saw the boat heading what he thought was straight towards him. He shouted six or seven times words to the effect "What's going on," he then gets down on the ground, holds on, one or two seconds later, there is an impact. It matters not whether it be one second or four seconds, but the fact is there is ample time for him, he, a seaman, to take some sort of action.

30 Mr. CHAN Shek. He says he was sitting on a stool at the midship upper deck facing the portside of the ship - this one apparently. There were some passengers in front of him. He notices that they, the passengers, started acting strangely. So both these men are reactive, are reactive to the conduct of the other civilians on board. He noticed that they suddenly started acting strangely, and looking towards the starboard side, he turned, had a look himself and saw another hydrofoil coming towards him in a curve. He talks about a curve as well. He had time to say, "Why the vessel steered this way?" and the collision then occurred.

40 So two men respond to noises of passengers, that something untoward has happened. He is attracted by that first. One of them has time to go through this sequence of events before he takes action to protect himself.

The sailors on the Goldfinch. There are two of those

50 COURT: Would this time be convenient?
11.35 a.m. Court adjourns.

In the
High Court
of Hong Kong

No. 3
Prosecution's
Opening
Address
7th March
1983

(continued)

11.56 a.m. Court resumes

All accused present. Appearances as before.
Jury present.

MR. LUCAS: May it please you, my Lord. I have just finished dealing with the sailors on the Flamingo. The sailors on the Goldfinch that I will be calling are also two and they have this to say. There's a gentleman called Mr. LO and he was sitting amidship on the upper deck looking out the stern at the back of the boat.

10

Now, he's on the Goldfinch, remember, the one coming from Macau. He watched the wake and he noticed the boat turned hard to starboard. So he is sitting here, as it were, and somebody's doing the boat, doing a hard turn to starboard - now, the experts will tell by the way that when they are talking in terms of hard turns, it is, I think, ten or eleven degrees rudder - that he felt a hard turn to starboard, he thought it odd and turned around to face the front. He then saw the other hydrofoil, Flying Flamingo, shortly after the collision occurred.

20

So his recollection and his reaction to the particular incident is in sequence a feeling of a turn to starboard, and then looking up and then finding a collision occurred.

30

Mr. LEUNG who is also on the same boat, also a sailor, and he was sitting on the tool box on the upper deck in amidships area and he was looking out over the stern of the boat looking at the wake as well, and he also saw this hard turn to starboard, so he stood up and looked to the front of the boat through the portside window. He then saw the stern of the other hydrofoil, the Flying Flamingo. He shouted out, "Is there anything wrong?" He turned, gripped hold of the staircase rail and he said it took about five seconds from turning to collision.

40

So both these men tell a story of a turn to starboard. Assuming the Flamingo is travelling in this direction, straight up, a turn from the Goldfinch in a hard turn into starboard and then a collision occurring after that.

50

So the evidence seems to point that the Flamingo coming out of the Fan Lau Point below Lantau heading across towards Macau. The Goldfinch, which even on the admission of Captain KONG was far to the north of its normal route, appears to come across.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

10 Now, you will remember the photographs, the demonstrations I put to you about the impact. Now, some of these witnesses tell us of course that when they looked up the other ship was hard to starboard or abeam. Now, clearly that can't be accurate as I said because if you have two boats, one here and one there, when they are three or four or five hundred yards apart, clearly that's going to happen if they go on a straight line. It makes sense.

(continued)

20 These sort of nuances, it is my submission to you, members of the jury, really needn't concern you. What you should consider is the overall effect of the witnesses that will be giving evidence before you as to the time involved, as to the reality that an impact was going to take place, as to a situation of danger being arising and they being conscious of it sometime before it actually happened.

30 Now, in relation to the collision itself, as I say, one of the witnesses Mr. Marriott talks about the boat being a hundred yards abeam when he saw it, but that seems to put, for some extraordinary reason - if the evidence is correct that they were going straight across, if the Flamingo was going straight across - it seems to indicate that there was a turn from the Goldfinch towards the south, which is not at this stage in the proceedings explicable, I will make comments about it at a later stage, but the evidence seems to be of a course set by Flamingo across towards Macau and the other one coming across at
40 some stage, either in a hard turn or not will depend of what you accept of the evidence.

Now, the overall effect of all this evidence, in my submission, is this, that civilians were able to say "Look, I saw a long time before anything happened that an accident was going to take place, that there was going to be a collision. In some cases I had time to take preventive actions. In some cases I had time - considerable time to do something about all this."

50 And also what comes through loud and clear, if I may say, in the evidence is this, that in so far as the impact that occurred, they all talked

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

of coming in from the side and also that there was prior to the event some, to say the least, consternation by the passengers which attracted the attention of at least two or three people prior to the event.

We will be calling in relation to this collision experts in relation to that and other matters. Two of them will be called, a Captain Pyrke and a Mr. Raymond Tang, who will tell you that they examined the two ships after the event and came to the conclusion that at the time of the actual impact, the angle of the impact was either, according to one of them, 50 to 70 degrees, like so, and the other one 60 to 80 degrees, approximately like so. 10

What is also clear is that the Goldfinch had done something to correct or try to correct, to try and turn away at the very last moment. They were still on foils, but the e seems to have been a turn to port which may, members of the 20 jury, indicate that the broad angle, if the passengers are right, that there was a broad angle of collision but at the last moment there was a swing by this boat which brought it in at an angle not quite so broad.

I would normally, if I could understand it, take you through these experts' evidence and tell you and explain to you why they came to this conclusion. The effect of it is just that - the effect is that there are these two witnesses who 30 will be called to give evidence to tell you of the angle which corresponds substantially with that is said by the civilian witnesses.

So, members of the jury, the authorities of course when you have a situation like this which is on the face of it inexplicable, go to the people who after all are best able to explain what happened. So in relation to each of these four accused, statements were taken which will be put before you in due course. 40

Substantially the statement taken from Captain Coull who is the 4th accused, says that,

"Prior to the collision on th t day I was sitting in the seat looking out of the window and I first sighted a hydrofoil of our same company approaching from the opposite direction at the position between one or two miles north of Ching Chau and about four to five miles distance and 10 degrees to 15 degrees starboard ahead of my 50 ship."

May I just say this, by the way, at the particular time in question there were, and there still are, two companies that flied between here and Macau in hydrofoils and jetfoils, one is the Hong Kong Macau Hydrofoil Company which is this company, and one is the Far East Company. At the time there were painted on the side of the vessels of this company a blue stripe, a distinctive blue stripe, and at the time as well there were painted on the vessels of the Far East Company a distinctive red stripe; a stripe, therefore, in the sort of visibility we are talking about on that particular day, was clearly distinguishable.

In the High Court of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

In any event, so he sees a boat of his company coming ahead of him two miles north. He then says,

20 "Shortly prior to the collision, the last time I caught sight of the other approaching vessel was when it was approximately 45 degrees starboard and two to three cables from our vessel. I did not do anything special but keeping a look-out. At that moment, I was sure that both vessels will pass on a reciprocal course about 500 to 600 feet apart. A few seconds later, the Deck Officer shouted out a few words in Chinese, I turned to him and asked what was wrong, then a big "BANG" followed."

30 Now, two things emerged from that statement, in my submission, members of the jury, and that is this, notwithstanding the pandemonium that seemed to be going on upstairs amongst the civilian passengers, untrained, there seemed to be in this particular and both these deck houses an air of tranquility. That's quite surprising.

40 We will also be calling witness - well, Captain Pyrke as an expert witness to demonstrate to you that that particular story can't be right and he will tell you, as he has thoroughly explained to me many times, that if you have a ship at an angle of 45 degrees, one from the other, heading in reciprocal courses, it is impossible for those two ships, travelling at full speed as they did to ever collide.

50 He will also tell you in relation to this particular statement and in fact as a matter of general evidence that the two persons on the bridge of these boats, one is at the helm and the one on the lefthand side a watch-keeping officer

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

and that he has a responsibility and a clear responsibility because of the speed of these things and for other factors he will tell you to keep a proper look-out. It is not left just for the man who is steering the boat, so that they are both responsible.

So Captain Coull's statement, on our experts' evidence, one, it is surprising that nothing is seen because he says in fact he was keeping watch, he says in fact that he didn't see anything and that nothing unusual happened in this helm-house or wheel-house until just before the event.

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Mr. HO who was in fact helming the Flamingo, he said,

"I saw another hydrofoil sailing towards us from the opposite direction not far away. The other hydrofoil was at about 10 degrees on the starboard side of our hydrofoil about 4 to 5 miles from us. At that time, the sea was very calm and the weather was very fine. There were not too many vessels on the sea. At that time I did not pay special attention to the said hydrofoil as it was very common.

20

Shortly afterwards, when I again notices the said hydrofoil which was at about 20 degrees on our starboard side about 3-4 miles away. At that time, the bow of our hydrofoil was heading towards the Tai Pak, Macau and our navigation route was not changed. I did not feel that the other hydrofoil had changed its route. Under that circumstances, I presumed that if both hydrofoils maintained their route, the other hydrofoil would pass by our hydrofoil about 500 to 600 ft. away safely. It was very common, so I did not pay attention to it, but to observe the sea in front and the two side mirrors to see if any other vessel was overtaking us. Later, when I noticed the other hydrofoil again, I discovered that it would cut across our bow. At that time, it was at about 40 degrees on our starboard side 200 feet away. I shouted out, "Wa, why is that." I then stood up and held the two foil levers with both of my hands. Then there was a loud noise of bumping."

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So here's the man who's steering this

particular boat, who says that he loses sight of it for some three minutes although it must have clearly been in his vision for that period of time on any story at all.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March 1983

10 Secondly, in relation to that particular story as well, what we have there is this, according to his story you have both his ship down here and then about three miles away over here at about 20 degrees angle this ship. Now, if in fact that is accurate, they would not have passed by anything like, according to our experts, five or six hundred feet but would have passed by some 3,000 feet. If, however, according to our experts, it was going to pass at that sort of distance, what the helmsman, what Mr. HO would have seen would have been a boat showing some portside which is a situation of danger.

20 If this boat in his estimation was going to cut past at 500 or 600 feet from it, it would have been at that sort of angle and at that sort of angle you have the risk of collision, and there are collision regulations which will be explained to you that would indicate that he should at that stage have started taking some action, not, according to him, to turn away and do nothing and look nowhere at all.

30 Mr. NG, the 2nd accused, according to him, he sat reading and working on his log book. He says,

40 "At 0963 hours when hydrofoil Flying Goldfinch was passing Ching Chau on its way to Hong Kong, I asked the Radio Operator for the draft of the log book of the boat and I wrote in the log book. When I was writing I did look outside and see a hydrofoil heading for Macau one mile away at 15 degrees on our starboard side. Having seen her I then continued to write in the log book. About 0926 hours, when I was writing the log book, suddenly there was a "Bang" sound. I looked towards the sea and saw our hydrofoil collide with another hydrofoil."

50 Now, according to him he saw nothing. He was writing in his log book. He doesn't feel anything odd or strange. Now, remember the sailors on board the back of his boat feel this hard turn to starboard, so much as that they -- I beg your pardon. They saw a hard turn to

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

starboard at least and one of them took some action in relation to it.

Now, in relation to that particular officer and to those officers generally, it would be the evidence of Captain Pyrke that they have a responsibility in that situation to keep a proper look-out and that there was a failure at the very least on his part of keeping a proper look-out.

(continued)

There is also in his statement this air of tranquility.

10

We also have the evidence of Captain KONG. Now, remember he was at the helm of the Flying Goldfinch, the one that actually came into the side of the other boat. He said,

"When my boat sailed till 0922 hours, she was abeam with Ching Chau. The latter was on our starboard side and my boat was in its north. I then found Ching Chau was quite far away from my boat, in my estimation between 1.3 and 1.4 miles. At that time within my vision, there was a fast going boat and a tug boat heading towards Macau on my starboard side. I estimated that both vessels had passed Fan Lau Tsui, about 4 to 5 miles away. At the same time another jetfoil passed over us from our right.

20

At this time I found that my boat had deviated its normal course to the north. Thus I altered course to the starboard side, heading towards Siu A Chau. Then I found the hydrofoil from the opposite direction and ours were travelling in a straight line. At that time the distance was about 4 miles. I maintained the same speed and route until we were two miles away. I then altered the course to the starboard side slowly towards Niu Tau. I put the position of the boat from the opposite direction at 10 degrees to 15 degrees portside of our boat and my boat kept on sailing. However I noticed that there was no significant change in the relative position between my boat and the boat from the opposite direction. At that time we were about half a mile away. So I altered the course 7 degrees to the starboard side and maintained my speed and turning of the helm until the relative position of the opposite ship was about

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0.2 - 0.3 mile to about 30 degrees to the portside of my boat. I then checked the rudder indicator, revolution indicator and the flap indicator on the switch board in front of me. When I saw the opposite vessel again, she was about 200-300 feet away, about 3 to 4 points on my portside. Under these circumstances, she was trying to pass me from my bow. I at once ordered to shut the engines and saw both hands of the first engineer were on the control handles. I tried to give out warning to the other boat, but both of my hands were controlling the rudder and flap. And my boat kept on swinging to the starboard side. Several seconds later my boat collided with the opposite one violently."

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March 1983

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As I understand the position as he puts it, there was, in relation to these two boats, this situation with a slow turning by both of them this way until they eventually had the collision.

Members of the jury, that, with respect, in my submission, does not correspond with the evidence of the other witnesses.

30

Now, I should say this to you, members of the jury, that when we produce a statement to you, we produce a statement not suggesting that that statement is true. We produce it simply indicating that what an accused person has said in relation to these particular facts and circumstances. We would submit to you at the end of the day that those statements are not true, but those are the statements made by these persons in relation to those particular statements.

40

Expert evidence will be called to demonstrate that they cannot, apart leaving aside Mr. NG, cannot be right. Also I ask you to contrast the fact that these men, trained as they were, all of them seem to suggest that no one saw it until it almost happened or immediately it did happen, an extraordinary situation given this particular scene.

50

We didn't leave the matter there. Enquiries were made, members of the jury, of other men, some other men on board these various boats. We discovered through police enquiries that on the night of the incident there was in fact a meeting held at the Hong Kong Hotel which involved

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

these accused persons except Captain Coull who was not there, and except the radio officer, a Mr. WU who was in hospital. But in other respects there was apparently a meeting the night that the incident occurred. On the night of the accident there was a meeting at the Hong Kong Hotel.

We are calling Mr. LO who was the Radio Officer of the Flying Goldfinch. Mr. WU was the Radio Officer of the Flamingo and Mr. LO was the Radio Officer of the Flying Goldfinch. And he will tell you that there were discussions on that night between the parties, particularly Captain KONG and Mr. NG, in which it was suggested that a story be fabricated to the effect that the Goldfinch had been turning to starboard throughout the trip, that at the time of the accident it had steered off at the rate of about five degrees. 10

So there was a meeting that night. During the course of that meeting it was suggested that the excuse be given, the explanation be given for this accident that it steered off at the rudder five degrees per second to starboard and that was what happened to cause the accident. And in fact the log book - because log books are kept on these ships - will be shown to you where that particular story signed by both KONG, the Captain, and NG, the first officer were -- they signed a story to that effect in the log. 20 30

We say that that story is a fabrication. We are able to say it, members of the jury, with some confidence because Mr. NG himself in his statement to the police says that that statement was not true.

So on the evidence before us we have what can only be described as an amazing collision in the middle of the sea. We have the amazing fact, I would submit to you, that those not trained in the matters of the sea were aware of the potential danger that was arising, those who were trained were not. And we have the situation that the statements taken from these people, who are after all the ones that can tell us what actually happened, do not coincide technically, mathematically or whatever with the knowledge of the expert who put the lie to those statements. 40

It is our submission that clearly in this particular case - it will be our submission at the end of the day - that these people have not 50

told the truth in this particular case because all of them have failed in their duty of care to the passengers they were travelling and carrying on that day. They, all of them, the helmsmen in both boats and the watch-keeping officers had a duty of care to see that no such collision occurred.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March 1983

10 They had available to them the means to avoid it if they were aware of it, and either they were in a situation of danger which they were aware of and they were prepared to take the chance, or alternatively they didn't know that they were in a situation of danger which means they didn't look.

20 Given the circumstances of the type of craft and the responsibility they carried, that, members of the jury, will be, in our submission, gross negligence and is gross negligence, and in relation to that we would also say that therefore those who are in fact grossly negligent in these circumstances are responsible for the death of Madam WU and are guilty of manslaughter of her.

30 I will be calling, members of the jury, my witnesses in an order. First I will be calling the civilian witnesses, whom I have called the civilian witnesses. I will then be calling thereafter the seamen witnesses who were on board and that certainly will complete the next day or so of their evidence, and thereafter I will be calling the other witnesses.

40 We will be calling evidence in relation to the death. We have to prove her death technically. We will be calling police officers who took statements from the various accused to say that they took statements. We will be calling photographers, technical officers who drew the plans simply to produce the plans. But I am hopeful and in fact confident that my learned friend and I can agree a great many of these witnesses and you will not be bothered so much with the technical side of things and that you will be able to focus your attention on the basic issues in this case.

50 Apparently Captain Pyrke, who is the gentleman sitting there with the beard who was shaking his head violently when I was giving evidence in relation to why HO was wrong, I clearly got that wrong and I am sorry and I apologise. Rather than clearing it up, I will let him do so in due course.

In the
High Court
of Hong Kong

No.3
Prosecution's
Opening
Address
7th March
1983

(continued)

Members of the jury, thank you for
your patience. My Lord, I call Mr.NG.

COURT: Just before you do that, the procedure
is that when a witness gives his evidence,
he will be taken through his evidence
by the counsel calling him. He is then
cross-examined by each of the other
counsel. He is also subject to be cross-
examined or to be asked questions by
myself and he will be re-examined finally 10
by the counsel who called him. So that
is clearly the process.

If, however, there is any point in his
evidence that you are not sure or if you
feel that there is something that you
would like to ask him which is not covered
in his evidence, then by all means let
me know that you do have a question that
you would like to ask this witness and I
will give you the opportunity of doing 20
so in each case.

If it is a proper question, that is a
question which is legally proper and can
be put to the witness, then it certainly
will be. If for some legal reason it is
not, then it will not be. Please do not
hesitate at the end of each witness to
let me know if there is something that
you would like to be clarified or some
point which you feel has not been clarified.30
Yes?

MR. LUCAS: I call Mr. NG. Page 14, my Lord.

Prosecution's
Evidence

No.4
P.W.1. Ng,
Chun-wai
Examination

No.4

EVIDENCE OF NG CHUN-WAI

P.W.1. - NG Chun-wai Affirmed in Puncti
XN BY MR. JENKYN-JONES:

Q. Mr.Ng, can you tell the court your
address please?
A. I live at Shun Tin Estate, Kwun Tong.
Q. And what is your employment?
A. I am a mechanical worker. 40
Q. What is the name of your company?
A. It's called Mitsui Manufacturing Hong Kong.
Q. On the 11th of July of last year, were you
working for that company?
A. I was.

	Q.	On the 11th of July of last year, did you in fact board the Flamingo to go to Macau?	In the High Court of Hong Kong
	A.	Yes.	
	Q.	What was the purpose of that visit, that trip?	<u>Prosecution's Evidence</u>
	A.	Just for fun.	
	Q.	Were you alone or were you in company?	No.4
10	A.	In company.	P.W.l. Ng, Chun-wai
	Q.	Who was the company?	Examination
	A.	Our staff of Mitsui Manufacturing Company.	
	Q.	Were there any members of your family present?	(continued)
	A.	Yes.	
	Q.	Who were they?	
	A.	You mean my family, members of my family?	
	Q.	Yes.	
	A.	My wife.	
	Q.	What was her name?	
20	A.	Madam WU Yuk-ngan.	
	Q.	Can you tell the court what happened on the trip? Take us from the time when you left Hong Kong.	
	A.	The vessel had stopped for a while when leaving Hong Kong and then it started its journey again.	
	Q.	First of all, can you remember what time of the day you left Hong Kong?	
	A.	I took the 8.30 a.m. vessel.	
30	Q.	You have told us it stopped for a while. Do you know why it stopped?	
	A.	Not sure.	
	Q.	Do you know about what time it stopped?	
	A.	I don't know. At that time I knew, but now I have forgotten the time.	
	Q.	Are you at all familiar with the islands of Hong Kong at the sea area?	
	A.	Not familiar.	
	Q.	What happened after the vessel stopped?	
40	A.	Shortly afterwards it started off again.	
	Q.	Now, carry on from there.	
	A.	Shortly after the vessel had started off, the collision occurred.	
	Q.	Where were you at the time of the collision?	
	A.	At that time I went down the cabin and I was at the bow of the vessel.	
	Q.	Prior to the collision, was there anything unusual about the trip?	
	A.	No.	
50	Q.	After the collision, what did you do then?	
	A.	After the collision I went up to the deck because my wife was at the bow of the upper deck.	
	Q.	I am going to show you a large drawing of the boat, and you can perhaps indicate on the plan the position of you and your wife	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.1. Ng,
Chun-wai
Examination

(continued)

immediately before the collision.
First of all, Mr. NG, do you understand
that drawing? It's Exhibit 14.

A. Yes.

COURT: Take it that the lower diagram is the
lower cabin and the other diagram is
the upper cabin.

Q. Now, are you able to say by looking at
that whereabouts you were immediately
prior to the collision?

10

A. I was in the lower cabin at that time and
I was ...

Q. Do you wish to go and point it out?

COURT: Can you go and point it out to us?

A. At that time I was at that seat. I was
sitting on that seat.

COURT: Are those rows numbered?

A. Not numbered.

COURT: So that's the second row back on the
portside on the aisle and that's where
you were.

20

A. Yes.

COURT: That's where you were at the time of
the collision.

A. Yes.

Q. And what about your wife?

A. She was there, that is the third seat of
the starboard side.

Q. Which direction did those seats face?

A. When one is sitting on that seat I would
be facing the portside.

30

Q. Thank you, Mr. NG. Come back to the
witness box please. After the collision,
what did you do then?

A. I went up to the upper cabin to see the
condition of my wife.

Q. Can you tell the court in your own words
what happened from then on?

A. At that time it was in chaos because people
bumped into each other and they were on
top of one another during the collision.
I removed some items in order to rescue my
wife. Let me think for a while. At that
time the exit was blocked. I broke the
window and I tried to save the victims
through the window. That's what happened
at that time.

40

Q. Well, when you located your wife, where was she then?
A. She was on the upper deck. It is difficult for me to tell the exact position.
Q. Was she in the same position that you had left her?
A. No. Not the same position. Actually at that time that seat was broken and the piece of iron was collapsed and I had to remove some of the items in order to rescue her.
Q. What was her condition at the time you found her?
A. She was in a coma.
Q. What did you do?
A. I rescued her. I broke the window and I asked somebody's help to take her away.
Q. And did somebody help you?
A. Yes, after the window was broken.
Q. And where was your wife taken?
A. At that time there was a lighter which had already arrived.
Q. What did you mean by a lighter?
A. A lighter, that is a vessel for loading goods.
Q. Did you go with your wife?
A. Yes. The victims were taken out and I went together with them.
Q. Where did you go with them?
A. We boarded the lighter and then transferred to another hydrofoil.
Q. And after that, where did you go with your wife?
A. Queen Mary Hospital.
Q. What was her condition at that stage?
A. All the time she was unconscious.
Q. What happened subsequent to her arrival at Queen Mary Hospital?
A. The doctor certified that she was dead on arrival.
Q. Were you required to identify her as your wife at any stage?
A. On that evening I went to a place, to a mortuary.
Q. Was there any police officer present at that time?
A. Yes, a police constable with me.
Q. Was that Police Constable 22823?
A. I didn't notice his service number.
Q. Now, your name is Mr. NG.
A. Yes.
Q. Your wife went under the name of WU Yuk-ngan, is that correct?
A. Yes.
Q. And the person you identified was WU Yuk-lan.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.1. Ng,
Chun-wai
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.1. Ng,
Chun-wai
Examination

(continued)

- A. Yes.
Q. Prior to the collision, what was her
medical condition? Prior to the
collision, what was her state of health?
A. She was in normal good health.

MR. JENKYN-JONES: No further questions,
my Lord.

NO XXN BY MR. STEEL

NO XXN BY MR. AIKEN

NO XXN BY MR. CORRIGAN

10

COURT: Members of the jury, I don't suppose
you have any questions for this witness.

MR. LUCAS: May this witness be released?

COURT: You are released. 2.30 please. There
is one point I should have mentioned.
I take it that there's no objection to
the continuation of bail until the end
of the trial. Bail is renewed until the
end of the trial.

12.45 p.m. Court adjourns.

20

2.35 p.m. Court resumes

All accused present. Appearances as before.
Jury present.

MR. LUCAS: My Lord, may it please you, my
Lord. I call Mr. CHOI Chung-fai who
is at page 21 of the depositions, my
Lord.

Prosecution's
Evidence

No.4
P.W.2 Choi
Chung-fai
Examination

P.W.2
EVIDENCE OF CHOI CHUNG-FAI

P.W.2 - CHOI Chung-fai Affirmed in Puntis 30
XN BY MR. LUCAS:

- Q. Where do you live, Mr. Choi?
A. I live at Fung Wong Sun Chuen.
Q. And your occupation?
A. Technical worker.
Q. You work for the Mitsui Company, do you
not?
A. Yes.
Q. And you have worked there since about
1976?
A. Yes.

40

	Q.	Do you remember the day the 11th of July of last year when I think that there was a party organized to go to Macau by your company?	In the High Court of Hong Kong
	A.	Yes.	Prosecution's Evidence
	Q.	And you went on that trip, did you not?	
	A.	Yes, I did.	
	Q.	About how many people went approximately?	No.4
	A.	About 30 odd people.	P.W.2 Choi
10	Q.	And what time of the day did you arrive at the wharf to go off to Macau?	Chung-fai Examination
	A.	It was sometime after 8 a.m.	
	Q.	And did you catch a hydrofoil to go to Macau?	(contin)
	A.	Yes.	
	Q.	And was that the Flying Flamingo?	
	A.	Yes.	
20	Q.	As I understand it, the '30' that you are talking about were 30 of a group of originally 40 that could get on that hydrofoil, there were still some left over who were coming on the next hydrofoil, is that correct?	
	A.	Yes.	
	Q.	Now, amongst your colleagues is the gentleman who just gave evidence, Mr. NG Chung-wai, is that correct?	
	A.	Yes.	
30	Q.	And his wife was also on this trip, her name being WU Yuk-ngan.	
	A.	Yes.	
	Q.	Did they also get onto the same hydrofoil with you, the Flamingo?	
	A.	Yes.	
	Q.	Now, when you got on board that hydrofoil, where did you sit?	
	A.	At first I sat in the cabin.	
	Q.	Yes, go on.	
40	A.	Later when the vessel had started its journey, I went to sit on the upper deck.	
	Q.	Now, could you look at that plan over there. Do you recognize that? Can you read the plan?	
	A.	Yes.	
	Q.	Now, the bottom one, Mr. CHOI, is the lower deck inside the hydrofoil and the middle one is the top deck and then the last one is the side elevation of the whole ship. When you say that you first sat at one place and went to the other, where are you talking about?	
50	A.	At first I was sitting somewhere at the stern, the last row of the stern.	
	Q.	In the bottom plan.	
	A.	Yes.	
	Q.	When you went up, you went up to the next level up, you didn't actually go outside as I understand it.	
	A.	Yes.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

P.W.2 Choi
Chung-fai
Examination

(continued)

- Q. When you went upstairs, up to the next level, did you go by yourself or with someone else?
- A. I went with CHAN Tin-shun and Mr. CHEUK Yee-yue.
- Q. When you got up into the upper cabin, what happened there?
- A. We sat on the sofa.
- Q. Did you talk to anyone at that time?
- A. Yes. 10
- Q. Who was that?
- A. And then Mr. NG Chun-wai and his wife also went up.
- Q. Now, after you chatted to them, what happened next?
- A. We chatted for a while and then we all - that means Mr. NG Chun-wai, his wife, Mr. CHEUK Yee-yue and I went to the stern.
- Q. That is outside.
- A. Yes. 20
- Q. And then after you had been there for a while, what happened, if anything?
- A. Shortly afterwards we found that the vessel had stopped for a while.
- Q. Are you able to tell us approximately where that was, where it happened?
- A. It was somewhere near Lantau Island.
- Q. Now after it stopped, how long did it stop for?
- A. Several minutes. 30
- Q. Did it just sit stationary, did it move about or what did it do?
- A. It stopped for a while and then went astern.
- Q. And then?
- A. And then started off forward to continue its journey.
- Q. And did it come down off its foils when it stopped and it go up on its foils when it took off?
- A. That's right. 40
- Q. After the boat had started off on that occasion, did you move from outside back inside?
- A. I did.
- Q. What about the others, did they also come inside?
- A. Mr. NG Chun-wai and his wife went inside first.
- Q. Did you follow them?
- A. Yes. 50
- Q. When you went inside, did you speak to anyone?
- A. The three of us, that is Mr. NG Chun-wai, his wife and I sat together and chatted.
- Q. Where was that? Whereabouts were you sitting?

	A.	We sat on the sofas on the upper deck.	In the
	Q.	Looking at that plan there, can you show us where on that? If the inspector goes over, can you tell him where to point at?	<u>High Court of Hong Kong</u>
	A.	The lower row. I presume it was the second or the third seat at the bow.	<u>Prosecution's Evidence</u>
	Q.	There, where the inspector is pointing.	No.4
	A.	That's right.	P.W.2 Choi
10	Q.	Was your back facing towards the back of the boat or to the side of the boat? Which direction was this sofa that you are talking about?	Chung-fai Examination
	A.	My back was facing the side of the vessel.	(continued)
	Q.	Now, I want you to tell us what happened then. I am sorry. What happened to Mr. and Mrs. NG or Mr. NG and Madam WU?	
20	A.	We chatted and Mr. NG Chun-wai was reading newspaper.	
	Q.	And did he do anything?	
	A.	He told me that he would go to a show ...	
	Q.	It doesn't matter what he told you, what actually did he do?	
	A.	He then took a newspaper and went down the lower cabin.	
	Q.	What about Madam WU? Did she stay upstairs with you?	
	A.	Madam WU remained there in the seat.	
30	Q.	Who was sitting on the other side of you, do you recall?	
	A.	You mean opposite to me?	
	Q.	No, next to you. Was there anyone else sitting next to you?	
	A.	A girl.	
	Q.	Was she part of your party?	
	A.	No.	
	Q.	Now, after Mr. NG left, what happened then?	
	A.	I continued to chat with his wife.	
40	Q.	Yes and then?	
	A.	Several minutes later I felt that a ship was approaching very close to us and collided with our ship.	
	Q.	What did you actually see? What we are interested in, Mr. CHOI, is what if anything that you saw.	
	A.	I saw a vessel sailing towards us at high speed.	
	Q.	What sort of a vessel was this?	
50	A.	It was a hydrofoil.	
	Q.	Which direction was it coming from once again on that plan?	
	A.	Referring to the middle diagram, I was sitting on the lower row of seats, that hydrofoil was coming from my back and then collided with our ship.	
	Q.	Coming from your back. Can you tell the inspector ...	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.2 Choi
Chung-fai
Examination

(continued)

MR. LUCAS: Sorry, My Lord, but that seems to be the only place in this courtroom where most of us can see this thing.

COURT: Would it be of any assistance if Mr. SHOI went over to the ...

MR. LUCAS: Then my learned friends wish to see him and take notes as well. I think we can manage for the time being. Perhaps we can think of some method whereby we can more conveniently deal with later. I had thought of there, my Lord, but the defendants won't be able

10

COURT: I think it is the only place. Anyway if the inspector would just place the -- you say you were sitting on the top cabin on the starboard side.

A. Yes.

Q. Looking at these small models, which direction was the other ship coming from? Perhaps in all fairness to all concerned, he should do it himself.

20

COURT: Would you go over to the board and place as you can on the board the little model where you think the other hydrofoil was when you first saw it?

Q. Mr. CHOI, if you could just come through...

COURT: Perhaps if you would place one of those models on the board representing the one that you were in. Would you put that one on top of the middle diagram facing away from you. If we assume that small model is the hydrofoil that you were in - you've told us whereabouts in it you were - can you indicate to us with the other model whereabouts the other hydrofoil was when you saw it?

30

(Witness complies)

COURT: Just for the record, I think perhaps I can indicate that the witness places the model of the other hydrofoil, that is the Flying Goldfinch, coming directly at the point where he says he was sitting.

40

Q. Mr. Choi, what I'd like to know from you is this, first of all, when you first saw it, how far away was the other hydrofoil?

A. From the time I noticed that the other hydrofoil to the time of the collision,

	I presume it was about one to two seconds.	In the High Court of Hong Kong
	Q. Are you able to say approximately how far the front of the other hydrofoil was from your boat at that time or not? Measuring it perhaps in terms of this courtroom.	<u>Prosecution's Evidence</u>
	A. A bit further away from that door.	No.4
	Q. The back of the court.	P.W.2 Choi Chung-fai
10	COURT: Well, from where the witness is to the back door is 50 feet.	Examination
		(continued)
	Q. Now, Mr. CHOI, I understand your evidence, you were sitting prior to this incident, prior to the collision, facing endways, as it were, with your back to where the hydrofoil eventually hit you from.	
	A. That's right.	
	Q. What made you turn and look Mr. CHOI?	
20	A. Because at that time I was sitting in the side position when I was talking to Madam WU, so I could see the hydrofoil coming.	
	Q. Now, what happened after you saw it?	
	A. So instinctively I shouted and then I lost my consciousness and I knew nothing about what happened later.	
	Q. You in fact, as I understand it, went to hospital, did you not, after this and were there for some time after an operation.	
30	A. Yes.	
	Q. Now, prior to the impact, prior to the collision on your boat, did you notice any change or anything happen to your boat, the one that you were in?	
	A. I didn't notice.	
	Q. Well, 'didn't notice' can mean at least two things - 'I wasn't concentrating, so it could have happened', 'I was concentrating and nothing did happen' or 'I am not sure whether it moved or not'.	
40	A. I mean actually I didn't know what direction the boat was sailing.	
	Q. When you say that you were sitting sidelong talking to Madam WU or Mrs. NG, were you facing more towards the front of the boat or more towards the back of the boat? Do you follow the question? If you can't remember, please say so.	
50	A. I don't remember.	
	MR. LUCAS: Thank you. NO further questions.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.2 Choi
Chung-fai
Cross-
Examination

XXN. BY MR. STEEL:

- Q. Can you remember whether Mdm. WU was sitting on your right-hand side or on your left-hand side?
- A. On my right-hand side.
- Q. And it is probable, isn't it, that you were facing slightly towards her as you were speaking to her?
- A. Yes.
- Q. And I gathered that you, at some stage, felt that another ship was approaching? 10
- A. Yes.
- Q. Is that because you could hear the noise of her engines?
- A. No.
- Q. So it is, in a sense, out of the corner of your eye you caught a glimpse of this other ship?
- A. That was in the beginning when I first saw the other ship, but when it was approaching closer, I got a clear look of it. 20
- Q. Yes, and having seen that, you had time to shout out and then you felt unconscious.
- A. That is correct.
- Q. And judging from the way in which you have positioned the models, the bow of the other ship was very close to your seat when you first saw her?
- A. Yes. 30
- Q. Indeed, the length of those two ships are 100 ft. each. So you have placed them so that the bow of the other ship was about 10 ft. from your seat. Is that a fair estimate of the distance?
- A. I presume the distance is more than 10 ft.
- Q. When you were able to get a good look at this other ship, is it right that you could only see her bow and could not see either of the two sides of the ship? 40
- A. I presume so.
- Q. It appeared to be aiming, in a sense, straight at you.
- A. Yes.
- Q. This ship hit your ship further forward than where you were sitting?
- A. I am not very sure.
- Q. Will you assume I am right? If you were sitting here and this other ship seemed to be coming straight towards you, this ship must be at a lesser angle, must it not, because otherwise you would have seen this side of her. 50
- A. Yes.
- Q. Thank you very much, Mr. CHOI.

XXN. BY MR. AIKEN:

Q. It is right, Mr. CHOI, that you only had time to shout out once?

A. Yes.

In the
High Court
of Hong Kong

Prosecution's
Evidence

XXN. BY MR. CORRIGAN:

Q. Mr. CHOI, I think at one time you told members of the jury you went up on the open deck for a bit of fresh air and to have a look around, is that right?

A. Yes.

Q. Now just to get the picture for members of the jury, this was a day, was it not, of brilliant visibility, the sort of day on which you could see almost as far as you wanted to see?

A. Yes.

Q. And the sea was what - a dead, flat, calm? Would that be a fair description?

A. That is right.

Q. Have you been from Hong Kong to Macau on hydrofoils on days before this particular day?

A. Yes.

Q. In various weather conditions?

A. No.

Q. Usually of fine weather?

A. Yes.

Q. I see. You have never been on a rough day, is that right?

A. No.

Q. Roughly about how many times would you have crossed, as a passenger, from Hong Kong to Macau on hydrofoil?

A. That was the third occasion.

Q. And generally speaking, when a hydrofoil is flying at full speed, any change of course is quite noticeable to passengers on board, is that not right?

A. Right.

Q. You get an impression that the boat is twisting or turning to one side or another, is that right?

A. If the turn is quick, well then it would be noticeable.

Q. Yes, indeed.

A. If not, it would not be noticeable.

Q. More noticeable on a hydrofoil than if you are travelling on a more conventional or ordinary sort of vessel, is that not right?

A. Yes.

Q. Generally speaking, yes. Now on this unfortunate day's trip on the 11th of July last year, having left Lantao Island behind, it appeared to you, did it not, that the Flamingo was

No.4
P.W.2 Choi
Chung-fai
Cross-
Examination

10

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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.2 Choi
Chung-fai
Cross-
Examination

(continued)

- going along towards Macau on a perfectly straight course.
- A. That should be the case.
- Q. Particularly, Mr. CHOI, at a time immediately before this collision took place, is it right that you did not notice any change of course or deviation on the part of this boat that you were travelling on, that is, the Flamingo?
- A. Correct. 10
- Q. Now did you have an impression -going back to a question that my learned friend asked you a few moment's ago - did you have an impression that the oncoming hydrofoil - which we know was the boat Goldfinch - hit your vessel somewhere in front of the position at which you were seated, did you have that impression or not?
- A. No, I did not have that impression. 20
- Q. No, what impression did you have of the position that your ship, Flamingo, was struck by Goldfinch in relation to where you were sitting?
- A. I felt - I was of the impression that the collision occurred at my back. I am not sure whether it was further to the front or further behind.
- Q. More or less at your back, is that what you say? 30
- A. That is correct.
- Q. Now I just want to get the picture so members of the jury can see. This is Flamingo. You were sitting as you told members of the jury on the second or third seat; you aren't sure which.
- A. Right.
- Q. In the upper cabin.
- A. Yes.
- Q. Now that is sometimes I think called the belvedere cabin. Now immediately in front of you, do you recall there was the door which leads to the bridge, "Crew Only", just in front of you where you were? 40
- A. Yes.
- Q. And your cabin is immediately behind the back of the bridge, so to speak. That is what you would look at in front of you, is that right?
- A. Yes. 50
- Q. And the view that you had of this vessel Goldfinch approaching, as you described it, was through one of those windows?
- A. Right.
- Q. You are not sure precisely which window, looking at the profile of the starboard side of the boat, are you?

	A. Yes.	In the
	Q. Can you say which window?	High Court
	A. Not sure.	<u>of Hong Kong</u>
	Q. Now I just want to be clear. We are	<u>Prosecution's</u>
	only dealing with approximations and	<u>Evidence</u>
	impressions in relation to all these	No.4
10	events. Mr. CHOI, just to clarify,	P.W.2 Choi
	you told members of the jury that it	Chung-fai
	was about one or two seconds, no more	Cross-
	than that, from the time you first saw	Examination
	the Goldfinch approaching to the time	(continued)
	of the actual impact, and you were	
	asked to give an estimate of the	
	distances and you said from about where	
	you were standing to the back door of	
	the court under the clock.	
	A. That is so.	
	Q. Can you really describe how much of that	
20	fast approaching vessel Goldfinch you	
	actually saw? Can you give us a	
	picture?	
	A. No impression.	
	Q. Thank you.	

REXN. BY MR. LUCAS:

Re-Examination

	Q. Mr. CHOI, just two things. When you	
	put those two boats up there against	
	each other, were you admitting simply	
	to indicate direction or distance or	
	both?	
30	A. I am not sure about the distance. My	
	intention was to show the direction when	
	the other boat was coming.	
	Q. Now you said to my learned friend Mr.	
	Steel this when he asked you if you felt	
	something come towards you, you said	
	something to the effect that you caught	
	a glimpse at first in the corner of your	
	eye, then as it approached "I" got a	
	good look at it.	
40	A. Yes.	
	Q. Now I'm sorry. Could you explain to us,	
	please if you would, that when you told	
	us that you saw it between here and the	
	door at the back of the court, are you	
	talking about when you first caught a	
	glimpse out of the corner of your eye or	
	when you are talking about when you had a	
	good look at it, or can't you remember, or	
	either way?	
50	A. I can't be sure because the time when I	
	first caught a glimpse of it to the time	
	when I had a full look at it was only a	
	very short time.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.2 Choi
Chung-fai
Re-Examination

(continued)

Q. There have been various suggestions put to you as to which direction it was coming from when you saw it. When you put the two models on the board, you demonstrated that the other boat was coming at right angles.

A. Yes.

Q. When in answer to questions from my learned friend Mr. Steel, he then moved the boat to there - he moved the other boat at the angle that we see here.' Now are you able to tell us now, having heard Mr. Steel put to you what your impression was as to angle, is it the first one that you showed us or the one that Mr. Steel put? 10

A. I can't tell for sure.

Q. I have no further questions.

BY COURT:

Q. Mr. CHOI, I'm not quite certain about the seats on this top cabin that you were in. They were ordinary airline style seats, were they, or were they different to the ones down below? 20

A. There was a difference.

Q. What was the difference? As I understand, they ran along, or was it one long seat, not individual seats?

A. There was no individual seat in the upper deck. It was a seat in a row. 30

Q. A long seat.

MR. LUCAS: Sorry, my Lord, the witness has been saying "sofa".

Q. Sofa. So it is just one long continuous seat?

A. Right.

Q. And Mrs. WU was sitting on your right?

A. That was what I remember.

Q. And I think you agreed that you had been turning to face her. You spoke to her, so you would have been inclined to be looking at the bow of the ship. 40

A. Yes.

Q. And you would have seen the other ship coming then, out of the corner of your right eye, coming to your right hand side.

A. Yes.

(No questions from jury)

MR. LUCAS: I call Mr. CHEUK Yee-yue, page 30 of the depositions. 50

P.W.3
EVIDENCE OF CHEUK YEE-YUE

In the
High Court
of Hong Kong

P.W.3 - CHEUK Yee-yue Affirmed in Punt

Prosecution's
Evidence

XN. BY MR. LUCAS:

No.4

Q. Where do you reside, Mr. CHEUK? First
of all, your full name?

P.W.3
Cheuk Yee-yue
Examination

A. CHEUK Yee-yue.

Q. Where do you reside?

A. Lam Tin Estate.

10 Q. And your occupation is a moulding worker,
is it not?

A. Yes.

Q. And you worked for the Mitsui Manufactur-
ing Hong Kong Limited as a moulding
worker?

A. Yes.

Q. And I think in July of last year you were
18 years of age. How old are you now?

A. 19.

20 Q. Now your company, the Mitsui Manufactur-
ing Company, arranged an outing for the
workers to Macau, is that right?

A. Yes.

Q. And that outing resulted in your catching
a hydrofoil called the Flying Flamingo
to go from Hong Kong to Macau?

A. Yes.

Q. And on board that particular boat were
a number of people from your company?

30 A. Yes.

Q. Some of them were left behind because the
Flamingo was full.

A. Yes.

40 Q. Mr. CHEUK, we are interested in what
happened on that trip, as you are well
aware and over there we have a plan of
the Flamingo and superimposed on that are
two little models which were - I wondered
could we have those removed. What I would
like you to do, if you would, for us,
witness, is tell his Lordship and the jury
what happened on that particular day on
board the Flamingo.

A. The vessel started its voyage.

Q. Where did you sit, for a start?

A. I sat on one of the seats on the port side.

Q. On which deck - the upper deck, lower deck?

A. The lower deck. I was sitting on the
first or the second seat of the last row
50 of the lower deck.

Q. Now you didn't stay there. You actually
went upstairs after some time.

A. That is correct.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.3
Cheuk Yee-yue
Examination

(continued)

- Q. Now when you went upstairs, was there anyone else up there with you?
- A. Yes.
- Q. People that you knew or just other passengers?
- A. People I knew.
- Q. How many?
- A. Two.
- Q. Who were they?
- A. Mr. CHOI Hung-fai and Mr. CHAN Tin-shun. 10
- Q. Did they stay there or did they go downstairs or what happened?
- A. One of them remained in the upper deck while the other one went down to the lower cabin.
- Q. Who stayed upstairs with you?
- A. CHAN Tin-shun.
- Q. Now apart from your friends or acquaintances, were there other people upstairs?
- A. Yes. 20
- Q. Now after the Flying Flamingo had been going for some time, did it stop at some stage?
- A. Yes.
- Q. Whereabouts was that approximately, do you recall? If you don't know anything about the waters, say "I just don't know."
- A. I don't know.
- Q. Now it stopped for about how long?
- A. 10 odd minutes. 30
- Q. It was stationary for 10 odd minutes?
- A. A little more than 10 minutes, it stopped there, stationary, and then went astern.
- Q. And then what happened?
- A. And then moved again.
- Q. What happened after it moved?
- A. Shortly afterwards, a collision occurred.
- Q. Collision occurred with what?
- A. With another hydrofoil.
- Q. At the time the collision occurred, was your hydrofoil Flamingo still on its foils? 40
- A. I don't know.
- Q. Right. Now when you saw - where were you standing? Did you see the other hydrofoil before the accident?
- A. Yes.
- Q. Where were you when you first saw the other hydrofoil?
- A. I was standing at the railing at the stern of the boat. 50
- Q. When you first saw the other hydrofoil that was involved in the collision with you, where was that?
- A. It was on my left.
- Q. Would you go to that board with us for a moment? (Witness complies)

	A. No, it was on my right.	In the
	Q. Mr. CHEUK, can you point to the place where you were standing? Facing which direction?	High Court of Hong Kong
	A. I was standing at that railing facing towards this direction.	<u>Prosecution's Evidence</u>
	COURT: Just for the record, witness indicates he's standing on the railing at the rear of the upper cabin facing to the starboard side.	No.4 P.W.3 Cheuk Yee-yue Examination
10		
	Q. And when you first saw the other hydrofoil, how far away from you was it? How far away from your hydrofoil was it approximately?	(continued)
	A. I don't know.	
	Q. When you were standing there, did you say or speak to your friend, was your friend still with you then?	
20	A. One of my friends was standing there; the other one had already gone to the lower cabin.	
	Q. Who was still with you?	
	A. CHAN Tin-shun.	
	Q. Where - let me just - won't you pick up those models for us first and see how they work. They are models and you can put them on that board and they will stay there. Now would you put yours down at the bottom left-hand corner of that board, or put one of them pointing upwards. Now	
30	remember approximately where it was in direction. I am not talking about distances now. I am talking about direction. Is that the direction it was running?	
	A. Yes.	
	Q. And what happened, tell us - please come back.	
	COURT: Again witness indicates the other hydrofoil being in a course at 90° to the Flying Flamingo.	
40		
	Q. Did you speak to your friend?	
	A. Yes.	
	Q. Don't answer this question immediately, witness. What did you say to him?	
	A. Just trivial, chatting.	
	Q. No, when you saw this other boat.	
	A. I said, "Why this boat was sailing in such a manner?"	
50	Q. Now was your boat - how fast was your boat travelling? Was it travelling, can you tell - not in terms of speed - was it on its foils or not?	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.3
Cheuk Yee-yue
Examination

(continued)

- A. As I was standing at the stern, I did not notice.
- Q. Now what happened then?
- A. Collision.
- Q. How long after you spoke to your friend was there the collision?
- A. All the time we were talking, but as I saw the other boat approaching I stopped talking to my friend. 10
- Q. What did you do?
- A. I looked at the other ship to see how it was going.
- Q. And then what did you do?
- A. I grabbed the railing.
- Q. Yes?
- A. And then the collision occurred.
- Q. Now are you able to estimate or tell us - if not, say so - how long it was before you commented on the approach of this boat and the actual collision? 20
- A. Several seconds.
- Q. Did you notice if there is any alteration of course by either your boat or the other boat in that period?
- A. There is no change of course.
- Q. Either boat, both boats?
- A. Both boats.
- Q. And there was a collision and people injured, was there not?
- A. Yes. 30
- Q. Now could you hear any warning sounds coming from either boat?
- A. No.
- Q. Thank you. No further questions.

Cross-
Examination

XXN. BY MR. STEEL:

- Q. Mr. CHEUK, when you first saw this other hydrofoil, what bit of it could you see?
- A. The bow.
- Q. And did it look as if the bow was aiming towards your hydrofoil? 40
- A. Our hydrofoil was going towards this direction and that hydrofoil was going at this direction.
- Q. Is it right that you could not see the side of the other hydrofoil, only its bow?
- A. You mean when the other boat was approaching or during the collision?
- Q. No, when you first saw the other hydrofoil, is it right that you could only see her bow but not her side? 50
- A. That is not correct. I saw the whole boat.
- Q. Which side of the other boat could you see?
- A. Port side.

	Q. And when you saw the other vessel, you stopped talking to your friend, is that right?	In the High Court of Hong Kong
	A. Right.	
	Q. And you gripped the railing?	Prosecution's Evidence
	A. Yes.	
	Q. Why?	
	A. I was actually gripping the railing tightly.	No.4
10	Q. Was that because you thought that a collision was just about to happen?	P.W.3
	A. No, I was at that time holding the railing as I was looking at the other boat.	Cheuk Yee-yue Cross-Examination
	Q. But why you said you gripped the railing hard?	(continued)
	A. I just grabbed it, not very hard.	
	Q. Did you think there was going to be a collision?	
	A. No.	
20	Q. Then what was so remarkable about what you saw?	
	A. Nothing remarkable. I was looking at it. The distance was very close.	
	COURT: You go to football matches?	
	A. Yes.	
	COURT: Do you know the length of a football pitch?	
	A. It was about the diagonal of the Hong Kong Stadium.	
30	COURT: The diagonal of the Hong Kong Stadium. (to counsel) I would say 200 yards would be about right, perhaps more.	
	MR. LUCAS: More than that, my Lord. I'm sorry. I am no judge of distance.	
	COURT: I think we just leave it at the diagonal of the Hong Kong Stadium.	
	Q. Why did you say to your friend, "Why is this boat sailing in that manner?"	
	A. Because it was sailing towards us.	
40	Q. And you gripped the railing to give you support in the collision that you saw was just about to happen, is that right?	
	A. No.	
	<u>XXN. BY MR. AIKEN:</u>	
	Q. If that is not right, why did you then say that "I stopped talking. I looked at the other ship. I grabbed the railing."?	
	A. I was looking at the boat.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.3
Cheuk Yee-yue
Cross-
Examination

(continued)

COURT: The question is you did in your evidence, Mr. CHEUK, you did say this: "I stopped talking," You made this remark to Mr. CHAN: "Why does the other boat sail in such a manner?" You then stopped talking. "I looked at the other ship. I grabbed the railing and the collision occurred." Now the question is: why did you say: "I grabbed the railing"? 10

A. Well if I say I used that railing for support, it would be more or less of the same meaning to I was grabbing the railing.

COURT: Did you grab the railing after you saw the ship approaching?

A. Right.

Q. And you did that because so far as you were concerned the collision was imminent?

A. Yes, but I thought that it was just half and half, as I was of the opinion that the collision is not probable, if not impossible. 20

Q. You were grabbing the railing to protect yourself in the event of a collision?

A. Right.

Q. One question: what is the diagonal of this court? I do not want the distance. Is that a diagonal?

A. No.

Q. What is a diagonal? 30

A. From this corner to that corner.

Q. Thank you, very much.

XXN. BY MR. CORRIGAN:

Q. Yes, you don't really know because you don't really remember, isn't this what it comes to? How far away the other hydrofoil was when you first saw it, Mr. CHEUK?

A. I just can't tell the exact distance in yards. 40

Q. Well never mind exact distances in yards. At the time you were so frightened, were you not - never mind what happened later on - you made no estimate of the time, did you, in this matter of distance at all?

A. Right. I only saw the ship. I did not estimate the distance in yards, but I was not frightened.

Q. The distance was very close and you feared what happened - which was an imminent collision. That is what it comes to. 50

A. Right, that is what I thought.

	Q.	You have a very vague impression in your recollection of the distance away the other hydrofoil was. I suggest you have a very vague impression of the angle of approach of that other vessel.	In the High Court of Hong Kong
	A.	I do not say that I don't remember the distance. I can tell the distance but not in yards.	<u>Prosecution's Evidence</u>
10	Q.	Yes, but getting away from distances now, I suggest you have, at best, a vague impression of the angle of the approach of this other vessel.	No.4 P.W.3 Cheuk Yee-yue Cross- Examination
	A.	I got a very clear impression.	
	Q.	You demonstrated as we saw on this board a perfect 90° right angle, is that your demonstration?	(continued)
	A.	Right.	
20	Q.	Because you recall, is this right, that you were able to see the whole of the port side of that vessel as she approached your ship.	
	A.	Yes.	
	Q.	Is that why you demonstrated a perfect right angle: simply because you could see the whole of the port side of that vessel?	
	A.	I saw the direction when it was coming.	
	Q.	Yes, and you saw the whole of the port side of that vessel.	
30	A.	Right, I saw it coming.	
	Q.	Yes, but she could have been coming at you - is this not the position - in a much less raw angle than 90°, curving in at you in a way?	
	A.	No, it is likely.	
	Q.	Did she - that is Goldfinch - give you any impression that she was still turning in at your boat as you watched her over these few seconds?	
40	A.	I did not notice.	
	Q.	You are not very sure about distances or directions. Can you help us at all as to the time that you were --	
	MR. LUCAS:	With great respect to my learned friend, the witness has indicated what he saw as to direction and he has indicated what he saw as to distances.	
	MR. CORRIGAN:	It might be a matter of comment.	
	MR. LUCAS:	Yes.	
50	Q.	You haven't been asked, as far as I am aware, about time. Can you help us at all as to the time over which you were looking at this	

In the
High Court
of Hong Kong

No.4
P.W.3
Cheuk Yee-yue
Cross-
Examination

(continued)

vessel as it approached your ship?
I have to be fair to you. You said
several seconds between the time you
made the comment to your friend and the
actual collision, several seconds. What
did you mean by "several seconds"?
A. About six seconds.
Q. That is from the time you spoke to your
colleague Mr. CHAN Tin-shun, is that
right, to the actual moment of collision?
Is that the period of time you mean?
A. That is correct.
Q. Yes, thank you.

10

Re-examination

REXN. BY MR. LUCAS:

Q. Just if I may, Mr. CHEUK, make this
quite clear. You mentioned a distance
as being about the diagonal of the
Hong Kong Stadium.
A. Yes.
Q. Now is that the time that you first saw-- 20
A. Still a bit further away than that.
Q. Is that the first time you saw it?
A. Right.
Q. And at that time - because it has been
put to you - there is some suggestion
that it was still turning - at that time
was it travelling in a straight line or
not, so far as you could tell?
A. That is what I saw.
Q. All right, and was it at that time - to 30
make it quite clear - as you have demonstr-
ated up on the board?
A. Right.

BY COURT:

Q. Mr. CHEUK, did you watch the other
hydrofoil from that time on until the
collision occurred?
A. Yes.
Q. And as I understand your evidence, so
far as you could tell, it did not appear 40
to be turning. Are you sure about that?
Is that your evidence?
A. I am of the impression that it did not
change its course.
Q. Now I think you said that when you first
saw the other vessel, you were not
frightened.
A. Because I thought, well, a collision was
unlikely because no step was taken by either
boats. 50
Q. That is true. When you first saw the
other hydrofoil, you first noticed it,

you were not frightened?
A. Right.
Q. Now at any time until the collision while you were watching the vessel, did you become frightened?
A. No, because the time when I saw it to the time the collision occurred, it was only a very short period of time.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.3
Cheuk Yee-yue
Re-examination

10 COURT: Yes, members of the jury, any questions you would like to ask this witness?

(continued)

JURY: No questions.

MR. LUCAS: I call Mr. Edmund TSANG, my Lord, page 35 of the depositions.

P.W.4
EVIDENCE OF TSANG SIK-YIU

P.W.4
Tsang Sik-yiu
Examination

P.W.4 - TSANG Sik-yiu Affirmed in English
XN. BY MR. LUCAS:

20 Q. Mr. TSANG, your full name is Edmund TSANG Sik-yiu?

A. Correct.

Q. Where do you live, sir?

A. 210 Li Ming House, Shun Li Estate.

Q. Your occupation?

A. I am a general manager and director of a travel company called the Jeking Tour Limited.

Q. You don't have anything to do with this Mitsui Company tour that day?

30 A. I beg your pardon? Because it is so noisy outside.

COURT: I am sorry about it, Mr. TSANG. We will try to do something about it tomorrow.

Q. On the 11th of July you went with a friend, as I understand it, to Macau.

A. Correct.

Q. You were not part of a tourist group?

40 A. No, just the two of us. We went to Macau for the purpose of doing a site visit because we were to discuss about a convention tour to visit Macau in 1985.

Q. You had a guest from America, a Mr. JOY?

A. I travelled with him. His name is called Charles Joy.

Q. What we are interested in, as you realise of course, Mr. TSANG, is what happened that day on the Flamingo. Now as I understand it,

In the
High Court
of Hong Kong

Prosecution's
Evidence
No.4

P.W.4
Tsang Sik-yiu
Examination

(continued)

- you boarded the vessel and sat in the lower deck cabin on the port side near the stern.
- A. We were sitting on the lower deck close to the back of the ship.
- Q. We have in fact, for everyone's interest, a plan of the Flamingo, the lower deck, the under deck and the side of the vessel. You were sitting on the --
- A. -- left-hand side, close to the back. 10
- Q. Now did you stay there throughout?
- A. No, no.
- Q. When did you come up?
- A. Well we stayed there for about 15 to 20 minutes, we went upstairs because we found the air-conditioning was not good and it was too noisy.
- Q. And would you tell us what happened thereafter?
- A. We went up to the deck and most of the time 20 we were standing on the right-hand side of the deck which is some kind of an open deck. We were looking at the scenery most of the time on the right-hand side, and suddenly there was - a few minutes later the hydrofoil slowed down and continued.
- Q. Slowed down and dropped onto its hull, did it not?
- A. Yes, like this.
- Q. Do you remember approximately where that was? Do you know enough of the area to know where it was? If you don't, don't worry. 30
- A. No.
- Q. How long were you actually - was it on its hull, do you remember?
- A. You mean the deck?
- Q. No, no, sorry. How long was the boat off its foils in the water?
- A. I think - I remember a few minutes. 40
- Q. And then you took off again?
- A. The boat took off again.
- Q. And then what happened?
- A. Well it continued its journey and we were still standing on the deck.
- Q. You were looking in the direction - standing on the deck of that one looking in this direction, is it not? Which direction were you looking?
- A. This is the front of the boat, the vessel. 50 This is the deck. This is the rail. We were looking towards this side and sometimes towards the front.
- Q. What we are interested in knowing is what you saw because we all know that there was in fact a collision between your hydrofoil and another hydrofoil.

	A. Yes.	In the
	Q. Would you be kind enough to tell us what you saw?	High Court of Hong Kong
	A. I remember that it was about 9.10 or 9.15 and we were still looking towards, you know, the right-hand side. We could see Macau in a distance and I was talking to Mr. Charles Joy. I called him Chuck. We were talking about formulating the itinerary for our convention to come to Macau in 1985 and suddenly we saw a hydrofoil coming towards us. That was about 6/7 blocks away.	Prosecution's Evidence No.4 P.W.4 Tsang Sik-yiu Examination
10	Q. You are talking in terms of city blocks?	(continued)
	A. Far away, all right?	
	Q. Okay.	
	A. And Chuck said that "It looks like a collision course", and then suddenly the hydrofoil was about 100 yards away. I was so afraid I told Chuck, "I think there is going to be a collision." So I told Chuck, "Let's duck down". So we ducked down and I held on the rail and then BANG!	
20	Q. Now you talked in terms of five or six blocks away when you saw it.	
	A. I mean large blocks of building, all right?	
	Q. Well the background is obviously Hong Kong/America. Were you talking about Hong Kong blocks or blocks in America?	
30	A. I am talking about American blocks, not Hong Kong blocks. I would say it is about 5/6, 4/500 yards away.	
	Q. Now I wonder - would you mind very much demonstrating for us the approximate angle at which this other boat was when you first saw it. Now will you do that with the use of those two things - which means you have to climb round to demonstrate.	
40	A. Over there? (witness walks over to the board which is in the well of the court)	
	Q. Now ignore the thing on the left for the time being.	
	A. At the beginning --	
	Q. Right. Now eventually it went onto the side of your vessel. Did you notice if the other one appeared to change course in any way?	
	MR. CORRIGAN: I can't hear.	
50	MR. LUCAS: I do apologise for both counsel. The noise is - (to witness) Could you be kind enough to demonstrate that again for my learned friend?	
	COURT: (to witness) You can leave them there. They will stay.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.4
Tsang Sik-yiu
Examination

(continued)

- A. (demonstrates) This is in the beginning.
Q. Whilst you were watching that one, the Goldfinch, did it appear to steer in a straight line or curve or what?
A. I did not see a curve line, slightly like this.
Q. What about yours? Did yours make any deviation?
A. As normal, towards the front.

COURT: I think this witness is unlikely to finish, Mr. TSANG today. I think probably he is going to come back anyway tomorrow and I think we will try and get something done about the noise. 10

MR. LUCAS: If the Court pleases.

COURT: (to witness) Mr. TSANG, I'm sorry. I think we have got to try and do something about the noise outside and I think inevitably we won't finish your evidence today, so I think perhaps we will adjourn. I'm sorry. Would you please come back again tomorrow morning at 10 o'clock. 20

Members of the jury, we will now adjourn until 10 o'clock tomorrow morning. Just two things I would like to say to you: the first is that during the course of the trial, by all means discuss the evidence that you have heard amongst yourselves. That is perfectly proper and, indeed, I would encourage you to do so, but please don't discuss it amongst anybody else who is not a member of the jury. 30

The other thing is you would have to choose a foreman. It is not a very onerous task, but somebody mainly to act as your chairman when you are considering your verdict. So I wonder when you come back tomorrow morning, before we come in, could you choose somebody to be your foreman. 40

10 o'clock tomorrow.

4.15 p.m. Court adjourns.

7th March, 1983

8th March, 1983
10.03 a.m. Court resumes

In the
High Court
of Hong Kong

All accused present. Appearances as before.
Jury present.

Prosecution's
Evidence

MR. LUCAS: I recall Mr. TSANG.

No.4

COURT: Negotiations have been under way
with the gentleman, the hydraulic man
outside and in the normal way a
compromise has been reached. They
had stopped at 10 o'clock on the basis
that we will adjourn at approximately
3 o'clock this afternoon. So we'll
adjourn at about 3 o'clock.

P.W.4
Tsang Sik-yiu
Examination

10

(continued)

P.W.4 - Edmund TSANG Ski-yiu o.f.a
XN. BY MR. LUCAS (continues) :-

20

Q. Mr. Tsang, your evidence was yesterday
of seeing this hydrofoil about 6 or 7 city
blocks away and you were in the process,
when we adjourned yesterday afternoon, of
showing us at what angle and what direction
both boats were travelling. Would you be
kind enough to repeat that for us please.
When you talk about the 5 or 6 hundred
yards or 6 or 7 blocks, are you talking
the angle between -- the distance between
the two boats from that boat where you
were standing?

30

A. I was standing here looking towards here.

Q. And that was the distance from your boat
to that boat.

A. That's right. I was actually -- this is the
rail, all right. This is the boat. I am
looking towards this direction.

Q. Now, just to be absolutely sure about this,
the boat that you've got, the boat that
you were standing on, is that supposed to
be straight up and down in a straight line,
going in a straight line in the direction
of the top of the board?

40

A. I thought so. In the normal manner.

Q. And this boat, was that heading in a
straight line or not?

A. It was heading in a straight line. It
caught my eyesight because it was a big boat
and white coloured and the water splashed.

Q. When you looked from your boat, what could
you see of the other boat? Could you see
one side, the other side, both sides, the
front, back?

50

A. I mean I was like this at the -- I had seen
this part, the front part of the other boat
like this.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.4
Tsang Sik-yiu
Examination

(continued)

- Q. Right. Now ..
- A. I saw the foils.
- Q. You saw the foils. Were both boats on their foils at that time?
- A. I couldn't see mine because I was, you know ...
- Q. But you were travelling at a fast speed.
- A. Yes.
- Q. Now, the boat continued to collision, is that right?
- A. Which boat?
- Q. Both.
- A. Two vessels.
- Q. Yes, eventually collided.
- A. Yes.
- Q. Between first seeing it and the collision, did you feel any deviation in - change in course in your boat?
- A. I didn't find anything like deviation on our boat and the other boat, and so the other boat came to our eyesight, say, about two hundred yards away. I couldn't see anything because -- my friend said there was going to be a collision, and I said "Quick. I don't want to die" and we were worried. So we ducked down and couldn't remember anything. I didn't see anything.

10

20

COURT: Mr. Tsang, I am sorry, you are some distance away from the stenographer.

30

MR. LUCAS: Perhaps you can come back here.

- Q. Let me see if I got this right because my understanding of your evidence was that you saw the other boat at about that distance you mentioned and you watched it until it was about two hundred yards when you said "I don't want to die" and then you ducked.
- A. My friend ducked first. He said it was going to be a collision. I saw it and I said - that was in a joking manner - "I don't want to die." It was closer and closer. We ducked.
- Q. Now, between the time that you first saw the other boat and the time when you ducked, did it appear to be going in a straight line or deviating from a straight line?
- A. I could see that it was like a straight line.

40

COURT: That is your own vessel.

50

A. The other vessel.

Q. So that on your evidence both vessels appeared to be going on a straight line. In the High Court of Hong Kong

A. Yes. I mean if our boat happened to change course, we could feel it because we were concerned with the situation. Prosecution's Evidence No.4

Q. But you didn't feel anything. P.W.4

A. I didn't feel anything on our boat. Tsang Sik-yiu

10 Q. And as for the other one, you lost sight of that for the last two hundred yards, is that right? Examination (continued)

A. We ducked down, we lost sight.

Q. What happened then?

A. It banged and I was rolling on the floor back and forth and my back seemed to have hit some fixtures on the deck back and forth. I didn't -- and fortunately I didn't black out but that half a minute I didn't know what I was doing, just rolling on the floor.

20 Q. Tell me, Mr. Tsang, apart from you and your friend, were there any other people on the deck of the boat that you recall?

A. Very clearly I saw one European family, husband and wife and a little child, possibly together with another Chinese male.

30 Q. Was there any sort of noise of any sort from your boat that you heard?

A. You mean before the collision?

Q. Before the collision.

A. I didn't hear anything. No announcement, no whatever sound.

Q. No announcement, no sound, but I am not talking so much from the boat itself, but did you hear any noise from other people apart from your friend Mr. Joy?

40 A. I didn't hear anything as far as the deck area is concerned. Maybe somebody inside the, you know, the cabin were talking. I didn't hear that.

Q. You say that there was no sound from your ship that you recall, no warnings.

A. No warnings except the engine sound.

Q. No sound of a bell or a horn or anything of that nature from either boat.

A. Absolutely no.

50 MR. LUCAS: Thank you, Mr. Tsang.

XXN.BY MR. STEEL:

Cross-
Examination

Q. When you first saw this other hydrofoil, were you personally worried?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.4
Tsang Sik-yiu
Cross-
Examination

(continued)

- A. In the beginning I saw the other hydrofoil that was about five hundred yards away, I wasn't worried at all² because we were still talking about the scenery of the vicinity with my friend.
- Q. And there came a time, however, when your friend commented to you that the approaching vessel appeared to be on a collision course. 10
- A. And then we were worried. I was worried.
- Q. How far off was the other vessel when he made that comment?
- A. I would say about two hundred yards away.
- Q. And it was then, as I understand it, that you realized that not only was the other vessel on a collision course but a collision was imminent. Is that right?
- A. He said it was going to be a collision - my friend said that. I was worried about a collision that would happen. 20
- Q. You see, as I understand it, all you could do between the time that you appreciated that there was going to be a collision and the collision was to hold on to the handrail and ducked.
- A. Right.
- Q. You were in fact standing not far away from where the collision impact happened.
- A. We were on the deck outside of the cabin. 30
- Q. Yes. And you were on the open deck and there was nothing to prevent you from seeking some kind of refuge on the port-side or at the stern.
- A. The speed was so fast, that was the only decision I could make, and I couldn't swim, I wouldn't jump into the water.
- Q. That's why I was minded to suggest to you that this happened very quickly indeed and that perhaps the distance that you mentioned of some two hundred yards is an over-estimate. 40
- A. I was sure it was about two blocks away according to American standard. The reason why I ducked, I am an experienced traveller. We always heard about these emergency cases on the plane, what you've got to do is just duck down. So naturally I ducked down.
- Q. You in fact went to hospital as a consequence of the collision. 50
- A. I was carried to the hospital by the ambulance.
- Q. And indeed you spent two days in hospital before you were discharged.
- A. Yes, I spent two days in hospital.

Q. Why were you in hospital? What was the nature of your injuries?
A. I was injured. I could remember that I had about 30 bruises all over my body, especially here on my back. I couldn't move. My upper part of my body couldn't move. Pain.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.4
Tsang Sik-yiu
Cross-
Examination

MR. STEEL: Thank you.

NO XXN. BY MR. AIKEN

10 XXN. BY MR. CORRIGAN:

(continued)

Q. You told members of the jury yesterday when you gave your evidence-in-chief that having gone up on the deck, the upper deck, and gone to the starboard side, when you were looking ahead you saw the buildings, you saw Macau, is that right, or you looked towards Macau and you could see Macau in a distance? Do you remember could you actually see as you stood on the starboard side of 'Flamingo', you could actually see the buildings in Macau?

20

A. Right.

Q. Certainly the high-rise buildings.

A. Yes.

Q. And it appeared, did it not, that your vessel 'Flamingo' was on a perfectly normal straight course, heading directly across towards Macau.

30

A. I think so.

Q. And as far as you recall, at no point, particularly in the moments or seconds leading up to this collision, did 'Flamingo' deviate in any appreciable manner one side or the other from that straight course.

A. I don't think so.

Q. You think that is a fair picture.

40

A. We were two people, all right, my friend and I were talking about, you know, the situation and I didn't feel anything personally.

Q. No. And in particular you did not notice, is this right, that 'Flamingo' did anything like a turn to port in any ...

A. You mean turn to the left?

Q. Yes, left in any way?

A. Left or right, I didn't feel anything.

50

Q. You didn't. I am much obliged. And of course standing where you were up on the upper deck looking out to the open sea on the starboard righthand side, you had a perfectly clear and uninterrupted view, is that right?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.4
Tsang Sik-yiu
Cross-
Examination

(continued)

- A. Yes.
Q. And suddenly, I think you told members of the jury, your eye was struck by the colours of - was it of this vessel which we know to be 'Goldfinch' in green and white, that was what struck your eye first of all.

COURT: Green.

MR. CORRIGAN: Green and white, I think in his evidence yesterday, my Lord. Sorry, it's now green and white under a different name but it was then blue and white. 10

A. It was white definitely anyway, plus the other colour.

Q. And so brilliant was the day that your eye was more or less caught by a colour and then a shape.

A. No.

Q. How do you describe your first sight of 'Goldfinch'? 20

A. I saw a hydrofoil coming over. Subsequently I paid more attention to this hydrofoil coming our way. It was a beautiful object with the foils up, with the water splashing. It caught my eyesight. I continued paying more attention towards this hydrofoil that was five hundred yards away.

Q. Yes. Are you sure that when you actually first caught sight of this approaching hydrofoil, she was in fact already, so to speak, coming directly at your vessel? 30

A. It was a hydrofoil. I could see the waves. I could see the foils.

Q. But are you sure of the direction in which that hydrofoil was approaching at that moment?

A. It was directly approaching us, otherwise I wouldn't continue looking at the hydrofoil and then we had a conversation right away. 40

Q. Did you notice that hydrofoil approaching and making any sort of turn whilst you were still watching it?

A. No. Definitely no.

Q. She appeared to you to be coming straight.

A. Straight. We were worried then.

Q. Do you think you may have, as it were, over-estimated that distance of five hundred yards which you say was the, I suppose, the approximate distance when 50

	you first caught sight of 'Goldfinch'?	In the
	A. It was about five hundred yards away.	High Court
	Q. Yes, you were looking out, when you	<u>of Hong Kong</u>
	saw her, out into the open sea.	
	There was no point of reference, so	<u>Prosecution's</u>
	to speak, which enabled you to make	<u>Evidence</u>
	that estimate. You were simply looking	
	at the hydrofoil when you noticed it.	No.4
10	A. I think within five hundred yards	P.W.4
	I could see the hydrofoil clearly.	Tsang Sik-yiu
	I think it was quite -- about five	Cross-
	hundred yards, four hundred, five	Examination
	hundred yards.	
	Q. Could you help us at all, I don't know	(continued)
	as to how long it was, say, how many	
	seconds before you spoke with your	
	friend and ducked down, from the time	
	you first saw the boat to the time	
	you ducked down?	
20	A. That was about a minute or less than	
	that, or a little over than one minute.	
	Q. One minute ...	
	A. It is very quick.	
	Q. A minute is a very long time indeed,	
	isn't it?	
	A. Anyway, it was quick.	
	Q. Or how many seconds?	
	A. I couldn't estimate. I didn't look at	
30	my watch, but we were talking for a	
	few seconds, it came to about two	
	hundred yards away, we were worried, we	
	ducked down.	
	Q. Really it was no more than a few seconds,	
	was it, from the time you spotted her	
	first of all to the time you ducked down.	
	A. I couldn't tell the time.	
	Q. No, but I am not asking you to be precise,	
	but it couldn't have been, I suggest to	
40	you, more than a few seconds between the	
	time you first saw her flying in at you to	
	the time you say she was two hundred yards	
	away and you ducked down.	
	A. My friend said it was going to be a	
	collision, I looked at it, he looked at	
	it and we were talking a few sentences and	
	I said "I don't want to die."	
	Q. A few sentences, "I don't want to die" and	
	then you ducked.	
	A. Then I ducked and then we heard a sound	
50	roaring, so we ducked.	

MR. CORRIGAN: Yes, thank you.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.4
Tsang Sik-yiu
Re-examination

RE-XN. BY MR. LUCAS:

- Q. Just one matter, if I may, Mr. Tsang. The area in which you were standing at the back of the deck, does it have railings around it or not?
- A. Some kind of things that I could hold.
- Q. No, no, but you see, there was a suggestion put to you that you could have escaped or gone somewhere else. How wide is the area?
- A. I would say this is the door leading to the cabin. I was here, the other side is about this width. 10
- Q. And the back of this is about -- the back of the boat ...
- A. Only a few feet. It is an open railing.
- Q. Have a look at this plan. Is that an accurate plan of the boat and the area that you are talking about?
- A. I guess this is the closed area. I think we were standing here. 20
- Q. Yes, you say this is the closed area, would you be kind enough to show his Lordship and members of the jury please?
- A. I could see some sort of --
- Q. But the closed area is the white area...
- A. Here. I was standing here. I think this is the closed area, you know, there is a gate which the crew would open to go in.
- Q. That is what I am getting at. There was in fact a gate and barrier between you and the back of the boat. 30
- A. Right.
- Q. Was that open or closed at that time?
- A. It was closed at that time.

MR. LUCAS: I have no further questions.

COURT: Members of the jury, any questions?
Thank you very much.

MR. LUCAS: I call Mr. HO Ngau. He is one of the witnesses who is one of the sailors - notice of additional evidence - he doesn't have a number. While we are on this subject, my Lord, I have now the translated and certified copy of the additional statement of Mr. Pyrke. You your Lordship and my learned friends have the copy without the formalities attached. 40

P.W.5
EVIDENCE OF HO, NGAU

In the
High Court
of Hong Kong

P.W.5 - HO Ngau Affirmed in Punt
XN. BY MR. LUCAS:

Prosecution's
Evidence

- Q. Where do you live?
A. I live at Room No.1107, Block 13,
Sun Ha Street, Chai Wan.
Q. And your occupation?
A. I am a sailor.
10 Q. Now, I think you joined the Hong Kong
Macau Hydrofoil Company as a seaman in
1966, did you not?
A. Yes.
Q. And since that time you have been
working aboard various hydrofoils.
A. That's right, several hydrofoils since
1966.
Q. But in 1967 I think there was a new
hydrofoil in commission called the
20 'Flying Flamingo' and that was launched
and you were assigned to work aboard that
vessel.
A. That's correct.
Q. And have you worked on the 'Flamingo'
ever since?
A. Yes.
Q. What were your duties, Mr. Ho?
A. My duties include the tying and untying
of cables, the cleansing work of the
30 hydrofoil etc.
Q. When the vessel is at sea, what do you
suppose to do then?
A. If the sea is rough, I would see if any
passengers suffer from seasick and in that
case I would offer them some plastic bags.
Q. On the morning of the 11th of July, do
you remember the day there was an accident
involving your 'Flamingo'?
A. Yes, I remember.
40 Q. On that day, what time did you report to
work?
A. I reported duty sometime after 7 o'clock
in the morning.
Q. What time was it your boat due to leave for
the first trip to Macau?
A. 8 o'clock.
Q. What time did you actually -- do you remember
what time it left?
A. It was about 8.10 a.m.
50 Q. Why did you leave -- why were you late in
leaving?
A. Because the captain was late.
Q. Now, how late were you when you left? Forget
the time that you were supposed to leave, how

No.4

P.W.5
Ho, Ngau
Examination

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.5

Ho, Ngau
Examination

(continued)

- late were you when you left?
- A. It was about ten minutes late.
- Q. Now, on that day who was your master of that craft?
- A. It was a European master.
- Q. Now, after you had left, after the vessel had left Hong Kong heading for Macau, where did you go?
- A. You mean started from Hong Kong?
- Q. Yes. I am sorry. That question was vague. 10
Where did you personally -- after the boat had taken off, where did you go personally on board the boat?
- A. After the vessel started its voyage, I sat near the bar.
- Q. Where is the bar?
- A. In the midship, upper deck.
- Q. Which direction were you first facing? Were you facing the bow of the ship or the stern of the ship? 20
- A. I was directly facing the stern.
- Q. Now, after you had travelled for some distance, something happened, I understand.
- A. When the vessel was some distance away from Cheung Chau, it was on its hull for one time.
- Q. In other words, it came off its foils and stopped, is that right?
- A. And then it went astern.
- Q. Now, this is not an unusual situation, 30
is it, to get rubbish off the back of the foils, something like that.
- A. That's right.
- Q. And did you continue sitting at the bar on the top deck looking at the stern whilst this was going on?
- A. That's right.
- Q. Now, after the vessel had resumed speed, in other words, got up on its foils, did something happen? 40
- A. It resumed its normal speed, that is, it went on its foils again.
- Q. And how long did you travel before something happened?
- A. About fifteen minutes.
- Q. What happened?
- A. We were somewhere away from Fan Lau at that time. At that time I was facing the stern. I saw a male passenger. I heard him saying in my back, "Why this vessel travelling - 50
sailing in such a manner."
- Q. Yes, go on.
- A. I immediately turned to the starboard side and I saw a hydrofoil.
- Q. Yes?
- A. I was shocked at that time because I didn't

know why could that happen.

10 Q. What happened? Which direction was this hydrofoil travelling?

A. Because at that time it was very dangerous, imminent danger would happen.

Q. Which way was it, Mr. Ho? I mean which direction was it coming from? Why was it in imminent danger?

10 A. I saw that the other hydrofoil was coming towards the 'Flamingo'.

Q. Yes?

A. I shouted five to six times. I left the bar. (continued)

Q. What did you shout?

A. I said "How could that be?"

Q. And you shouted that how many times?

A. Five to six times.

Q. Yes, and then?

20 A. I left the bar. I lay between the gap of the seats.

Q. Yes?

A. One to two seconds later, I heard a sound of collision.

Q. Yes, go on.

A. And then it became silent. I got to my feet.

Q. Yes?

30 A. I stood up. I saw that the midship was in a state of confusion.

Q. Yes?

A. I saw a female passenger. She was bumped from the starboard to the portside. I tried to help her up but my energy failed me. So I crawled to the portside and I lowered a life-boat.

Q. Yes?

A. And then I saw other passengers going aboard the 'Flying Goldfinch'.

40 Q. Was the 'Flying Goldfinch' the other hydrofoil that had struck you?

A. Right.

Q. Same company as your own.

A. Yes.

Q. Now, you saw some passengers going across to the 'Goldfinch', going onto the 'Goldfinch', did you?

A. Yes.

Q. And did you go over there as well?

50 A. I stopped lowering the life-boat and I tried to pack the passengers to go to the 'Flying Goldfinch'.

Q. Mr. Ho, I would like to go back, please. You've just told us the story of what happened in general terms. I'd like to go back over the period that you have just told us about and get some further details from you.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.5
Ho, Ngau
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.5

Ho, Ngau
Examination

(continued)

- Now, can you read a plan? First of all, can you see it from here?
- A. Yes.
- Q. Can you point to the place where you were sitting?
- A. The portside of midship.
- Q. Mr. Ho, there is a thing here marked "Bar", is that right?
- A. Yes.
- Q. You have told us that you were sitting near the bar facing the stern. 10
- A. Yes.
- Q. Were you sitting somewhere in this vicinity?
- A. The left side.
- Q. Here.
- A. Yes.
- Q. Now, when you were sitting there, you say that you heard someone shout.
- A. That person was not shouting. That person only said "Why the vessel sailed in such a manner?" 20
- Q. I see. Now, did that voice -- did that come from inside the cabin that you were in or outside or?
- A. That sound came from the starboard side of the midship.
- Q. Inside the cabin.
- A. Yes, inside.
- Q. At that stage, did you turn around then? 30
- A. Yes, I immediately turned to the starboard side to have a look upon hearing the sound.
- Q. Did you stay in your seat? Were you sitting down or standing up?
- A. I remained seated at that time.
- Q. Which direction did you look? You say that you saw a sister hydrofoil coming. Which direction did you look out the window? Better still, perhaps we do this. I wonder if you could come over to this board and using these two models, using first of all that one representing your ship on the lefthand side, Mr. Ho, down the bottom. Now, that is the boat on the lefthand side, Mr. Ho, say, for the moment, is the 'Flamingo', the boat that you were on. You were sitting in the bar. You heard someone say something, you turned around and you looked to the starboard and you saw another hydrofoil. Are you able to place the second one that you have in your hand in the approximate position, angle, direction when you saw the 'Goldfinch'? 40
- A. Would it mean that this model which I am holding represents the 'Flying Goldfinch'?
- Q. Yes. Do you understand what I am asking you?
- A. That is the direction when it was coming. 50

Q. How far away was it when you first saw it in distance? First of all, are you able to tell us, estimate the distance? Are you able to tell us how far away it was when you saw it?

A. It was about 60 to 70 feet.

Q. Right. Would you come back. Do you know how long a hydrofoil is approximately, Mr. Ho?

10 A. 80 to 90 feet.

Q. So when you saw it, you say it was closer than a hydrofoil in length from you.

A. Right.

Q. Now, once you saw it, you say that you got up.

A. Right.

Q. And you called out five or six times.

20 A. Yes, five to six times.

Q. What did you shout out?

A. "How could that be? How can that be", I shouted.

Q. After that, what did you do?

A. I left the bar. I sprawled between the gap of the seats.

Q. Portside or starboard side?

A. Starboard side.

Q. And what did you do?

30 A. Sorry, portside.

Q. What did you do?

A. I sprawled down. About one to two seconds later, I heard a sound of collision.

Q. Did you apart from sprawling down have time to take any sort of hold on anything?

A. I tried to grab the handle of a chair which was in the midship at that time.

Q. And did you have time to do that?

40 A. Yes.

Q. So you turned around, saw the boat, called out five or six times, sprawled on the ground, gripped hold of the seats and then one or two seconds later you heard the collision, is that right?

A. That's right.

Q. Now, you have got the boat representing the 'Goldfinch' turning in slightly to the right.

A. Yes. I saw that the 'Flying Goldfinch' was turning to the right.

50 Q. About -- I mean is that about right as you remember it? I am not suggesting that you be accurate to the degrees, but is that the approximate angle that you recall?

A. Yes, that is the approximate angle.

Q. Now, in relation to your boat the 'Flamingo' you say that you were watching the stern.

A. Yes.

Q. And you were watching the wake. Did you say

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.5
Ho, Ngau
Examination

(cOntinued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.5

Ho, Ngau
Examination

(continued)

- that? Did you notice, apart from the stern, did you notice the wake at all?
- A. I saw the splash of water at the stern and I found it was in a straight line.
- Q. Now, what I am -- you say th t it was in a straight line. What was in a straight line? Let's get this clear. What was in a straight line, Mr. Ho?
- A. The splash of water at the stern because the propeller was in a straight line. 10
I didn't feel that it had changed its course.
- Q. Right. While you were watching and before you heard someone speak, you were looking out at the stern.
- A. Yes.
- Q. And the wake then was straight, was it? There was a straight mark made by the propeller in the sea.
- A. Yes. 20
- Q. And did you before the collision at any time feel the boat that you were on make any deviation in course?
- A. No, I didn't feel that.
- Q. Now, rescue operations were taken out and you were taken back ashore, as I understand it.
- A. You mean after the collision?
- Q. Yes.
- A. We went on board of the 'Flying Goldfinch' 30
and then we sent -- we asked other vessels passing by to assist us to get other passengers on board of those ships.
- Q. Did you hear any -- before the collision or at any time, did you hear any sound made, any emergency sounds made in your boat?
- A. I didn't notice any.
- Q. And I think subsequent to going home that day, you actually felt some pain in your ankle and went to hospital. 40
- A. Yes.
- MR. LUCAS: Thank you, Mr. Ho. I have no further questions.

Cross-
Examination

XXN. BY MR. STEEL:

- Q. How long does the hydrofoil usually stay in Macau before making the return journey?
- A. About 15 minutes.
- Q. Yes. It is sometimes 10 minutes but usually about 15 minutes. 50
- A. Right.
- Q. And this gives time, does it, for the passengers from Hong Kong to disembark and for the passengers bound back to

	A.	Hong Kong to embark.	In the
	A.	Right.	High Court
	Q.	When your hydrofoil commenced her passage on the day of the collision, she was already 10 minutes late, is that right?	<u>of Hong Kong</u>
	A.	About 10 minutes.	<u>Prosecution's Evidence</u>
	Q.	During the course of the passage the hydrofoil came off her foils and then after a time resumed her passage.	No.4
10	A.	We passed Cheung Chau and then the hydrofoil came off the foils and then went astern.	P.W.5
	Q.	And how long was spent reducing speed, going astern and then resuming full speed?	Ho, Ngau
	A.	It was about two to three minutes.	Cross-
	Q.	So by then the hydrofoil was about 12 or 13 minutes late, is that right?	Examination
20	A.	You mean the time of the arrival in Macau would be delayed?	(continued)
	Q.	Yes.	
	A.	We never arrived at Macau because the collision occurred.	
	Q.	You have told us that when you first saw this other hydrofoil, its bows were about 60 to 70 feet away.	
	A.	Yes.	
30	Q.	Were you able to see either side of this other hydrofoil? Sorry, that's a very confusing question. I apologize. Perhaps I will rephrase it. Were you able to see either the starboard or the portside of this other hydrofoil?	
	A.	I saw the portside of the other hydrofoil.	
	Q.	Do you think it is possible that your recollection of the angle at which the other vessel lay was when you looked up after the collision was over?	
40	A.	It won't be the case. That's not the case.	
	Q.	Would you just say what the answer was?	
	A.	It is not the case.	
	Q.	Not the case. I asked you that because an expert has suggested that the initial -- at the moment of impact the vessels were angled like that but during the course of the collision the angle changed to that.	
	A.	The angle of the other ship which I placed was the angle I saw before the collision.	
50	Q.	You have told us that you -- as you recollect the wake of the ship was straight.	
	A.	Yes.	
	Q.	When had the wake last been bent?	
	A.	Which vessel do you mean?	
	Q.	Your vessel.	
	A.	I didn't notice it.	
	Q.	It is not something that you would particularly	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.5
Ho, Ngau
Cross-
Examination

(continued)

- notice at any moment, is it?
- A. At that time I was facing the stern. I could see very clearly.
- Q. But you had no reason to particularly note whether the wake was straight or not.
- A. If there were any deviation, the line wouldn't be straight.
- Q. Am I right in thinking that the first time you were ever asked by the police to recollect what happened on the day of the collision was a week ago? May I ask this question again. Am I right in thinking that the first time the police asked you to recollect what happened on the day of the collision was a week ago? 10
- A. It was the same as what happened on that day.
- Q. But what is the answer to my question?
- A. Yes. 20
- MR. STEEL: Thank you.

XXN. BY MR. AIKEN:

- Q. And where were you when you made a statement to the police last Tuesday? In Macau or Hong Kong?
- A. When are you referring to?
- Q. On the 1st of March you made a statement. Were you in Hong Kong or Macau?
- A. Hong Kong.
- Q. I see. You weren't with Mr. CHAN Shek on that day. 30
- A. No.
- Q. Nor Mr. LAI Wong.
- A. No.
- Q. But they were the other two seamen on the 'Flamingo' when this accident occurred, weren't they?
- A. Yes.
- Q. When you gave my learned friend for the Crown Mr. Lucas times, you said something happened 15 minutes later or 10 minutes later, you were relying on your memory. When you gave in evidence to Mr. Lucas a series of times, you said 15 minutes later something happened, 10 minutes later something else happened. For those times you were relying on your memory. 40
- A. Yes.
- Q. You saw no document to prompt your memory.
- A. Sometimes I had a glance of the document or documents. 50
- Q. Shown to you by whom? The police?
- A. Yes, the police did, as well as the Marine Department.

	Q.	The police and the Marine Department brought along documents when they came to take a statement from you.	In the High Court of Hong Kong
	A.	Yes.	
	Q.	And those weren't documents written by you, were they?	Prosecution's Evidence
	A.	No.	
	Q.	And they weren't documents you had signed in July of last year.	No.4
10	A.	They had come to see me to make enquiries last year.	P.W.5
	Q.	And you told them you don't really remember very much about it.	Ho, Ngau Cross- Examination
	A.	I remember clearly.	(continued)
	Q.	You remember there was an accident, of course you remember that, but you told them you don't remember the exact times and the exact sequence of events.	
	A.	I remember the rough detail.	
20	Q.	But you wouldn't remember a detail like the captain being 10 minutes late.	
	A.	I remember that.	
	Q.	Didn't you get that detail from one of the documents that you were shown?	
	A.	At that time the hydrofoil was full of passengers and then it started its journey.	
	Q.	Yes, you probably remember it was late but you wouldn't remember exactly how late it was without reference to a document.	
30	A.	It was about 10 minutes late.	
	Q.	What information did these documents you were shown contain?	
	A.	I was asked about the time collision and the time when the hydrofoil started its voyage.	
	Q.	And did you get that information from the documents?	
40	A.	When the hydrofoil started off, it was about 10 minutes late.	
	Q.	Did you get that 10 minutes from a document shown to you?	
	A.	I did not look at any document.	
	Q.	I thought you told me a moment ago that the police and the Marine Department brought documents along when they saw you.	
	MR. AIKEN:	I will be corrected if--I thought that was his answer.	
50	COURT:	I thought, Mr. Ho, that you had agreed with counsel that the police and Marine Department did bring along some documents when they interviewed you, is that correct?	
	A.	Yes.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.5
Ho, Ngau
Cross-
Examination

(continued)

- Q. And I think you said "Sometimes I had a glance at the document shown to me by the police and the Marine Department."
A. Yes. I am referring to the document given to me by the Marine Department.
Q. I am not criticizing you, Mr. Ho. I am just saying that you required certain documents to get details for your statement.
A. Well, in fact when the hydrofoil started off, it was 10 minutes late. 10
Q. Yes.

COURT: Mr. Ho, counsel said nobody is in any way criticizing you, to blame you or anything, but you have given us an account of what you saw on this occasion. Now you are telling us about something which occurred nine months ago, it's quite a long time. What we are anxious to establish is whether there was any possibility that you may be genuinely mistaken in what you have told us. What counsel is trying to find out from you is to what extent, if at all, were you assisted by seeing documents when you were interviewed. 20

MR. LUCAS: Would your Lordship be kind enough to specify the date of the interview as being the 1st of March, because with respect, there has been some confusion. 30

COURT: It's on the 1st of March.

MR. LUCAS: It's the statement on the 1st of March at the Queen Mary Hospital, my Lord, as headed in the front of that statement.

MR. AIKEN: My Lord, no confusion in my questions. I made it perfectly clear which statement I was referring to. If there is any confusion, it must be in the interpretation. 40

COURT: On the 1st of March when you were interviewed, were you shown any documents, any statements?

A. Even if a document was shown to me, I won't be able to understand it because it was in English.

COURT: Mr. Ho, were you shown any documents?

A. Yes, but I didn't understand it because it was written in English.

	Q.	When you were shown the documents, someone told you what the documents were.	In the High Court of Hong Kong
	A.	Yes.	
	Q.	And he told you that in Chinese.	Prosecution's Evidence
	A.	Yes.	
	Q.	And he told you what was in the documents.	
	A.	Yes.	No.4
10	Q.	And so although you can't read English, you were made aware of certain facts contained in the document.	P.W.5 Ho, Ngau Cross- Examination
	A.	Yes. I understood it when he told me.	
	Q.	He translated it for you.	(continued)
	A.	Yes.	
	Q.	And it was on the basis of what he translated that you were able to give us the factual information in the statement.	
20	A.	Yes.	
	Q.	Factual information like the times, the exact times.	
	A.	Yes.	
	Q.	Factual information like the position of the two boats.	
	A.	Right.	
	Q.	This accident happened--it was completely unexpected as far as you were concerned.	
	A.	Right.	
30	Q.	You heard someone speak in the cabin, you immediately turned round and you saw this vessel very close to the 'Flamingo'.	
	A.	Yes.	
	Q.	In your words to Mr Lucas, "At that time there was imminent danger - imminent."	
	A.	Yes.	
	Q.	You were very frightened.	
	A.	Yes.	
	Q.	Your prime concern was with your own safety.	
40	A.	Yes.	
	Q.	And as you have told us, you fell down between the seats.	
	A.	Yes.	
	Q.	You did that immediately.	
	A.	After I shouted five to six times.	
	Q.	But - I am coming to that, if you don't remember you must tell the jury - but you didn't stand there and shout five or six times and then get down to the floor. You were shouting as you were falling on the floor.	
50	A.	No.	
	Q.	You were shouting when you were on the floor.	
	A.	As soon as I saw the other hydrofoil I stood up, shouted for five to six times.	
	Q.	You were shouting to warn people.	
	A.	Yes.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.5
Ho, Ngau
Cross-
Examination

(continued)

- Q. And that is why you shouted several times.
A. Yes.
Q. You didn't stop shouting when you got to the floor, you shouted right up to the moment of impact.
A. I shouted for five to six times. I then lay down and one to two seconds later I heard a sound of collision.
Q. You can remember that you stopped shouting before you lay on the floor. 10
A. Right.
Q. Surely you wanted to warn other passengers.
A. Yes.
Q. So if you don't remember please tell us, but I am suggesting that you continued to shout right up until the moment of the crash.
A. I stopped shouting after I lay down.
Q. Will you tell us why you stopped shouting?
A. Because at that time the other hydrofoil had almost collided with 'Flying Flamingo'. 20
Q. The accident occurred almost as you reached the ground.
A. Yes.
Q. And if there had been a one to two second's gap between the time you reached the ground and the accident, you would have continued to shout.

INTERPRETER: Sorry?

- Q. If there had been a gap of one to two seconds from the time you reached the ground until the time of the accident, you would have continued to shout for those one to two seconds. 30
A. The other hydrofoil had almost come to us. I had no time to shout. I did not shout.
Q. You had no time to shout.
A. No time to shout.
Q. So you could be mistaken when you gave us the time of one to two seconds. 40
A. It is an estimate, a rough estimate. I can't be sure whether it is one or two seconds.

MR. AIKEN: Thank you.

XXN. BY MR. CORRIGAN:

- Q Mr.Ho, some questions had been raised about the 'Flamingo' being rather late starting off on this particular Sunday morning and you told members of the jury it was about 10 minutes late because the captain was late, is that right? 50
A. Yes.

	Q.	Nothing very unusual, is this right, in a hydrofoil setting off in the morning somewhat late.	In the High Court of Hong Kong
	A.	Right.	
	Q.	It happens quite often.	Prosecution's Evidence
	A.	At times, occasionally, not very often.	
	Q.	At times, occasionally it happens, yes. If you do get behind time, there is nothing very much that you can do about it, is there?	No.4 P.W.5
10	A.	Right.	Ho, Ngau
	Q.	Because these hydrofoils, when they are flying between Hong Kong and Macau, travel, do they not, at more or less a constant speed.	Cross-Examination
	A.	Yes, almost.	(continued)
	Q.	So you can't really go faster than the maximum even if you wish to get a bit of speed on, is that the position?	
20	A.	Not much faster, almost the same speed.	
	Q.	And I think we shall hear expert evidence that that flying speed, otherwise termed the maximum speed, is about 32 knots, nautical miles per hour, and if you try to reduce speed or reduce speed very much, there is a danger, isn't there, that the vessel would come off the foils and go down onto the hull, in fact come to a stop or stall.	
30	A.	It depends how much is the reduction of speed. What would you say about the reduction?	
	Q.	Any appreciable reduction of speed, particularly perhaps in bad weather you are in danger of losing way, aren't you?	
	A.	What reduction would you say?	
	Q.	I am not here to debate with you, but as a generality these vessels travel at a constant speed for one reason or another, is that not right?	
40	A.	Yes, when it is on its foils.	
	Q.	Yes, until they come down onto the - off the foils onto the hull where they go to a very slow speed indeed, is that the position?	
	A.	Right.	
	Q.	Now, you had been on this unfortunate boat 'Flamingo' since 1967.	
	A.	Yes.	
50	Q.	That is some 14 years until the day of the accident.	
	A.	Yes.	
	Q.	I don't think members of the jury have been told, but in fact on this day, the 11th of July of last year, after this collision 'Flamingo' sank and was no more, is that right?	
	A.	Right.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.5
Ho, Ngau
Cross-
Examination

(continued)

- Q. Now, in all the years that you sailed on 'Flamingo', you never, I take it, experienced a close-quarter situation involving another hydrofoil coming at you, anything like this, did you?
- A. No.
- Q. When on this occasion you heard the passenger in the bar, in the cabin shouting something about "Why is this vessel sailing in such a manner", which vessel did you understand that passenger to be referring to? 10
- A. Upon hearing the male passenger saying "Why the vessels sail in such a manner", I turned to the right, I turned to the starboard side, saw the other hydrofoil sailing straight towards us.
- Q. It was on hearing the passenger talking about "Why is this vessel sailing in such a manner" that you immediately looked and saw the 'Goldfinch' approaching as you described, is that the picture? 20
- A. Yes.
- Q. As far as you were concerned, your recollection is that your vessel Flamingo was sailing on a perfectly normal, straight course across the sea towards Macau on this clear Sunday morning, is that what you say?
- A. Yes.
- Q. Now during the course of a voyage in conditions like that when you are sitting, as you told members of the jury, in the upper deck saloon or bar, you got nothing in particular to do, is that right, so long -- 30
- A. Right, nothing to do.
- Q. -- so long as you aren't cleaning up or, indeed, passengers aren't being sick -- I suppose they weren't being sick on such a glorious, calm morning? 40
- A. That is correct.
- Q. So you were just sitting in that position by yourself, is that it?
- A. Right.
- Q. Doing nothing in particular.
- A. No.
- Q. And what do you look at? What do you look out to? What do you see as you sit there as the vessel is going across the open sea? 50
- A. I saw Fan Lau on my right.
- Q. We don't want a geographical tour, Mr. HO.

COURT: Come on, Mr. Corrigan! Frankly, what are you enquiring about? You are asking a general question as to what he generally sees. He says he sees Fan Lau. That is a reasonable answer, I think.

MR. CORRIGAN: All right. He was asked the particular - members of the jury will recall - about whether or not he had any particular reason to be looking at the wake of the stern. That is, of course, what I am most concerned with. It relates to the course that the Flamingo was taking.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.5

Ho, Ngau

Cross-
Examination

(continued)

10 Q. What I say - never mind the geography and the places on the landward side of the sea. What generally do you sit there looking as you go across?

A. I just look around with no purpose. That is what I normally did.

Q. Looking at - you told members of the jury - I think your description was "facing the stern" which you could see very clearly.

A. Yes.

20 Q. How is it that sitting inside the cabin that you are able to see - you see, we are not familiar exactly with the job. Now you are able to look out and see the stern or something of the wake. How is that? Can you describe it? What do you look through?

A. As I said, I have no particular purpose in doing that.

30 Q. If you look at the stern and see the wake, what are you looking out through?

MR. LUCAS: I'm sorry, my Lord. I do apologize for interrupting. There seems to be some confusion as to the word "wake" in Cantonese on my instructions.

MR. CORRIGAN: (to interpreter) The wake is the wash from the propeller. It is behind the ship as she is going across. Is that what you translate?

COURT: The trail of --

40 MR. CORRIGAN: -- left by the propeller behind the ship, immediately behind the ship.

COURT: -- of white water - agitated water left by the ship as it moves, that is the wake.

MR. LUCAS: Long wave, trail.

INTERPRETER: That is what he answered.

MR. LUCAS: I'm sorry. We shouldn't really query the interpreter. I'm sorry.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.5
Ho, Ngau
Cross-
Examination

(continued)

COURT: Yes, Mr. interpreter, you are satisfied that is what the witness understands?

INTERPRETER: I see. I interpreted "the way".

COURT: No, "wake".

INTERPRETER: Sorry.

A. I would look right at the stern.

COURT: And can you see from where you were - can you see the wake?

A. Yes, I could. 10

Q. I'm sorry. I have asked you - you have given a lot of evidence about what you saw of the wake. You are sitting, as far as we know, inside the upper cabin at the bar as you described. All I am asking you is: can you describe your view of the stern and the wake behind the ship from the point where you were sitting? What were you looking out? How are you able to see out to the end of the ship? 20

A. If I look straight towards the stern, I would be able to see the wake.

Q. Yes, looking through what - a window, a door, or what?

A. Looking through the window.

Q. And is that in any sense your customary position when you were sitting in the bar having nothing else or nothing else better to do on these trips?

A. Yes. 30

Q. And when you gave your statement - I think it was on the 1st of March - on this particular topic of seeing the wake of the ship, seeing the wake of the ship having been in a straight line on this occasion, were you asked about that matter by the police, or did you tell the police about the wake of the ship or what?

A. I told it of my own accord.

Q. You gave it as part of your own explanation of these events, is that right? 40

A. I was asked by the police, so I told what happened at that time to the police.

Q. Do you have an actual recollection, Mr.HO, of the state of the wake behind the Flamingo on that occasion?

A. The wake was in a straight line.

Q. You are sure about that?

A. Sure.

Q. Good. Now when you saw the other hydrofoil Goldfinch, you described to members of the jury how you saw her - I think you said - 50

- turning to the right as you recollected.
- A. Yes, the Goldfinch was turning to the right.
- Q. Yes, apart from the direction you say she was turning to the right - did you notice whether or not the Goldfinch was keeling or heeling to the right or to the left in any manner?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.5
Ho, Ngau
Cross-
Examination

INTERPRETER: I beg your pardon?

- 10 Q. -- was herself heeling to one side or the other on her foils?
- A. At that time I saw the Goldfinch turning to the right. Of course, its foil was turning a bit to the right.
- Q. A bit of an angle as you will recall.
- A. That is right.
- Q. Did you notice whether Goldfinch in any way came down off its foils?
- A. I did not see.
- 20 Q. You did not see. You mean you did not notice or she did not come down off her foils or what?
- A. It did not come down on its foil.
- Q. The last you saw of it, it appeared to be still flying, is that the position?
- A. Right.

(continued)

REXN. BY MR. LUCAS:

Re-examination

- 30 Q. Mr. HO, there seems to be - there is possibly some confusion with your statement. Do you see this gentleman with the beard sitting in the front row?
- A. Yes.
- Q. Do you remember meeting him in August of last year? Do you know who was he - what was he doing?
- A. He is an officer of the Marine Department.
- Q. An officer of the Marine Department. And did you give him a statement at that time?
- 40 A. Yes, I did.
- Q. Was there any policeman there at that time?
- A. No.
- Q. Now did you get a copy of that statement from the Marine Department, Mr. HO?
- A. Yes.
- Q. And that was made in August of last year?
- A. Yes, it was some time last year.
- 50 Q. Now you gave a statement to this police officer Mr. LING.
- A. Yes.
- Q. The first thing that was suggested was that two other sailors on your boat

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.5
Ho, Ngau
Re-examination

(continued)

Mr. LAI Wing and Mr. CHAN Sik were
there at the time.

MR. AIKEN: My Lord, it certainly wasn't asked
whether they were present. I wasn't putting
that they were present when the statement
was made. I asked him if it was made
in Macau, whether they were in Macau.
Certainly, it wasn't suggested that the
three of them were together when the
statements were being made.

10

MR. LUCAS: I am delighted to hear that.
Perhaps I misunderstood.

MR. AIKEN: It was the geographical location -
whether they were all in Macau.

COURT: I certainly took it that the statement
was made in the presence of CHAN and LAI.

MR. AIKEN: Oh my Lord, I must correct any
ambiguity there. It wasn't intended.

MR. LUCAS: It was taken at the same time in
their presence. That was my understanding
of the question that was put.

20

Q. Can you just tell us for the record,
LAI Wing, where is he, do you know?
What has happened to him?

A. Passed away unfortunately.

Q. How he is dead or he is none of the
three sailors being mentioned, that Mr.
LAI Wing is dead. Now will you be good
enough - your Lordship has the original
statement made by this gentleman - not
the Chinese, just the English. Would you
look at that statement? Would you look
at the English version?

30

(Insp. LING leaves court, on request)

Q. Do you recognise that?

A. I can't read. I signed my name there.

Q. You signed your name there. When my
learned friend was asking you about being
shown a document, what document were you
referring to?

40

A. This document.

Q. That is right. That statement, Mr. HO, is
your own statement and taken by Mr. LING,
the police officer, while you were in
Queen Mary Hospital?

A. Yes.

Q. And after he took it you spoke to him in
Chinese and he took it down in English,
is that right?

	A. Yes.	In the
	Q. And after he had taken it, he read it back to you?	High Court
	A. Yes, he did.	<u>of Hong Kong</u>
	Q. And did you sign it?	Prosecution's
	A. I did.	<u>Evidence</u>
	Q. Were you shown any other document at that time?	No.4
10	A. Two days later I was given by another person two sheets of paper, telling me that I would be appearing in court on the 7th of March. I told him that I didn't know if I would be discharged from hospital.	P.W.5 Ho, Ngau Re-examination
	Q. Right. I am talking at the time of the statement-taking, the time that Mr. LING came to see you in the hospital, the date of that statement when you signed it, the 1st of March, 1983.	(continued)
20	A. Yes.	
	Q. Apart from being shown this statement and signing this statement in the hospital, at that time were you shown any other document?	
	A. He gave me - I was given another document, well, by which I was informed that I would be attending court on the 7th of March.	
30	Q. Well apart from your own statement and the witness summons to come to court, was there any other statement?	
	A. No.	
	Q. At the time that you were in hospital on the 1st of March, it was in relation to something quite different from the accident. This was some other illness, is that right? It has nothing to do with the hydrofoil crash?	
40	A. It was related.	
	Q. What was it, Mr. HO? In what way, can you tell us.	
	A. Because the collision was mentioned. It was about the collision.	
	Q. No, that is the taking of the statement. I'm sorry.. I have no further questions.	
50	MR. AIKEN: My Lord, I want to raise something because it is not clear in my own mind. I was cross-examining this witness on the basis of the statement taken on the 1st of March and I remember I was on my feet, so I don't have a note - I remember quite distinctly asking him if he was shown documents in order for him to obtain information to make this statement. Now I don't know what Mr. LING has shown him. If he has shown him the statement he made on the	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No. 4
P.W. 5
Ho, Ngau
Re-examination

(continued)

1st of March, then that won't make sense.

MR. LUCAS: My Lord, with respect, the question was raised in his cross-examination. There was quite clearly confusion in the mind of this witness. There was suggestion of documents; there was suggestion of marine police and police being together. The reality of it is - and there was also suggestion that he had never made a statement before. It has now become clear that he made a statement to the marine police, Captain Pyrke in August of last year. He made a statement on the 1st of March in hospital to INsp. LING. He was not shown any other document but his own statement at the time he signed it. You will recall it was translated subsequently and the translation certainly, and the only other document he has ever seen is a summons to come to court. Now the question has been raised in cross-examination. It has been cleared up in re-examination. It is the function of re-examination. It can't go on like this. My learned friend, with respect to him, is unhappy with some of the answers. 10 20

MR. AIKEN: My Lord, let me clear up the position. I was asking him about the statement made on the 1st of March and I said, "Were you shown any documents there" and he said "yes" and he said, "They were translated to him and the information of this statement came from them. If my learned friend is saying that this statement is the only document he was shown on the 1st of March, then it doesn't make sense. 30

COURT: Surely he says he was shown a document on the 1st of March. He now says that was his own statement. 40

MR. AIKEN: But how can he be shown - if he was shown documents to obtain information to make a statement, how can the showing of his statement assist? It can't if it is the same document.

COURT: I will clear the matter up. Mr. HO, when you made your statement you were in hospital. This was on the 1st of March.

A. Yes. 50

COURT: Now on that occasion, was any document -

other document apart from your own statement, was any other document shown to you or read out?

A. Last year a statement was given.

COURT: Yes, you remember making your statement on the 1st of March, that is only a few days ago, to the police inspector?

A. Yes, this is the statement.

10 COURT: Now when that statement was taken from you, were you shown any other document apart from that? Were you shown any other document or was any other document read out to you?

A. This statement was read over to me.

COURT: Was any other statement read out to you?

A. And this one is notice for me when to attend.

20 COURT: Was there any other statement apart from the witness' summons?

A. No.

MR. CORRIGAN: If your Lordship will allow a very short break?

COURT: Yes, members of the jury, any questions you would like to ask?

30 A MEMBER OF THE JURY: Do you remember if there had been any disturbance and a sound of alarm made by other passengers or colleagues other than that mentioned, a male passenger?

COURT: Did you hear any other passenger saying anything relevant to the other hydrofoil which is approaching?

A. No.

12 noon Court adjourns

12.15 p.m. Court resumes

Appearances as before. Jury present.
Accused present.

40 MR. JENKYN-JONES: May it please my Lord. I call Lawrence Marriott, page 41 of the depositions.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.5
Ho, Ngau
Re-examination

(continued)

Prosecution's
Evidence

P.W.6 - Lawrence John MARRIOTT Affirmed in
English

No.4

XN. BY MR. JENKYN-JONES:

P.W.6

Lawrence
John Marriott
Examination

- Q. Can you tell the court your address please, Mr. Marriott?
- A. 9A, Homantin Street, 5th floor.
- Q. And what is your occupation? 10
- A. I am a musician and company director.
- Q. On the 11th of July, you boarded a hydrofoil to go to Macau?
- A. Yes.
- Q. The name of that hydrofoil was the Flying Flamingo?
- A. Correct.
- Q. Do you remember what time of day you boarded the Flying Flamingo?
- A. Shortly before 8.30. 20
- Q. Were you with anyone else?
- A. With my wife and son.
- Q. Are you familiar with the sea area around Hong Kong?
- A. Fairly familiar,
- Q. Have you done the trip from Hong Kong to Macau on other occasions?
- A. Yes, several times.
- Q. Do you have any nautical experience yourself? 30
- A. Yes.
- Q. What is that?
- A. I have done training courses with the Royal Navy and I have sailed extensively in Hong Kong waters and in the United States I have navigated larger vessels.
- Q. So if I show you a map, you will be able to tell the court the course that the Flying Flamingo took on that particular day? 40
- A. Yes.
- Q. Could you perhaps come round to the floor?

(Witness goes down to the board set up on the middle of the courtroom)

MR. JENKYN-JONES: This is Exh.P27 on the papers, my Lord.

- Q. Perhaps if you could stand well to one side so that members of the jury could see. First of all, do you recognize the area involved? 50
- A. This area (indicates)

Q. If you could perhaps take us through the trip from the time you left Hong Kong starting via Cheung Chau?
(Witness indicates by hand)

In the
High Court
of Hong Kong

Prosecution's
Evidence

COURT: Now just before we go on, Mr. Marriott, for the record, you are indicating that the Flying Flamingo followed the westbound path as indicated on P27.

No.4

P.W.6

Lawrence John
Marriott

Examination

10

A. Yes, approximately. I can't say for sure. That is as far as I can say.

COURT: Did you observe that - I mean - what I am saying is: are you able to say. in fact, it was in that particular path and not in the eastbound one?

(continued)

A. In what sense?

COURT: You see, there are two lanes, There is an eastbound and a westbound.

A. I didn't notice.

20

COURT: You didn't notice. But it was in that general area?

A. Yes.

Q. Can you tell the court whether at this stage the hydrofoil was foilborne or on its hull.

A. Foilborne.

Q. Will you carry on?

A. As we came up here, somewhere in this area, we stopped. There is one thing that I happened to notice. When we crossed this land here, about half way to Macau, I happened to say it to my wife. Shortly afterwards, approximately here, this area, we stopped. For some reason or another, we reversed and then carried on.

30

COURT: I'm sorry. Again for the record, your evidence is that after passing the southwest tip of Lantao, you stopped, the vessel went astern, and you then resumed the course.

40

A. Just before that, just before we stopped, it started describing a zigzag course.

MR. STEEL: My Lord, I, just for the record, really should state the witness is describing having come across a half-way mark for this trip to Macau, namely, a line drawn between Niu-t'ou and Fan Lau. He commented about that to his wife. The vessel then proceeded and he describes on a zigzag course and

50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.6
Lawrence John
Marriott
Examination

continued)

then resumed her passage as he indicated that position. The position is north-west of Niu-t'ou. It has a scale to it. I think probably something like two or three miles west of Niu-t'ou.

COURT: Your evidence is that you stopped when you were past the half way mark and that is when the vessel went astern?

A. Yes, we described a zigzag course, then stopped, went astern and then carried on. 10

COURT: And when you resumed, after having gone astern, when you started again, you would then have been somewhere to the north-west of the island Niu-t'ou?

Q. Perhaps if you would just have a - just get your bearing on the general area. Once you appeared to go on, what happened next?

A. We proceeded directly to Macau.

Q. And when you resumed on your course to Macau, were you foilborne or hullborne? 20

A. Foilborne.

Q. At that particular time, did you notice any other vessel in the area?

A. Yes, I met some - you mean when we resumed?

Q. Yes.

Q. Yes, I met some small fishing vessels just to the west, somewhere around there (indicates) some small fishing vessels, and a jetfoil coming from Macau and I can remember ... and a hydrofoil ... (inaudible) 30

COURT: I'm afraid you are some distances from the reporter. Please speak up.

A. There was a jetfoil coming from Macau. It passed us and it passed us to port; and a hydrofoil together with some fishing vessels.

COURT: A jetfoil passed you on your port side? 40

MR. CORRIGAN: He said "starboard".

A. I meant to port.

Q. Now it is not disputed that there was in fact a collision later on between the Flying Flamingo and the Goldfinch. Did you at any time see the Goldfinch, the vessel which eventually collided with the Flamingo?

A. Yes, after we proceeded from here, I took a look out towards Macau --- 50

Q. You will have to speak up.
A. -- after we resumed our passage, I looked forward and I could see Macau lying ahead and I could see some sort of foilborne vessel coming from Macau at a distance.

In the
High Court
of Hong Kong

Prosecution's
Evidence

10 Q. Now on the big map of the area, perhaps you can put your approximate position and your course to Macau and whereabouts the Goldfinch was when you first saw it.

No.4
P.W.6
Lawrence John
Marriott
Examination

A. The Goldfinch when I first saw it?
Q. Where was it when you first saw it?
A. When? When I first saw the Goldfinch, it is just after here (indicates) I saw the Goldfinch coming out from Macau.

(continued)

20 MR. CORRIGAN: The witness has indicated when he points to where he first saw the Goldfinch, his vessel was north, directly off the island of Ching Chou, is that correct?

A. Yes.

Q. And the vessel, the Goldfinch at that time, could you indicate again --

A. Yes ... (inaudible)

(Court reporter asks leave to go down to the well of the Court)

30 MR. CORRIGAN: My Lord, could we have the last answer? I recorded, "I didn't take much notice. The Goldfinch was just coming out from Macau." Is that it?

COURT: Mr. Marriott, you told us you were just to the north of Ching Chou?

A. Yes.

COURT: You saw the Flying Goldfinch coming towards you from the direction of Macau?

40 A. Not coming towards us. It was - it had obviously left Macau; it's about here, somewhere in this general area. As I looked out, it was slightly to the north. If drawing a median like that, it would be north of (indicates)

COURT: It seemed to be to your north and it appeared to have just left Macau?

A. Yes.

Q. Were you able to at that stage say whether it - what course it was on?

A. No.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.6
Lawrence John
Marriott
Examination

(continued)

- Q. You said it wasn't going towards you.
Why did you say that?
- A. Because it was going east-north-east and we appeared to be going due west, so it wasn't coming directly towards us. Looking ahead, it was coming towards us but not directly.
- Q. And what sort of distance was it when you first saw it?
- A. I would guess 5 or 6 miles. 10
- Q. Now you say you didn't pay much attention to it at that stage.
- COURT: 5 or 6 miles?
- A. Yes.
- Q. When did you next notice it?
- A. Just prior to the collision, just seconds before the collision.
- Q. Now take the screen off. Behind the screen, Mr. Marriott, is a diagram of the Flying Flamingo. Can you indicate 20
on that plan whereabouts you were when you first saw the Goldfinch?
- A. I was here (indicates)
- Q. Were you on the starboard side or on the port side?
- A. On the starboard side.
- COURT: You were on the upper deck?
- A. Yes, I was outside here, on this small deck.
- COURT: At the rear on the upper cabin, on the 30
starboard side.
- A. On the starboard side.
- Q. Was there anyone else there with you?
- A. My family was with me and quite a few other passengers.
- Q. Now you told us that you next saw the Goldfinch seconds before the collision. Were you in the same position at that time?
- A. No, at that time I was further inboard. 40
I had to look out through - without going through the gate, but I had to look out across there to see the Goldfinch for the first time and to see Macau and then I went further inboard and then I was --
- COURT: I'm sorry I can't --
- A. -- you can't. (speaking louder) When I first saw the Goldfinch - and I was just sort of taking a bearing on where we 50
were going I had to go to the edge and

look forward, but then when I saw the Goldfinch just before the collision I was further inboard. I was closer to the centre, closer midships.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.6
Lawrence John
Marriott
Examination

(continued)

10 Q. Now what brought you attention to the Goldfinch when you saw it on that second occasion?

A. My wife screamed. That drew my attention.

10 Q. Now using the two magnetic models, can you indicate - if you use one as the Flamingo going up, let's say - can you indicate with the other one the sort of angle it appeared to be approaching you from?

A. If this is the Flamingo, the Goldfinch, when I saw it, seemed to be at that sort of an angle. (indicates)

20 COURT: Again for the record, I think would you agree that that means it was coming virtually directly straight towards you?

A. At midship, yes.

Q. Yes, you said that your wife screamed. Were you facing in her direction when she screamed or did you have to turn around?

A. I had to turn around.

Q. How far away was it when you first saw it approximately?

A. When I first saw it?

30 Q. On the second occasion when you saw it coming at that angle?

A. At that angle? It couldn't be much more than - I mean (pause while thinking) just before the collision I would guess (pause) 30 to 40 metres.

Q. At that time was it foilborne or on its hull?

A. Foilborne.

Q. Did you notice whether it was deviating in its course?

40 A. No.

Q. You did not notice or --

A. No..

Q. Are you saying you didn't notice it happening?

A. I didn't notice it deviating. I did not have time to notice if it was deviating.

Q. Did you hear any bells or whistles or any other signals from either boat?

A. No.

50 Q. Were you able to sense whether the boat you were on, the Flamingo, made any alteration to either side?

A. No, I didn't sense any alteration of course.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.6
Lawrence John
Marriott
Examination
(continued)

- Q. What about alterations in speed?
A. I did not notice anything.
- Q. What did you do on hearing your wife scream?
A. I turned round, saw the Goldfinch and realized that collision was inevitable and grabbed hold of my son.
- Q. How far away was your son at that time?
A. A stride away.
- Q. What happened after the collision? 10
A. After the collision? My wife's handbag was scattered, so I picked the things up. I found my son. He was under a couple of other passenger, I picked up his shoe, gave him his shoe, picked up my wife's belongings, put them in the handbag, and asked them if they're okay. I told them to wait there and see what happened.
- Q. Did you notice any smoke at the time? 20
A. Yes, I noticed red flare smoke before I noticed any other kind of smoke, and then there was what looked like a mixture of smoke and steam coming from below decks a little while later on.
- Q. After the collision I understand that you were taken to hospital yourself, having been put onto a , first of all, a tug and then another jetfoil.
A. Yes. 30
Q. Can you just explain the business of the zigzagging after you had gone down on the hull? This was before the collision and you had gone down on the hull to clear rubbish.
A. Well that is what I thought we were doing. I don't know.
- Q. What do you mean by this zigzagging?
What was that?
A. We weren't -- 40
- MR. CORRIGAN: (interrupts) If my friend puts to the witness that there was a zig-zag after the rubbish --
- COURT: No, no, the zigzag was before the --
- MR. CORRIGAN: -- before the rubbish or before we stopped?
- Q. When was this zigzag?
A. Before we stopped.
Q. Before you stopped. Can you explain that?
A. Well we described a zigzag course; 50
watching the wake, it goes as if a dog leg, a long dog leg, a wake, a zigzag course, and then we slowed down and stopped,

- then reversed and then carried on.
- Q. And it was after you had stopped and taken off again you first noticed the other hydrofoil leaving Macau?
- A. That is correct.

In the
High Court
of Hong Kong

Prosecution's
Evidence

(Witness returns to the box)

- Q. When you did stop after the zigzags, the boat taking off again, did you see Lantao?
- 10 A. Yes.
- Q. How far away was that?
- A. I didn't really notice. I didn't take much notice. I was looking towards the fishing vessels and noticed that they were off the coast of Lantao.
- Q. Thank you.

No.4
P.W.6
Lawrence John
Marriott
Examination

(continued)

XXN BY MR. STEEL:

Cross-
Examination

- Q. You have told us that you recollected the hydrofoil on which you were on board travelling along the south coast of Lantao?
- 20 A. Yes.
- Q. And you can't remember, as I gathered, the distances off the coast you were travelling?
- A. No.
- Q. Nor do you have any recollection of whether the vessel was travelling in the westbound or eastbound lane of the traffic separation scheme.
- 30 A. No, at that time I was inside. I didn't --
- Q. Indeed, by merely looking at the water, you wouldn't be able to tell or know nice headlines along the water?
- A. Sorry?
- Q. You would not be able to tell whether you were in one or other of the lanes by just looking.
- A. There's some buoys there.
- 40 Q. But you didn't notice that.
- A. No.
- Q. You didn't notice which side the buoys went.
- A. No.
- Q. Did you notice which side vessels approaching were passing?
- A. Yes, they're passing to port.
- Q. They were invariably passing on your port hand, is that right?
- 50 A. Not invariably. The ones that I noticed were passing to port and the vessels, the smaller vessels, just bobbing about.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.6
Lawrence John
Marriott
Cross-
Examination

(continued)

- Q. And there came a time when you felt that the vessel described a zigzag path? When you say a zigzag, do you mean that the vessel made a series of changes of course, or just seemed to make one change of course?
- A. A series.
- Q. So she didn't just bear off to the right?
- A. No.
- Q. She did a series of turns, did she not? 10
- A. Yes.
- Q. And then the vessel stopped as you remember, and what happened then?
- A. Then we reversed and then proceeded.
- Q. And you then proceeded and by this time, as I understand it, you were already past Niu-tou Island.
- A. Yes.
- Q. And you didn't see the other hydrofoil in which - sorry, you then saw a hydrofoil at a distance of 5 or 6 miles? 20
- A. Yes.
- Q. How do you know that it's the same hydrofoil that collided with you?
- A. I don't.
- Q. It probably isn't, is it, because well, let me start again: where do you say the collision happened?
- A. Do you want me to say it on the chart?
- Q. Perhaps you would be given a copy of the chart. 30

(Witness given a copy of the chart)

- Q. You told us that by the time you first saw this particular hydrofoil, your vessel was already to the north of Ching Chou.
- A. Yes.
- Q. And this other vessel was 5 or 6 miles away. Do I assume that the collision must have happened somewhere between Ching Chou and Macau, is that right? 40
- A. No, what I mean by north is that we were laterally further north. I mean that we were north in this sense, not due north off Ching Chou.
- Q. I think you pointed to a position which you identified correctly as being north, perhaps not precisely so: north-north-east or that sort of direction from Ching Chou Island.
- A. Yes. 50
- Q. Then you saw to the west this other hydrofoil at a distance of 5 or 6 miles. Now the distance to the exit of the channel from Macau is 5 or 6 miles from Ching Chou Island.
- A. Yes.

	Q.	So on your view, the collision must have happened, as I understand it, somewhere between Ching Chou Island and the exit of the channel from Macau.	In the High Court of Hong Kong
	A.	Yes, I would imagine so.	Prosecution's Evidence
	Q.	And where do you think it did happen?	
	A.	I think it happened slightly - at a guess because when it happened I was more concerned with other things - a bit slightly north-west of Ching Chou.	No.4 P.W.6
10	Q.	I didn't quite follow that because it would suggest, would it not, that the vessel that you saw at a distance of 5 or 6 miles must have been travelling 5 or 6 times faster than your own ship in order to have a collision where you say it occurred.	Lawrence John Marriott Cross-Examination
	A.	Yes, it must have cleared the rubbish earlier than I thought.	(continued)
20	Q.	I think that must be so.	
	A.	I think I named the wrong island. Actually I meant Niu-tou when I said the island - when we cleared the rubbish.	
	Q.	You told us you cleared the rubbish whilst to the north of Niu-tou.	
	A.	Yes.	
	Q.	But you are probably mistaken about that, aren't you? It must have happened earlier.	
	A.	Why?	
30	COURT:	When you were clearing the rubbish, did you in fact notice whereabouts you were?	
	A.	Yes, I noticed that Niu-tou is south of where we were.	
	COURT:	And you were clear of Lantau?	
	A.	Yes.	
	Q.	And again you recollect seeing this other vessel at a distance of 5 or 6 miles when you were in a position, roughly, to the north of Ching Chou Island?	
40	A.	Yes, it was probably before that actually when I first noticed it.	
	Q.	Oh I see. It may have been half way between Niu-tou and Ching-Chou?	
	A.	Yes.	
	Q.	Where do you say the collision happened?	
	A.	I would think north-west of Ching-Chou.	
	Q.	How are you able to tell us that?	
	A.	It is an estimate. I said I would guess. I wouldn't be able to say for sure, but the water changes colour a bit there and I just noticed the water goes - it seems to have a muddy colour to it.	
50	Q.	You see, by the time you had cleared the	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.6
Lawrence John
Marriott
Cross-
Examination

(continued)

rubbish and seen the other vessel, you have described your ship as having already past the position where both masters of the hydrofoils said the collision happened. Now are you certain about the position where you said the collision happened?

- A. No.
- Q. You say that the other hydrofoil which - the hydrofoil you saw at a distance of 5 or 6 miles which may or may not have been the vessel that subsequently collided with your ship. Are you seriously suggesting you can tell the heading of a hydrofoil at a distance of 5 or 6 miles? 10
- A. Well it is - I knew that I wasn't seeing a head on. That is all I can say. I couldn't give a precise heading of a hydrofoil of 5 or 6 miles, but I have seen a lot of hydrofoils and you can usually tell which way they are going in an approximate manner. 20
- Q. And your impression was that, vis-a-vis the line of advance of your vessel, this other hydrofoil was getting further to the north?
- A. Yes, at that time, yes.
- Q. You had at some stage passed a jetfoil which passed you on your port side?
- A. Yes. 30
- Q. You then passed another hydrofoil - sorry, a hydrofoil, is that right?
- A. Yes, I can't remember if it was before the jetfoil or after the jetfoil. I know that it was a hydrofoil that passed.
- Q. Did she pass on the port side or starboard side?
- A. On the port side.
- Q. Thank you.

XXN. BY MR. AIKEN:

- Q. When you first saw this hydrofoil in a distance of 5 or 6 miles away, so far as you were concerned, there was no danger. 40
- A. No, no.
- Q. You first became aware of danger when your wife cried out.
- A. That is right.
- Q. And the accident occurred very, very soon after her crying out. All you had time to do was grab your son. You didn't shout out yourself. 50
- A. No.
- Q. You didn't have time to grab a railing?
- A. No.

	Q.	So the accident was almost simultaneous with your wife crying out.	In the High Court of Hong Kong
	A.	No, the accident was - it is difficult to give a time, but it gave me time to see the other hydrofoil, for me to register what was happening, to turn round and grab hold of my son.	<u>Prosecution's Evidence</u>
	Q.	But that would have been one movement; your seeing it, your first reaction would be instinctively to get your boy.	No.4 P.W.6
10	A.	No, and I remember in a very long moment that when I saw it, I didn't believe that it could hit us and then logic took over and I said, yes, it is, and then I turned round and grabbed my son.	Lawrence John Marriott Cross-Examination
	Q.	What do you mean you didn't believe it could hit you?	(continued)
	A.	Things like that don't happen.	
20	Q.	It's a long moment because it was a very frightened moment?	
	A.	Yes.	
	Q.	But if you would put a time to it, it would probably be a split second?	
	A.	Yes.	
	Q.	Now probably a very simple explanation. When you first saw the hydrofoil in a distance, do I understand you to be saying you were standing on the starboard side of Flamingo?	
30	A.	Yes.	
	Q.	Not on the port side?	
	A.	No, on the starboard side.	
	Q.	Did you ever stand on the port side?	
	A.	Yes.	
	Q.	When was that?	
	A.	When I was walking between the two, just pointing things out to my son.	
	Q.	Was that before you saw this other hydrofoil or after?	
40	A.	On the port side? Both before and after.	
	Q.	Yes, thank you.	
	<u>XXN. BY MR. CORRIGAN:</u>		
	Q.	It is quite common, is it, in your experience, for hydrofoils to pass each other flying to and from Macau starboard to starboard?	
	A.	Starboard to starboard?	
	Q.	Yes.	
50	A.	No, I wouldn't say it's common. Starboard to starboard?	
	Q.	Yes, quite normal?	
	A.	Depending on the traffic. I don't really take much notice. Sometimes there are three or four together.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.6
Lawrence John
Marriott
Cross-
Examination

- Q. I see. You've sailed in these actual waters, do you, between the south-west point of Lantao --
A. No.
Q. -- west of --
A. No.
Q. You have never sailed in those waters?
A. No.
Q. Your sailing is more inshore?
A. On the other side of Kowloon, Sai Kung.
Q. Yes, thank you.

10

(continued)

Re-examination REXN. BY MR. JENKYN-JONES

- Q. Are you able to give an approximate time when you first saw the Goldfinch apparently leaving Macau, the approximate time of day?
A. Of day? No.

COURT: Members of the jury, any questions you would like to ask? No.
Yes, thank you. Yes, 2.30

20

1 p.m. Court adjourns

2.30 p.m. Court resumes

Appearances as before. Jury present.
All accused present.

MR. JENKYN-JONES: May it please you, my Lord. It's Mrs. Sandra Marriott, page 47 of the depositions.

P.W.7
Sandra
Marriott
Examination

P.W.7
EVIDENCE OF SANDRA MARRIOTT

P.W.7 - Sandra MARRIOTT Affirmed in English: 30
XN. BY MR. JENKYN-JONES:

- Q. Can you tell the court please, is it Mrs. Marriott or Miss Marriott?
A. Mrs. Marriott.
Q. And is your husband the witness who has just given evidence before lunch?
A. Yes.
Q. On the 11th of July of last year, you were on board the Flying Flamingo hydrofoil with your husband and small child, is that correct?

40

	A. Yes.	In the
	Q. Can you tell the court whereabouts on board the vessel you were?	High Court
	A. I was on the upper deck outside.	<u>of Hong Kong</u>
	Q. Was that from the time you left Hong Kong?	<u>Prosecution's</u>
	A. No, I first sat inside on the upper deck and then moved outside.	<u>Evidence</u>
	Q. Can you recall whether the vessel at any time went down off its foils onto its hull?	No.4
10	A. Yes, about ten minutes before the accident, it stopped and went backwards and then started off again.	P.W.7
	Q. Are you familiar with that particular part of the sea?	Sandra Marriott
	A. No, not really.	Examination
	Q. Are you able to say whereabouts you were when the vessel did stop?	(continued)
20	A. No, I don't know.	
	Q. Can you recall whether at that stage any land marks or other things were being pointed out to you?	
	A. No, I can't remember now.	
	Q. After the vessel had stopped, did it take off again on its foils?	
	A. Yes.	
	Q. Where were you standing at that particular time?	
30	A. Outside on the upper deck.	
	Q. I wondered if you could come round to the map and --	

(Witness goes down to the board)

	Q. -- just point out where you were standing after the vessel had taken off again on its foils?
	A. Just by the board.
	COURT: By the railings?
	A. Yes.
40	COURT: Witness indicates the spot just to the aft of the upper cabin nearest --
	A. (interrupts) I was just here. I had the door on my side and I was looking towards there (indicates).
	COURT: The door is opened into the cabin just by your side?
	A. No, this door.
	COURT: I see, yes. Witness was beside the door at the rails.
50	A. Yes.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.7
Sandra Marriott
Examination

(continued)

COURT: On the starboard side.

- Q. Which side of the ship were you on, were you on the left or on the right?
- A. On the left
- Q. As the ship was travelling towards Macau, to which side were you looking at?
- A. I was looking forward on the left and the right. I was looking everywhere.
- Q. When did you first see the other hydrofoil?
- A. I saw it just before the accident, just a few seconds before the accident. I didn't see it before. 10
- Q. And at the time you saw it, from which side did it appear to be coming? On which side was it coming from?
- A. It was just very close. I can't tell you which way. It was coming straight.
- Q. You will have to speak up.
- A. I can't tell which side it was coming. It was coming from the right and it was very, very close when I saw it and I don't know from what angle. 20
- Q. But you are able to say it was coming from the right?
- A. Well I mean it was coming - my right, as I was standing like this, my right.
- Q. And was it coming from a position forward of you or from the position behind you?
- A. Forward.
- Q. Are you able to give us even an approximate angle? If you were to use those two models for instance, are you able to give us an approximate impression of where the other boat - where the Goldfinch seemed to be coming from? 30
- A. For me it seemed to be coming -- (places models on the board)
- Q. Which boat are you on?
- A. (indicates horizontal model) And I was standing here (indicates) 40
- Q. And that is the impression you formed when you first saw it?
- A. Yes.
- Q. When you first saw it did you do anything?
- A. Yes, I just told my husband what was happening. I just screamed and did not have time to do much. It's very, very close when I saw it.
- Q. When you saw it, did you have a completely unobstructed view of it or were you looking through anything? 50
- A. I was looking through the cabin door, this window, and of course this angle.

COURT: Sorry, Mrs. Marriott. You looked through

	the window?	In the
	A. Yes, I could see it through the cabin door window and this window and also this angle, this space. When I saw it first through the cabin window because I was looking into the cabin and then of course I looked to the right.	High Court of Hong Kong
		<u>Prosecution's Evidence</u>
		No.4
10	Q And just to be perfectly clear, where were you standing if you used the flat plan on the bottom - in the middle?	P.W.7 Sandra Marriott Examination
	A. On the plan? Here (indicates)	
	Q. And you were looking at what sort of --	(continued)
	A. (indicates) This is the cabin door, and this (indicates)	
	Q. You say that when you first saw it you screamed.	
	A. Yes. My husband wasn't looking, so I told him to look what was happening and "Paul", my son, and then it happened. He didn't have time to hold my son.	
20	Q. Perhaps I'll have to ask you to speak up so that the jury can hear everything you say. Could you repeat that?	
	A. I screamed and I told my husband. My husband didn't see. He was watching on the other side, and I told him what was happening. I said, "Look!" and "Paul", my son, who was next to him. He didn't have time to hold him. It just happened then.	
30	Q. When you saw the other boat, are you able to give any impression how far away it was?	
	A. No, to me it looked 20 yards away.	
	Q. Perhaps if you would come back.	
	(Witness goes back to the box)	
	Q. At the time you saw it, was the oncoming vessel - was the Goldfinch on its foils or not?	
40	A. Yes.	
	Q. Were you able to tell whether the oncoming vessel was turning or was keeping a straight line?	
	A. I am not able to tell that, no. It was just going straight. It didn't change course or anything.	
	COURT: You didn't get any impression of any change of course?	
50	A. Or that it tried to stop.	
	Q. And what about the boat that you were on? Did you have any sensation that that was turning?	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.7
Sandra Marriott
Examination

(continued)

- A. No.
- Q. Are you able to give any estimate of how long it was between your first seeing the oncoming boat and the actual collision?
- A. Seconds. One or two seconds.
- Q. And prior to catching sight of the boat, in which direction had you been looking at that stage?
- A. I don't remember. 10
- Q. Now after the collision, what happened then?
- A. I got up and I think after a few seconds there was a lot of smoke and everybody was lying and when the smoke disappeared and I could see my way, I just went into the hydrofoil, the Goldfinch.
- Q. Can you remember what colour that smoke was?
- A. White grey, not dark grey, very light grey. It was very thick. 20
- Q. And I think you were then transferred to another jetfoil and taken back to Hong Kong?
- A. Yes.
- Q. And from there you were taken to Queen Mary Hospital?
- A. Yes.
- Q. Immediately prior to the collision, did you hear any horns or bells or anything of that nature? 30
- A. No, I did not hear.
- Q. Did you notice whether there were any other passengers in the same area that you were standing?
- A. Yes, 4 or 5 other passengers. Maybe more, 6 or 7 I think.
- Q. Can you recall whether there was any sound, any indication from them about the imminent collision? 40
- A. I remember two passengers standing on the other side by the door and they were pointing at the boat coming towards us.

NO XXN. BY MR. STEEL

Cross-
Examination

XXN. BY MR. AIKEN:

- Q. This answer you gave and I didn't get the whole answer because you were behind me. You said, "My husband wasn't looking. I screamed, 'Look!' He didn't have time to what? 50
- A. No, I said "Look!" and "Paul", the baby because we had our son with us.
- Q. And then you said he didn't have time --
- A. No, because he looked, he followed my

finger, he looked and then he just went to grab him and it happened then.

In the
High Court
of Hong Kong

Q. So it happened very, very shortly after your first sight of it.

Prosecution's
Evidence

A. Yes, seconds.

Q. You say one or two seconds. It could be less, split seconds?

No.4

A. No, I think one or two seconds.

P.W.7
Sandra Marriott
Cross-
Examination

10 NO XXN. BY MR. CORRIGAN

NO REXN. BY THE CROWN

(continued)

NO QUESTIONS FROM JURY

Witness released. Mr. Marriott released as well.

MR. LUCAS: I call Mr. CHAN Shek. Mr. CHAN, my Lord, is one of the additional four witnesses.

P.W.8
EVIDENCE OF CHAN SHEK

P.W.8
Chan, Shek
Examination

20 P.W.8 - CHAN Shek Affirmed in Punt

XN. BY MR. LUCAS:

Q. Where do you live, Mr. CHAN?

A. I live in Macau.

Q. Whereabouts?

A. Edificio.

Q. Where is that? What is the full address?

A. Ho Wan Building, No.13, 3rd floor.

30 Q. How old are you, Mr. CHAN?

A. 69.

Q. I believe that you worked for the Hong Kong Macau Hydrofoil Company?

A. Yes.

Q. And you've worked for them since 1964, is that correct?

A. Yes.

Q. Now on the 11th of July of last year, you were working, were you not, on the Flying Flamingo?

40 A. Yes.

Q. Now what are your normal duties on board ship?

A. I am a seaman.

Q. What do you actually do as a seaman?

A. As a seaman, when the ship arrives, I am

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.8
Chan, Shek
Examination

(continued)

- responsible for the mooring of the ship.
- Q. When the ship is travelling between Hong Kong and Macau, what do you do during that segment of your working hours?
- A. After the boat sets sail, we check the passengers to see if they get enough seats.
- Q. I would like you to take you to - your mind to the trip when the Flamingo had a collision, do you remember that? 10
- A. Yes, I remember.
- Q. Now the Flamingo was in fact going to Macau?
- A. Yes.
- Q. What time did it leave?
- A. I remember the vessel set sail at 8 o'clock.
- Q. Did it leave at that time or not?
- A. It seemed on that day it was about 10 minutes late. 20
- Q. Do you know why?
- A. Waiting for somebody.
- Q. Do you know who the somebody was?
- A. I don't remember, but it seems to me that one of my colleagues had not yet arrived.
- Q. Now after you left Hong Kong and left the harbour, what were you doing yourself, you personally? 30
- A. It is our routine that after the boat had set sail, we got nothing to do and we took a rest.
- Q. You also sold cakes and drinks, do you not?
- A. Yes.
- Q. Now did you do that first before you took a rest?
- A. Yes.
- Q. Now after you sold your soft drinks, etc., did you notice that the vessel stopped at some stage? 40
- A. Yes.
- Q. Do you know approximately where that is - where it stopped?
- A. We were near Cheung Chau.
- Q. Now when you stopped there, what happened? Did the boat stay stationary? Did it have its foils back?
- A. It went astern. 50
- Q. Now this is not an unusual thing that happened, is it?
- A. Correct.
- Q. And you paid no great attention to that?
- A. It is not abnormal. I understood the stop may be due to some rubbish.
- Q. Now it took off again, did it not, on its foils.

	A. Yes.	In the
	Q. Now it is a time after that that we are interested in, Mr. CHAN.	High Court
	A. The boat continued its voyage straight ahead.	<u>of Hong Kong</u>
	Q. Now where were you when the boat continued its voyage? Where were you sitting or standing or --	<u>Prosecution's Evidence</u>
	A. I took my rest on a movable chair near the entrance of the boat.	No.4
10	Q. Now when you say the entrance to the boat, were you sitting inside the cabin or outside the cabin?	P.W.8
	A. Inside the cabin behind the door.	Chan, Shek
	Q. Which way were you facing?	Examination
	Q. I was facing the port side.	(continued)
	Q. You were on the top deck, on the upper deck inside?	
	A. Yes, upper deck.	
20	Q. Which side were you sitting on? Were you sitting on the port side or the starboard side?	
	A. Port side.	
	Q. And you were sitting there looking out of the port side window?	
	A. Right.	
	Q. Now what happened then that you remember?	
30	A. In the upper deck there were 10 odd passengers sitting. I noticed that some passengers were paying attention to something. I turned around and had a look - I turned around to the starboard side to have a look.	
	Q. You say that the passengers were - sorry, to use your words - paying attention to something. When you say they were paying attention to something, were they looking at something inside the boat, outside the boat, in the same direction, different directions?	
40	A. Passengers were looking at both directions, direction of both sides.	
	Q. From both sides?	
	A. Some of the passengers were looking at the direction where the collision occurred.	
	Q. Sorry, Mr. Interpreter, perhaps I misunderstood the witness. There were some people looking towards the side where the collision was, where was that?	
50	A. Do you mean which side of the boat?	
	Q. Which way were they looking? Were they looking towards the port side or the starboard side?	
	A. Port side. Some of the passengers were looking towards the starboard side and some of them were looking towards the port side.	
	Q. Could you read this or can you understand	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.8
Chan, Shek
Examination

(continued)

- what this is?
- A. This is the ship.
- Q. Now can you see the cabin on top of that where you were sitting?
- A. Is this the entrance of the boat?
- Q. No. Mr. Chan, perhaps you come over here. Can you read that map? Have a look at that. First of all, can you tell us what you understand that to be? Now before you start pointing out, Mr. Chan, could you describe what you see first, to make sure, what is that? 10
- A. The boat.
- Q. Now where is the entrance to that boat?
- A. From there.
- Q. If you look at the next one down. Do you know what that is?
- A. The passenger seats.
- COURT: Mr. Chan, the middle diagram shows the upper deck of the ship, and you could see just by your hand there, you could see just on each side the life rafts? 20
- A. Yes.
- COURT: And if you move to the right a little you could see two rows of seats?
- A. Yes.
- COURT: And you could see the stairway which leads down to the lower deck?
- A. Here. 30
- Q. Now are you able to tell us where you were sitting on that plan?
- A. Here.
- Q. That is on the right hand side?
- A. Left hand side. I was sitting there, and that was the passenger passage where passengers enter the boat.
- COURT: Could you just point out where you were sitting, Mr. Chan?
- A. That position, this entrance. 40
- Q. Is that the entrance to the deck, when you talk about the entrance are you saying the entrance from the cabin to the outside?
- A. Yes, that is the entrance from the cabin to the open cabin.
- Q. Which way were you looking?
- A. I was watching that side.
- Q. Now you say that you heard something, you heard or saw that your passengers were paying attention to something, is that right? 50
- A. Yes.

	Q. And you turned around and looked, did you not?	In the
	A. Yes.	High Court
	Q. Which direction did you look when you turned around?	<u>of Hong Kong</u>
	A. That direction, that is the starboard side.	<u>Prosecution's Evidence</u>
	Q. Which direction were your passengers paying attention to?	No.4
10	A. That direction.	P.W.8
	Q. And were the passengers sitting on one side or the other side, or both sides - the ones that were paying attention?	Chan, Shek
	A. Both sides.	Examination
	Q. And you say you looked around in the direction where the passengers were paying attention, that is the side you have indicated, what did you see?	(continued)
	A. I saw a boat.	
20	Q. What sort of boat?	
	A. Our Company's boat.	
	Q. Is it the same sort of boat as the one you were on - a hydrofoil?	
	A. The same boat as owned by our company.	
	Q. What was that hydrofoil doing?	
	A. She was flying.	
	Q. And which direction?	
	A. I noticed that she was sailing towards our starboard side at a slanting angle.	
30	Q. How far away was she when you first saw it, when you turned around and looked?	
	A. Very close - I believe it was 100 odd feet.	
	Q. Do you know how long a hydrofoil is?	
	A. Less than 100 feet - several tens of feet.	
	Q. When you first saw it how many hydrofoils' distance approximately would you say this other boat was when you first saw it?	
	A. When I saw it it was a bit more than two hydrofoils' lengths away.	
40	Q. Were you still sitting when you saw this other hydrofoil?	
	A. No, when I saw it I stood up.	
	Q. Which direction was it coming from, can you say, coming towards your starboard side? Have you any recollection at all as to which direction it was coming?	
	A. As far as I saw she seemed to be coming from the direction of Kau Chau, but when I saw it it was already very close to me.	
50	Q. Leaving aside Kau Chau, was it this direction from the boat, you draw a line from the boat - are you able to say or not?	
	A. That hydrofoil came towards our boat from our front and she came towards us at a slanting angle.	
	Q. I wonder if you could show us. Do you think you could try and show us, Mr. Chan? Make the	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.8
Chan, Shek
Examination

(continued)

one at the bottom your boat. Are you able to show us where it was coming from?

A. The other boat came from that direction.

COURT: You can place that one in your hand on the board, Mr. Chan, you will find it stays there. Could you just put the other boat which you have in your hand in the position where you think you saw the Flying Goldfinch when you first saw it?

10

INTERPRETER: Witness is moving the boat.

COURT: When you first saw the other hydrofoil, Mr. Chan, can you just put that one where you think you saw it in relation to the Flying Flamingo?

INTERPRETER: That is the first position the witness saw the Flying Goldfinch.

Q. Mr. Chan, when you looked and saw the boat for the first time which window did you look through, do you remember?

20

A. There were three windows, I looked through the second window.

Q. You are talking about the windows along here?

A. Yes, I looked through the second window from the front.

Q. This window?

A. That window.

MR. LUCAS: Thank you, Mr. Chan, no further questions.

30

NO XXN. BY MR. STEEL

Cross-
Examination

XXN. BY MR. AIKEN:

Q. One short matter, Mr. Chan. When you finished your journey, when you reached Macau, you have a short turn-round period, about 15 minutes?

A. Yes.

Q. And then you set off back to Hong Kong?

40

A. Yes.

Q. If on the journey over to Macau there is some small delay, due to lap sap, then you have a shorter turn-round time in Macau, don't you?

A. Yes.

NO XXN. BY MR. CORRIGAN

BY COURT:

Prosecution's
Evidence

No.4

P.W.8

Chan, Shek

(continued)

- 10 Q. You've placed the other model on that board in a position where it was virtually near the head of your own vessel coming straight towards you?
- A. Yes.
- Q. Now that doesn't seem to tally with your evidence when you were looking out through the starboard window you saw it because if it was coming straight towards you you could not have seen it from the starboard window?
- A. As I say, it came at an oblique angle.
- Q. So it was not dead ahead of the ship, as you have indicated?
- A. It took a turn, a curve towards us.
- Q. Curve from left to right or right to left?
- 20 A. For example, my Lord, this is the Flying Flamingo, this is the position where I was. It came he e and then it came towards at a curve.
- Q. It was turning to its left?
- A. It's turning to the left.
- Q. Turning from right to left?
- MR. LUCAS: Sorry, my Lord, if something turns like that, isn't it turning from left to right?
- 30 Q. Mr. Chan, it was coming towards you?
- A. Yes, coming towards me, but at an oblique angle.
- Q. So it was turning in fact to its right; if you were sitting in the wheelhouse of the Goldfinch it would be turning to its right?
- A. That's right.
- Q. How did you notice it was turning to its right?
- A. The Flying Goldfinch was coming from Macau and it came towards us at a slanting angle.
- 40 Q. Do you mean it was coming towards you simply at an angle or it was turning, the vessel was actually turning?
- A. I saw it was coming towards us at an angle, at a curve.
- Q. I am not quite sure what you mean, Mr. Chan. It was coming toward you at an angle; it was not coming directly towards you. Was it turning, was the vessel turning?
- 50 A. Yes, it was. I noticed it was taking a curve.
- Q. Why did you notice it was taking a curve; what made you think it was taking a curve?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.8
Chan, Shek

(continued)

- A. Because I saw the wake behind that boat.
Q. Did one foil seem to be higher than the other?
A. Yes.

COURT: Members of the jury, any questions?

FOREMAN: Are we correct to think that the other vessel was turning to starboard...

COURT: I think that is his evidence. Was the other vessel turning to starboard? That is your evidence, Mr. Chan, isn't it?
The other vessel was turning to starboard, turning to the right?

A. Yes.

COURT: Yes, thank you.

3.30 p.m. Court adjourns

8th March, 1983

P.W.9
George
Young
Examination

P.W.9
EVIDENCE OF GEORGE YOUNG

P.W.9 - George YOUNG Affirmed in Puntì

XN. BY MR. JENKYN-JONES

Q. Yes, Mr. Young, you are at present employed by the Far East Hydrofoil Co.Ltd.

A. Yes.

Q. And the boat that you are employed upon is the Sao Jorge?

A. Yes.

Q. How long have you been with the company?

A. Up to this date, 29 months.

Q. And on the 11th of July last year, were you on the Sao Jorge working for that company?

A. Yes.

Q. What is your experience at sea? What are your qualifications?

A. As Chief Officer.

Q. And how long have you been at sea?

A. More than 10 years.

Q. When did you qualify as chief officer?

A. In 1975.

Q. On this particular day you were on the Sao Jorge, can you tell the court what your schedule was?

A. Oh I was on this 7.30 first run and I

	<p>arrived at Macau at 8.29. Q. So that is the 7.30 run from Hong Kong to Macau..Can you briefly describe the weather conditions of that day?</p> <p>A. It was light winds, calm sea, visibility over 12 miles.</p> <p>Q. Once you were in Macau, did you at some stage that morning take a return trip back to Hong Kong?</p> <p>10 A. Yes, that was at 0900, that was the trip No.2.</p> <p>Q. Now you have stated the time as 0900. How are you able to place it so accurately?</p> <p>A. That is what our schedule is, you see. We are supposed to sail at 9 o'clock.</p> <p>Q. And are you able to say with any certainty whether you left on schedule on that particular morning?</p> <p>20 A. No, we were delayed for 5 minutes.</p> <p>Q. Did you make any record of the times of delay or anything of that nature?</p> <p>A. No.</p> <p>Q. Can you recall the actual time you started off on that particular day?</p> <p>A. On that day we sailed out at 0905.</p> <p>COURT: Do you have a log?</p> <p>A. Yes, I have.</p> <p>MR. LUCAS: It is in evidence, my Lord, P35.</p> <p>30 Q. Mr. YOUNG, can you describe the document you are looking at?</p> <p>A. Yes, we were off coast at 09 --</p> <p>Q. What is the document?</p> <p>A. It is the log book of the Sao Jorge on the 11th of July, 1982.</p> <p>Q. Does that state the time that you left Macau on the return trip to Hong Kong?</p> <p>A. Yes.</p> <p>Q. What time did you leave?</p> <p>40 A. 0905.</p> <p>Q. Now could you put that to one side just for a moment and look at Exh.P27? Do you recognize that plan?</p> <p>A. Yes, I recognize this plan.</p> <p>Q. Throughout the course of your journey that morning, did you make a note of the times at which you passed various land marks?</p> <p>A. Yes, I did. I did this.</p> <p>50 Q. Now using the log book, can you mark on that map your course to Hong Kong and the times at which you passed the various landmarks?</p>	<p>In the <u>High Court of Hong Kong</u></p> <p><u>Prosecution's Evidence</u></p> <p>No.4 P.W.9 George Young Examination</p> <p>(continued)</p>
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(Witness marks on the plan)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.9
George Young
Examination

(continued)

Q. Could you plot as far as 9.30 in the morning?

(Witness complies)

MR. JENKYN-JONES: There is a light pencil line, my Lord, but it is clearly discernible.

COURT: Yes.

Q. Now Mr. YOUNG, you have plotted the times in the course. How are you able to be certain that those times are accurate? 10

A. These are the points that are laid out by the company to be noted correctly when you are passing them. These are the laid-down courses by the company.

Q. When you pass these points which have to be noted, how do you ensure that the time piece you are using is accurate?

A. Every morning the radio officer checks the time with the ship's clock, which is the time signal of Radio Hong Kong. 20

Q. Sorry? With --

A. -- Radio Hong Kong.

Q. Do you use any other aids?

A. No, I don't think so. That is the standard aid.

Q. And what about aids for distance, the distance between landmarks?

A. The distances between landmarks are on the radar which is always on throughout the trip and you note it down by ranges. 30

Q. On this particular trip, was the radar on as usual?

A. Yes, the radar was on.

Q. And on this particular trip, to your knowledge, had the time signal of the radio, Hong Kong radio, been checked?

A. Yes.

Q. Now you have told us that you came out of Macau at about 9.05. Did you see any other shipping during the course of your journey? 40

A. Prior to departure, we saw one HMH hydrofoil mid-channel, outward bound.

Q. Whereabouts would that be?

A. Between No.1 and 2 beacon and No.6 and 7.

Q. Now at the time you saw that other hydrofoil or the hydrofoil, was it in front of you? Whereabouts was it in relation to you?

A. We were still alongside the berth, just leaving the berth at 0905. 50

Q. Now at that time was the hydrofoil on its hull or was it foilborne?

(No answer)

Q. First of all, if you would just mark the position of the hydrofoil in the channel?

In the
High Court
of Hong Kong

(Witness complies)

Prosecution's
Evidence

Q. Now you'd better just describe the normal route, the normal course that you would take to pass those beacons out of Macau?

No.4
P.W.9
George Young
Examination

A. That is the Master's job, you see.

10 Q. Are there any particular beacons that have to be cleared before you can set off?

(continued)

(No answer)

Q. You told us that you were alongside the other hydrofoil or alongside the terminals?

A. No, I was alongside the wharf and before you depart, you have to inform the master how the traffic is in the channel.

Q. In other words, this hydrofoil was ahead of you, in front of you at that stage?

20 A. Yes.

Q. You set off on your trip at about 9.05, did there come a time when you drew alongside and eventually overtook that other hydrofoil?

A. It was between 0913 and 0915.

Q. So on the line you have marked on the map, it would be at about somewhere between the times of 9.13 and 9.15 that you passed --

A. No, 9.10 - 9.10 and 9.20.

30 Q. Yes, but it would be between 9.13 and 9.15, sometime between those two times that you passed the other hydrofoil.

A. Yes.

Q. How long did it actually take to pass the other hydrofoil?

A. We are about 0.2 miles or so faster than the hydrofoil, every minute, so it won't take very long once you are abeam of it, you see.

40 Q. And at the time you saw the other hydrofoil, are you able to give any indication of the course it was on?

A. No.

Q. Can you tell in which direction it was heading?

A. It was just heading for the south-west Lantao, north of us. She was on our port side.

Q. Are you able to give any indication as to the bearing it was in?

A. No.

50 Q. Was it to your north at the time you passed it?

A. Yes, she was to my north.

Q. About how far north was she at that time?

A. About 0.5 miles.

Q. What was your own bearing in that particular time?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.9
George Young
Examination

(continued)

- A. My own bearing was 086.
Q. And using your own bearing in relation to the other boat's bearing, are you able to give any approximate estimate?

MR. STEEL: My Lord, I must regret I find that question incomprehensible. The bearing of something is the relative direction. A boat cannot have a bearing.

COURT: Heading.

MR. STEEL: The heading. If my learned friend is asking what the heading of the other ship was, then it is a very simple question to ask. Perhaps he'd do it. 10

COURT: You mean the heading?

MR. JENKYN-JONES: Yes, that is right.

COURT: Yes, your heading was 086.

A. 086.

Q. From your heading and the position of the other vessel, are you able to say what apparent heading she was on? 20

A. No.

Q. How along the line that you have drawn on the map for us, did you see any other vessels shortly prior to arriving at Fan Lau Point?

A. Yes, I saw another hydrofoil which is proceeding on the opposite way towards Macau?

Q. And what company was that hydrofoil?

A. It was the HMH. 30

Q. Later on that morning did you hear anything on the radio which appears in the log?

A. At about 0942 I heard a voice over the VHF saying "to keep silence" in Chinese, "There is a distress signal."

Q. Have you marked where you were at 9.25/9.26 on that map?

A. Yes, I have marked it.

Q. Have you put the time against the specific spot? 40

A. Yes. (indicates)

COURT: You were past what?

A. I was just passing Niu-tou.

COURT: You were just passing the island of Niu-tou.

A. Yes.

Q. At that particular time, were you anywhere near either the hydrofoil you had first seen leaving Macau or the hydrofoil which was approaching from Fan Lau Point?

A. No, it was quite a distance off from the vessel that was proceeding to Macau.

Q. So that we are perfectly clear, are you saying that the hydrofoil from Fan Lau Point --

A. -- was proceeding --

Q. -- in that direction was a long way from the other hydrofoil?

A. Yes.

Q. Or was it a long way from you?

A. A long way from me.

Q. But nonetheless, do you recall whether at that stage you could see it?

A. You can see it because it is - the colouring is blue, so it is darkish in colour. It is different from the Far East hydrofoil that has its colour red, you see, which is more conspicuous.

Q. Now you keep using the phrase "HMH", so that we are all clear about that, what does it actually stand for?

A. Hong Kong/Macau Hydrofoil.

Q. And that is different to your company?

A. Yes.

Q. If I can take you back to the heading of the other hydrofoil leaving Macau, are you able to give us any indication of the heading it appeared to be going - which part of Lantao it may have been heading?

A. No, no, no specific --

In the High Court of Hong Kong

Prosecution's Evidence

No.4

P.W.9

George Young Examination

(continued)

10

20

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40

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MR. STEEL: He has already answered, he saw this other craft heading towards the south-west point of Lantao. My learned friend is not wanting that answer. Could he indicate what problem is the answer?

COURT: I think it is highly unlikely that the witness could give anything like an accurate estimate of its heading except it was generally heading --

A. -- towards Macau.

MR. JENKYN-JONES: No further questions, my Lord.

XN. BY MR. STEEL:

Cross-Examination

Q. Could you help me understand your log, Mr. YOUNG? You have a company form which identifies various places by numbers, is that right?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.9
George Young
Cross-
Examination

(continued)

- A. Yes.
- Q. And you are expected to fill in the log at the time when you pass the various numbered places?
- A. Yes.
- Q. And we can see there a second column in your log the voyage that we are talking about.
- A. Yes.
- Q. The first entry being your departure from the berth at 0905. 10
- A. Yes.
- Q. You then record, do you, that you were foilborne 4 minutes later at 0909.
- A. Yes.
- Q. You then come to position No.1. What is the position No.1?
- A. The position No.1 is abeam of No.1 and 2 beacons.
- Q. Abeam of Nos. 1 and 2 beacons which is, effectively, the exit from the channel from Macau? 20
- A. Yes.
- Q. Why do we not have a bearing in distance for that time or, sorry, that place?
- A. It is most probably due to the speed that we are travelling through.
- Q. Well you have a bearing and distance for passing that same point on your voyage in before and after this voyage. Why do you not have a record for the voyage out? 30
- (No answer)
- Q. All right. What is point No.2?
- A. Point No.2 is the cargo lighthouse.
- Q. Could you give me the co-ordinates of it on the chart, please, the cargo point, yes, I follow.
- A. Yes.
- Q. Why is there no time or bearing or distance for that position? 40
- A. It is a - should I say - it is a - we have been trained on a day run not to take any note on that because it is about more than 2 miles off from my actual target.
- Q. So your first time together with a position is position No.3 which is Ching Chou, is that right?
- A. Yes.
- Q. And you record as passing Ching Chou at 9.21, the bearing being "S" which I suppose being starboard, and the distance of 1.05 miles, is that right? 50
- A. Yes.
- Q. And it was shortly before that, as I understand it, that you passed the hydrofoil.
- A. Yes.

Q. You had passed her on her starboard side leaving her to your port side?
A. Yes.
Q. And she was about half a mile to the north of you?
A. To the north of me.
Q. And she appeared to be heading in the general direction of the south-western point of Lantao, is that right?
10 A. Yes.
Q. And if she was on a similar course to yours, she was likely to pass Ching Chou about half a mile further off than you did?
A. Yes.
Q. And on that basis, it would have passed Ching Chou at a distance of 1.55 miles or thereabouts?
20 A. Yes.
Q. You told us that your course was 086 true, is that right?
A. Yes.
Q. Did that include some allowance for the effect of the current?
A. No.
Q. What was the current doing?
A. At that time it was flooding.
Q. We know from your log book in the top right-hand corner that high water for that day was at 11.39.
30 A. Yes.
Q. And accordingly, the tide was flooding at 9 to 9.30 that morning.
A. Yes.
Q. And that meant, did it not, that in the vicinity of Ching Chou, the tidal current was setting to the north, is that right?
A. Yes.
Q. We can see that, can we not - we will try and see it - there are some very small arrows that you can see on the chart. There is one, is there not, just to the east of Ching Chou Island about half way between there and Niu-tou.
40 A. Yes.
Q. And the feather on the end of the arrow indicates that that is the flood current.
A. Yes.
Q. What would you estimate to be the speed of the flood current?
50 A. I wouldn't know.
Q. The effect of it, whatever speed it had, would be to make your vessel - let me try and use simple language - would set your vessel somewhat further to the north than she was heading, is that right?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.9
George Young
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.9
George Young
Cross-
Examination

(continued)

- A. Yes.
- Q. She would make good a course slightly to the north because she was steering?
- A. Yes.
- Q. And there was, as I gathered, nothing unusual about seeing a hydrofoil in the position where you saw it?
- A. Yes.
- Q. In the English language that is an ambiguous answer. It was perfectly usual to find a hydrofoil in the place where you saw it? 10
- COURT: This is -- I'm sorry - just the one you passed.
- Q. Yes, I am so sorry. You passed a hydrofoil half a mile to port?
- A. Yes.
- Q. There was nothing unusual about that?
- A. Nothing unusual.
- Q. And nothing unusual about the position of that hydrofoil. 20
- A. No.
- Q. Your next landmark is item No.4 and that, I understand, is Niu-tou.
- A. Yes.
- Q. At which you passed at 9.27, is that right?
- A. Yes.
- Q. At a distance of half a mile?
- A. Yes.
- Q. And do you take that distance of the little island in fact just to the north of Niu-tou? 30
- A. Yes, there is an island.
- Q. It is a tiny little island just off the north-west coast of it.
- A. Yes.
- Q. And then your next landmark I assume is Fan Lau?
- A. Yes, Fan Lau.
- Q. And you passed that and that is to port of you at a distance of - is that .375? 40
- A. .375, yes.
- Q. At 9.31.
- A. Yes.
- Q. And it was shortly before that that you had passed this other hydrofoil coming in the opposite direction.
- A. Yes.
- Q. And she passed you on your port side or your starboard side? 50
- A. On my port side.
- Q. And again that was usual, was it?
- A. Yes, usual.
- Q. How far off to port was she when she passed you?

A.	No specific distance.	In the
Q.	She had apparently emerged, had she, from the westbound lane of the traffic separation scheme. Your next landmark is Siu A Chau?	High Court of Hong Kong
A.	Yes.	<u>Prosecution's Evidence</u>
Q.	--which is the buoy or beacon - I'm not sure what --	No.4
A.	The beacon.	P.W.9
10 Q.	-- in the middle of the channel --	George Young
A.	Yes.	Cross-
Q.	-- in the separation zone itself which you passed to port. I was slightly puzzled to see that on your way out to Macau, you had recorded - sorry, where is the record of passing - no, I'm sorry, I withdraw that question. You have told us that - sorry, are these entries in this log made by you?	Examination (continued)
20 A.	Yes.	
Q.	And the times are taken from what - your watch or --	
A.	The ship's clock.	
Q.	And in fact I find it difficult to hear some of your evidence. Did you say that that clock had been synchronized --	
A.	Synchronized, yes.	
Q.	-- what, with the local radio?	
30 A.	With Radio Hong Kong, yes.	
Q.	You record right at the bottom of your log book this phrase, "Radar bearings checked against visual bearings." - I assume that is.	
A.	Yes.	
Q.	What does that mean?	
A.	That is to see if the radar is - the heading of the radar is - tallies the master radar and the slave radar - if it tallies one against the other.	
40 Q.	Slave radar?	
A.	Yes, we have two displays.	
Q.	Two displays. Yes, I follow. You have one displayed on each side of the wheelhouse?	
A.	No, one displayed beside the helmsman, one on the mate's desk.	
Q.	So that the helmsman from time to time can use the radar if he wishes to, is that right?	
A.	Not use it, but say if I am driving the jetfoil, I have to note down the time and the distance off immediately.	
50 Q.	I'm sorry, you misunderstood my question. You, as the mate might be using the mate's radar to check bearings, but what is the point of having a radar screen by the helmsman?	
A.	To note down the time because the driving is done consecutively with the master, you see,	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.9
George Young
Cross-
Examination

(continued)

the master takes the wheel on the trip,
the mate takes the wheel on the second
trip, so if the mate is on the wheel, he
has to note down the time and the distance
off.

- Q. So the mate, when he is on the wheel, not
only is steering but is looking in the
radar from time to time to record the times
when he passes a position?
- A. Yes. 10
- Q. The bearings that you record in this
document simply decide at which particular
place you pass. You do not give any true
bearing on it.
- A. No true bearing, it is just an abeam
bearing.
- Q. It is an abeam bearing. Thank you.

XXN. BY MR. AIKEN:

- Q. Were you steering on this trip --
- A. Yes. 20
- Q. -- back to Hong Kong?
- A. Hong Kong, yes.
- Q. And so whilst steering, you recorded the
information?
- A. All this information.
- Q. On Exh.35. Just help me with this; if
you are the mate that is the deck officer,
that is another word for it?
- A. Yes.
- Q. Now when the captain is steering, does 30
he complete the deck log?
- A. No.
- Q. The deck officer always does.
- A. Always does this.
- Q. And it is the deck officer's duty to
complete it as things occur. In other
words, when he passes points, he makes
the record there and then?
- A. Yes.
- Q. He doesn't store it in his memory and do 40
it at the end of the trip?
- A. No.
- Q. Thank you.

XXN. BY MR. CORRIGAN:

- Q. May it please you, my Lord. Now your
vessel, Sao Jorge, is a jetfoil, not a
hydrofoil?
- A. Yes.
- Q. Now that is a significantly faster vessel
at constant running speed, normal running 50
speed, than a hydrofoil, is that right?
- A. Yes.

	Q.	By about - well, what is the normal or constant speed on this particular journey on a jetfoil?	Inthe High Court of Hong Kong
	A.	Between 40 and 42 knots.	
	Q.	So that is nearly 10 knots faster than the hydrofoil?	Prosecution's Evidence
	A.	Yes.	
10	Q.	And whilst steering on course, at that speed, you told members of the jury that it is quite a normal function for the man at the helm to take these passing bearings and make records?	No.4 P.W.9 George Young Cross- Examination
	A.	Yes.	
	Q.	Jot them down?	(continued)
	A.	Just jot them down.	
	Q.	That is normal practice.	
	A.	Normal practice.	
	Q.	Much obliged.	
	<u>REXN. BY MR. JENKYN-JONES:</u>		Re-examination
20	Q.	In steering, these vessels, do you have any aids on the jetfoil, any artificial aids?	
	COURT: I don't quite understand that question. I do not think the witness does. What do you mean by "in steering"? You mean --		
	Q.	-- in helming the vessel, is it possible to set it on an automatic course and lock it in that position?	
	COURT: Any sort of automatic --		
30	A.	Yes, there is an automatic gyro where you can lock it on.	
	Q.	And what is the normal practice on the run between Hong Kong and Macau in helming these vessels?	
	A.	When there are not a lot of targets around and you have a straight course for a distance right ahead, so you put it on automatic.	
40	Q.	And you have told us that you didn't really notice the current.	
	A.	Yes.	
	Q.	At the speed you are travelling, would the tide such as there was on that day, have any appreciable difference on your course, on your heading?	
	A.	I don't reckon because the jetfoils are foilborne, you see, and she is travelling on struts which I reckon the tide doesn't play too much on it.	
50	Q.	Can you perhaps just explain why you don't	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.9
George Young
Re-
Examination

(continued)

think the tide has much effect on the
jetfoil at these speeds?

A. Because the amount of hull that is in the
water is very small, you see, in
percentage to the whole craft.

MR. JENKYN-JONES: My Lord, you look puzzled.
I wondered if you might --

COURT: On a moving nest of water, why would
it matter with your own foils - whether
you are on foils or on the hull, aren't
you going on move - the ship will move
in the same speed? 10

A. No, if you have a ship completely - just
an ordinary ship on the water, you have
a larger span of body which the water
will attack, but if you are on foils, the
percentage is very, very small.

COURT: Yes, Mr. Young, the e are these traffic
separations in the south of Lantao marked
on the chart. According to the chart,
they end off the point of Lantao, that
is Fan Lau Point. Do I take it that you
normally adhere to those traffic separation
lanes whilst south of Lantao? 20

A. Yes.

COURT: After you have passed south of Lantao,
are there any requirements so far as you
are aware to adhere to any traffic lanes?

A. No.

COURT: In practice, do you adhere to any
traffic lane? 30

A. In practice we do set sail so that to
keep clear of one another.

COURT: And in which direction do you normally
keep clear of one another?

A. If we are proceeding out of Fan Lau Point
towards Macau, we head on a northerly
course, not westerly course, and when we
are bound for Hong Kong from Macau, we
are on a north-easternly course, near
to the east. 40

COURT: So the practice is, in fact, to adhere
to the same sort of traffic separation
lanes that are shown on the chart.

A. Yes.

COURT: Is there anything laid down by your
company or anybody else regarding --

A. Yes, it is laid down in the company's
log book to follow specific points at

certain distances.

COURT: Is there anything laid down as to the heading that you should follow after you have passed Fan Lau Point?

A. Yes, it is also written down in the log book.

COURT: It is written down in the log book.

A. Yes.

10 COURT: But is there any standard heading laid down by the company as to what you should follow?

A. Yes, it is laid down by the company.

COURT: What are those headings, do you know?

A. After Fan Lau Point?

COURT: Yes.

A. 085 true, from Fan Lau Point to Cheung Chau turning buoy.

20 COURT: To where?

A. To Cheung Chau turning buoy.

COURT: This is when you are --

A. -- Hong Kong borne.

COURT: What about the other way? After you pass Fan Lau Point going west, is there anything laid down?

A. About 262 true.

30 COURT: About 262 true, but is there any requirement, standard requirement as to the heading you should take after you have passed Fan Lau Point going west?

A. Yes.

COURT: And where is that laid down?

A. That is laid down at the back of the log book, deck log book. This is laid down - to be followed by --

COURT What does counsel want to say?

40 MR. CORRIGAN: My Lord, we are a little puzzled as to the relevance, with respect, of this evidence because this gentleman is giving evidence about jetfoils and his company, as I understand it, recommended routes laid down by the Far East Company in respect of the jetfoil traffic. Whatever the status of these recommendations with his company, they would not, with respect, appear to be

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.9
George Young
Re-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.9
George Young
Re-
Examination

(continued)

relevant generally, there being no similar regulations so far as the company concerning this case is concerned with their hydrofoils.

COURT: I'm sorry. I thought they were the same.

MR. CORRIGAN: No, different companies, different vessels, entirely different regimes, as I understand it. I think the evidence will be - it is common ground - that the Hong Kong Macau Hydrofoil Co. with which we are concerned, these vessels, have no similar regulations whatsoever. 10

COURT: I'm sorry. I thought it was the same. Yes, in that case, members of the jury, any questions you would like to ask?

JURY: No questions.

COURT: Yes, thank you.

Witness released.

MR. LUCAS: I call Mr. WOO Tat-chung, who is at page 208 of the depositions. 20

P.W.10
Woo Tat-
chung
Examination

P.W.10
EVIDENCE OF WOO TAT-CHUNG

P.W.10 - WOO Tat-chung Affirmed in Punti

XN. BY MR. LUCAS:

Q. Mr. WOO, would you be kind enough, please, to speak up. Your full name, Mr. WOO, is WOO Tat-chung, is that right?

A. Yes.

Q. And you live at 17, Peking Road, North Point? 30

A. Yes.

Q. And by occupation you are a wireless operator working with the Hong Kong Macau Hydrofoil Company?

A. That is correct.

Q. And I think you joined that company as wireless operator in 1971.

A. Yes.

Q. And you worked on various hydrofoils, did you not, until 1978 when you went to work on board the Flying Flamingo? 40

A. That's correct.

	Q.	And you had in fact stayed on that boat thereafter until the 11th of July, 1982?	In the High Court of Hong Kong
	A.	Yes.	
	Q.	Now that was the day that you were involved in a collision?	<u>Prosecution's Evidence</u>
	A.	Yes.	
10	Q.	Now you worked, as I understand it, a system whereby you worked 4 days on, 2 or 3 days off, is that right?	No.4 P.W.10 Woo Tat-chung Examination
	A.	Worked for 4 days and then I took off for 2 days.	
	Q.	Now sometimes when you are working you would spend the night in Macau because it works out that way, the last trip goes to Macau, sometimes in Hong Kong?	(continued)
	A.	Correct.	
20	Q.	When you were in Macau, do you actually stay at the same accommodation with your colleagues?	
	A.	We stayed in the same hotel.	
	Q.	Now I would like to take you, first of all - sorry, on the Flamingo, your radio room is behind the front of the - behind the bridge?	
	A.	Yes, it was a room behind the bridge, a small room.	
	Q.	You are in a separate room with the radio. You don't see out from where you were?	
30	A.	I could not see outside.	
	Q.	Right. Now on the day of the 11th of July you took your first trip from Hong Kong to Macau, is it not?	
	A.	Yes.	
	Q.	Now you left that day with a full crew and a full load of passengers at 8.37, is that right?	
	A.	Yes.	
40	Q.	Now does your job, is it not, to play the tape telling passengers about the way they use life jackets, etc.	
	A.	Yes, correct.	
	Q.	And you played that there. Did you then go back to that room or were you there when you actually played it, I'm sorry?	
	A.	The tape was inside the bridge.	
	Q.	Now who was on the bridge that day? Who was actually helming the boat? Who was sitting at the first officer's place and who was the engineer?	
50	A.	When the ship left the berth, Captain Coull was on the helm at first.	
	Q.	And then after that?	
	A.	And then the first mate was on the helm.	
	Q.	Who was that?	
	A.	Mr. HO Yim-pun.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Examination

(continued)

- Q. And the engineer's name what is his name?
- A. Mr. YUEN Wing-yiu is the first engineer.
- Q. Now those three, as I understand it, sit in a line together.
- A. Yes.
- Q. And the helmsman is in the middle, is that right, deck officer on the left and engineer on the right.
- A. Engineer is on the right. 10
- Q. Yes, the first officer or the helmsman in the middle.
- A. Right.
- Q. And either the first officer or the captain, depending on who is helming the boat; on the left-hand side - the other ones on the left-hand side.
- A. The first mate or the captain would be on the left-hand side.
- Q. So on that particular day, when Captain Coull handed over to Mr. HO, they would change seats or they changed seats? 20
- A. That is correct.
- Q. Now did you notice what they were doing when you were going along? There was eventually a collision, we know that, Mr.
- A. Oh because I was inside my room I was not sure what was going along.
- Q. Did you notice what the - after the hand-over, did you notice what the captain was doing? 30
- A. The captain was sitting on the left-hand side.
- Q. What was he doing, Mr.?
- A. What period of time are you referring to?
- Q. Well at any period of time, did you notice what he was doing?
- A. I only saw the captain was sitting there.
- Q. Is there a sort of bridge - is there a sort of counter-type effect - is there a console - is there a flat surface in front of these three chairs? 40
- A. There was a radar on the left-hand front.
- Q. In front of the captain?
- A. In front of the left seat.
- Q. And tell me, Mr. WOO, did you notice anything else apart from the radar in that position during the trip at any time? Did you notice in front of the captain, apart from the radar, notice anything else in front of the captain? 50
- A. Some papers.
- Q. What sort of papers?
- A. Newspaper, etc.
- Q. Newspapers. What were the et ceteras, Mr. WOO? You've said "newspapers, etc."

	A.	For example, company notices, deck log.	In the
	Q.	Where was the newspaper? Was it on top of this, this other stuff?	High Court
	A.	I did not notice. Nevertheless, among those items were newspapers, deck log.	<u>of Hong Kong</u>
	Q.	Was the newspaper -- you see, Mr. Woo, Newspaper can be wrapped up like so, or sometimes you can actually open it and read.	Prosecution's
10		Now when you saw the newspaper in front of the captain was it rolled up in a firm bundle or was it spread out like so, or how was it, perhaps you can help us?	<u>Evidence</u>
	A.	The newspapers were placed there in the normal manner.	No.4
	Q.	Mr. Woo, you have the advantage on all of us. You were there, we weren't, and what may be normal for you may not be normal for me. So would you be kind enough to tell me what you mean when you saw in front of Capt. Coull a newspaper in the normal manner?	P.W.10
20			Woo Tat-chung
	A.	Because I had many duties to do, I am not supposed to watch particularly whether they were reading newspaper.	Examination
			(continued)
	COURT:	You were not asked whether they were reading newspaper. Was the newspaper opened or not?	
30	A.	It seemed to me that the newspapers were opened.	
	Q.	Now your boat eventually stopped, did it not, after Fan Lau Point?	
	A.	Not after Fan Lau Point.	
	Q.	I beg your pardon, before Fan Lau Point.	
	A.	That's correct, before Fan Lau Point.	
	Q.	And then after it stopped there was a manoeuvre reversal and then went forward again, right?	
40	A.	The boat was hull-borne for a while and then foil-borne again, and then proceeded this way.	
	Q.	It came down on its hull, right - it stopped?	
	A.	Yes, came down on its hull.	
	Q.	Did it go back?	
	A.	I did not notice whether it went backward. I only knew that it came to its hull for a short while.	
50	Q.	Do you recall the time and the place where this happened?	
	A.	I only knew that we had passed the south-west buoy of Lantao Island -- not south-west buoy, south-east buoy.	
	Q.	Mr. Woo, correct me if I am wrong, do you keep the rough log, that is the times of	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Examination

(continued)

- passing those points?
A. Yes, I do. It is my duty.
Q. Would you be good enough please to have a look at exhibit No.19. Now is that the rough log?
A. Yes.
Q. Did you make the notes at the time?
A. Yes.
Q. Have a look at the particular page in question. Is that your writing? 10
A. Correct.
Q. Now I wonder if you could just lift it up and show it to the jury?
A. (Complies)
Q. Now what are those marks?
A. Blood.
Q. Whose blood?
A. My blood.
Q. How did they come to be on that log?
A. This log book is placed on my desk. 20
Q. And it was on your desk at the time of the collision, is that right?
A. Correct, on my desk.
Q. Now at the time of the collision you had not seen anything before that; you had not seen any hydrofoil approaching, had you?
A. No.
Q. What was the first thing that you knew about this collision? 30
A. I heard a very loud bumping noise.
Q. And then?
A. And then I knew nothing further. I believe I had fainted.
Q. When you regained consciousness did you find that you had injured yourself and, if so, where?
A. When I regained my consciousness I found that I was bleeding profusely. My forehead was bleeding, my tongue as well as my upper lip were bleeding. 40
Q. What about the pains on your body?
A. And also the right part of my upper body was bruised all over.
Q. Did you in fact require medical treatment?
A. There was no doctor on the boat.
Q. Did you eventually go into hospital?
A. Yes, eventually.
Q. And how long were you in hospital for?
A. One day. 50
Q. Now that is a plan of the Flamingo?
A. Yes.
Q. Just to make quite clear where you were - is this your radio office?
A. Yes.
Q. And these are the three seats?

	A. Correct.	In the
	Q. And this is where the engineer, the first officer and Captain Coull was?	High Court
	A. Yes.	<u>of Hong Kong</u>
	Q. When this impact occurred you were sitting in your room?	<u>Prosecution's Evidence</u>
	A. Yes.	
	Q. And as a result of this impact it rendered you unconscious and bled profusely?	No.4
10	A. Yes.	P.W.10
	Q. And the book that you have before you is in that condition because of that?	Woo Tat-chung
	A. Yes.	Examination
	Q. When you regained consciousness were you instructed by the captain to send out an international distress signal?	(continued)
	A. Yes, I did.	
	Q. Did you do that?	
20	A. Yes.	
	Q. And did boats eventually come to your rescue?	
	A. Yes.	
	Q. After the passengers had left I think you went back on the Flying Condor to Hong Kong for medical treatment?	
	A. After the passengers were left I was instructed by the captain to board the Flying Condor to go back to Hong Kong for medical treatment.	
30	Q. Prior to this collision did you hear any sound at all, any warning, any sound?	
	A. I did not hear any sound of warning.	
	Q. Either human or mechanic?	
	A. No, I did not.	
	Q. Now your hydrofoil, and your company are fitted with an intercom of some sort, are they not?	
	A. Yes.	
40	MR. CORRIGAN: My Lord, it's paragraph 9, page 209 of the depositions that my learned friend is leading on. In view of what appears, I object to this evidence being led. No admission as to that matter, therefore it is purely speculative. A question of prejudice, my Lord. That is my objection.	
	COURT: Is it not relevant whether - if the two vessels could communicate with each other is it not relevant whether in fact they did so?	
50	MR. CORRIGAN: My Lord, in the circumstances of this particular collision in so far as we know at all I would have thought that that was a wholly unlikely possibility if your	

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Examination

(continued)

Lordship sees the evidence as it stands.

COURT: If the two vessels were on a collision course, and there is some evidence that they were, is it not relevant as to whether any radio communication went between them?

MR. CORRIGAN: If it is put in that term, my Lord, yes.

COURT: Well, I think that's the way it is put.

MR. CORRIGAN: I think that is common ground.

MR. LUCAS: Also, my Lord, I'm afraid I am in a prejudiced business and there is a second part to that. 10

MR. CORRIGAN: Exactly. If it is going to be discussed, please in the absence of the jury. My learned friend knows perfectly well the matter as to why --

COURT: I think, Mr. Lucas, it is relevant as to whether any communication passed between them on this occasion.

MR. LUCAS: If your Lordship pleases. 20

MR. CORRIGAN: I am much obliged.

Q. And on this intercom are you able to communicate?

A. I am not the person responsible for this intercom because this intercom is not installed inside my room.

Q. I am sorry, my lack of knowledge has caused this confusion. What I meant to talk about is the V.H.F. apparently. Do you have a V.H.F. on board? 30

INTERPRETER: I beg your pardon?

Q. There is an intercom which is within the boat itself. I am not talking about that where you play things over about safety regulations. What I am talking is a system of communication between your ship and other ships in your company.

A. Yes, there was a V.H.F. machine installed inside the radio room.

Q. There is another one as well, is there not, there are two? 40

A. There is only one V.H.F. system installed inside the radio room.

Q. What about in the -- where the officers sit, the engineer, the captain and the first.

officer, any V.H.F. there?
 A. That is supposed to be an intercom. It is doing some sort of communication with our company as well as passengers on board. That is not for external communication. This is for communication with our company and the boats of our company, not to communicate with passengers on board, I am sorry.
 10 Q. There is one in the wheelhouse which is a company one, is that correct?
 A. That's right.
 Q. On which you can contact the headquarters of your company?
 A. Yes.
 Q. Or you can talk to other ships of your company, is that right?
 A. Right.
 20 Q. Mr. Woo, you told us you are the one that writes in the rough deck log, that is, exhibit 19?
 A. Yes.
 Q. And you have got some times here?
 A. Yes.
 Q. Next to that is a thing called, I assume, the bearing and distance?
 A. Yes.
 Q. Are you supposed to do that?
 A. No, I don't do that.

In the
 High Court
 of Hong Kong
 Prosecution's
 Evidence

No.4
 P.W.10
 Woo Tat-
 chung
 Examination

(continued)

30 MR. LUCAS: No further questions.

12.55 p.m. Court adjourns

2.35 p.m. Court resumes

Accused present. Appearances as before.
 Jury present.

P.W.10 - WOO Tat-chung O.F.A.

XXN. BY MR. STEEL:

Cross-
 Examination

Q. Mr. Woo, I gather it is your job to fill in the rough deck log?
 A. Yes.
 40 Q. And the system was this, was it, you filled in the rough deck log and then later you gave a copy of the rough deck log to the master who would then fill in the fair deck log, is that right?
 A. Do you say the mate or the captain?
 Q. I actually said captain, but may I start the question again: you then hand the rough deck log to either the mate or the captain and one of them fills in the fair
 50 deck log, is that right?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

- A. That is not the case.
- Q. Well how does the fair deck log come to be made up?
- A. The first mate came to me to look for the rough deck log. He took away the rough deck log and then he faired the particulars from the rough deck log to the fair deck log - to his log book.
- Q. Let's get away from the day of the collision. The standard practice was for you to give the rough deck log to the mate and then he will later complete the fair deck log, is that right? 10
- A. The first mate came to me and copied from the rough deck log.
- Q. Just look at your rough deck log for the day of the collision, would you, and can I just make sure I have the times right because they are difficult to read. You unberthed at 0837? 20
- A. Yes, 0837.
- Q. You commenced passage at 0839?
- A. Yes.
- Q. Green Island 0844?
- A. Yes.
- Q. Hei Ling Chau Buoy 0853?
- A. Yes.
- Q. Adamasta Rock 0856?
- A. Yes.
- Q. And the S.E.Lantau Buoy 0858? 30
- A. Yes.
- Q. And the Fan Lau Light 0915?
- A. Correct.
- Q. You have not inserted any entry under the "bearing and distance" column?
- A. No.
- Q. Why not?
- A. Because I have no knowledge in bearing and distance.
- Q. Tell us how you, for instance, recorded the time of passing Fan Lau Light? 40
- A. It was the time when the vessel went abeam that point.
- Q. So you have no difficulty in understanding what is meant by "be abeam"?
- A. That's right, no difficulty.
- Q. And it means, does it, that you can see that the object is in a position at right angles to the direction in which your vessel is proceeding? 50
- A. I don't quite understand.
- Q. How did you know that Fan Lau Light was abeam your vessel at 0915?
- A. I looked through the entrance of my radio room to the starboard side by which I saw the beacon.

	Q.	In order to see whether an object is abeam on you, you have to come out of the radio room, do you not?	In the High Court of Hong Kong
	A.	Yes, if that object is on the starboard side.	Prosecution's Evidence
	Q.	That is because you have to come out of the radio room to look across?	
	A.	That is correct.	No.4
10	Q.	When the object is on the port side of the vessel, if you want to see whether it is abeam you have got to put your head round the door and look to port, haven't you?	P.W.10 Woo Tat-chung Cross-Examination
	A.	It is not necessary for me to put my head there because I can just look through the window.	(continued)
	Q.	There is a window in the radio room, is that right?	
	A.	Yes, the port side.	
20	Q.	Are these seats here? (Indicate plan)	
	A.	Yes, it's a long bench.	
	Q.	When you are en route to Hongkong or Macau and require to fill in the rough log book, wouldn't it be more convenient to sit in one of these seats so that you can see to your right and to your left?	
	A.	Because I am a wireless operator, my duty is to send out cables, messages, and I also have to receive messages inside my cable room.	
30	Q.	During the voyage to Macau on the day in question you were not sending out any messages or sending out any cables, were you?	
	A.	It is my duty. I have to stay inside the radio room to listen.	
	Q.	If you sit here you could perfectly well hear the wireless loud speaker if somebody is trying to contact the boat?	
40	A.	According to the wireless regulation we are not allowed to leave the radio room.	
	Q.	Then how is it that you feel entitled to come out of the radio room in order to check whether you are abeam a particular place?	
	A.	By doing that I just stood outside the radio room.	
50	Q.	Do you have to be a very lucky man always to come out of the wireless room at that very moment when the object in question is abeam, do you not?	

INTERPRETER: Sorry?

Q. In order to check whether a point is abeam to starboard you must come out and stand

In the
High Court
of Hong Kong

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

- in the wheelhouse and wait until it is
abeam?
- A. I did not walk outside my room. I just
stood at the entrance.
- Q. And you were standing at the entrance
during the course of the voyage, is that
right, marking off the points as they
came abeam?
- A. It depends, if that is necessary. In
case if that object is on the starboard
side and if I have to stand up to look at
it then I would stand outside the radio
room. 10
- Q. Would you look at the rough deck log again.
It says in large capital letters at the
bottom of it: "radio clock to be checked
every morning"?
- A. Yes.
- Q. Is that the clock you use for recording
the time at which you pass various places? 20
- A. This radio clock does not show local time.
It shows the Greenwich mean time.
- Q. So what clock did you use for keeping the
record in the rough deck log?
- A. I checked the time with the radio clock
giving addition to that.
- Q. And adding 8 hours?
- A. That's right.
- Q. So you did use the radio clock to record
the times of passing points, didn't you? 30
- A. Yes, but I have to add 8 hours.
- Q. I follow that. And had that been checked
on the morning?
- A. No, not that morning.
- Q. Why not?
- A. Because the radio control would announce
the time in every two hours and that morning
our vessel started at 8.30 and the announce-
ment was to be made at 10 o'clock.
- Q. Did you find that you usually had to adjust 40
the clock when you checked it or was it
usually accurate to the nearest minute?
- A. There wouldn't be a big difference in the
clock. I would say in one day there would
be a difference of one second, or less
than a second - or perhaps several seconds,
or ten seconds.
- Q. Could you help us with this: a jetfoil
passed your ship near Fan Lau Light when,
according to its clock, it was 9.29. You 50
recorded as passing that point at 9.15.
Are you certain that your clocks were
synchronized to local time?
- A. I am sure that the clock was accurate.
- Q. Would you be kind enough to look at the
fair deck log which we have as exhibit 18

or, rather, 18A. Now I gather that the deck officer asked you to give him the rough log for the day and you gave it to him, is that right?

10 A. Yes, if he asked me I would give it to him.

Q. When did you give him the rough log for the 11th July?

A. Before I left the hydrofoil owing to the fact that I was injured.

Q. Do you see that in the first column here there are some times which seem to be the same times as you recorded in your rough log and no doubt copied into the fair log?

A. Yes, the time is the same.

Q. You also see that there are some entries under the "bearing and distance" column?

20 A. Yes.

Q. And "revolutions" column and "visibility" column?

A. Yes.

Q. I gather that that information was not derived from you or the rough log that you prepared?

A. Right, it is not obtained from me.

Q. And before the collision you had got no record of the distance of the various places that you had passed?

30 A. No.

Q. So that it should be clear to the jury can you just confirm that the place where you or, rather, where your hydrofoil came to a halt for a moment to free the vessel of rubbish was in the vicinity of Cheung Chau?

A. Yes, I remember that we have passed Cheung Chau at that time.

40 Q. Perhaps that is not an answer to my question. Was it still in the vicinity of Cheung Chau that the vessel came to a halt and reversed and then went on ahead?

A. More or less that area. It is somewhere between Cheung Chau and Shek Kwu Chau.

Q. Again the fair deck log has an entry right at the bottom left hand corner under remarks: "0901 - 0903 hovercraft on hullborne to clear the plastic bags on foil"?

50 A. Right.

Q. There is no record of that in the rough deck log?

A. No.

Q. Why not?

A. Because I would only have done that upon instruction of the deck officer or the captain. If they did not give me instruction to write that down I would not do that.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

Q. Were you asked after the collision to try and record the time and place at which it happened?

INTERPRETER: Sorry?

Q. Did the mate or the master immediately after the collision ask you to record the time and place where the collision had occurred?

A. No.

Q. You were seriously hurt in the collision, you were rendered unconscious, is that right, for a while? 10

A. I believe I was unconscious.

Q. Do you know for how long you were unconscious or do you not know?

A. I presume 3 to 4 minutes.

Q. How do you make that presumption?

A. Because when I regained my consciousness I looked at the clock and it showed 9.30. I asked the deck officer the time of the collision he told me that the time was 9.25. 20

Q. Was the first thing you were asked to do when you recovered consciousness to send out a distress signal and by the V.H.F.?

A. I consulted Captain. Captain instructed me to give that signal. So I did accordingly.

Q. And was that within a minute or two of your recovering consciousness? 30

A. Yes, it was within one or two minutes. I asked the deck officer the location of the collision. The deck officer told me.

Q. So the time of the receipt of that distress signal, you gave us the time at which you - about the time you recovered consciousness?

A. Yes, it was one or two minutes after I regained my consciousness. 40

Q. I assume you are still working on a hydrofoil, is that right?

A. Yes, I am now still working.

Q. From your position in the radio room and from time to time putting your head out of the door you noticed, is this right, that the master had a newspaper spread out in front of him?

A. It was in front of the captain -- let me think for a moment... I saw a newspaper spreading in front of the captain. 50

Q. But because he had his back to you you could not be sure whether he was reading it all the time, is that right?

MR. CORRIGAN: I don't think he has ever said he saw the captain reading it.

In the
High Court
of Hong Kong

MR. STEEL: I am putting the suggestion to him.

Prosecution's
Evidence

MR. CORRIGAN: I cannot be sure if he saw him read it all the time.

No.4

Q. Is this right, because he had his back to you you could not be sure whether he was reading it all the time?

P.W.10
Woo Tat-
chung

10 A. The newspaper was in front, but I did not know whether he was reading it.

Cross-
Examination

COURT: You are not sure whether he was reading the newspaper?

(continued)

A. Right, not sure.

MR. STEEL: Thank you.

XXN. BY MR AIKEN:

Q. Do you know anything about the lay-out of the Goldfinch?

20 A. Yes, once I had been working there.

Q. You have been a radio officer on the Goldfinch?

A. Right.

Q. There is no radio room on that vessel, is there?

A. No.

Q. The radio officer sits on the starboard side?

A. Correct.

Q. He sits by the starboard side window?

30 A. Facing the starboard side window.

Q. He is looking directly to starboard through the window?

A. But part of his view is obscured by the wireless apparatus.

Q. He has two pieces of equipment in front on a deck, doesn't he?

A. That's correct.

Q. And above those pieces of equipment is a starboard window?

40 A. Correct.

Q. And port, in other words, behind him is another bit of equipment?

A. Not the port side, but behind him, behind where he was sitting.

Q. I quite agree with you, it is not the port side of the hydrofoil which is to the right of him, it is just behind him?

A. Right behind him.

50 Q. And he is sitting in a small area so that he can deal with both bits of equipment at once?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

- A. Right.
- Q. And if he wishes to do that he turns his chair round, it is a turning chair, so that his back is to the stern and he is facing towards the bow?
- A. Yes, that is a turning chair. He can turn in that position with his back facing the stern, with his back to the stern.
- Q. Am I right the prime function of a radio officer is to record the times in the rough deck log? 10
- A. The prime duty of the wireless officer is to receive and to transmit wireless messages.
- Q. Yes, but on this route that does not happen all the time, does it?
- A. Not the transmission, but my duty is to receive messages.
- Q. Yes, I know that. I know part of the duty of the wireless officer is to receive messages, but in practical terms what you spent most of your time doing is completing the rough deck log, putting times against positions? 20
- A. This is not the main duty, filling the rough deck log.
- Q. But you spent most of the time doing it?
- A. No, the filling in of the rough deck log spent only a minority of time. For the other time I have to fill in the radio log. 30
- Q. Can we just be shown that. I think you have got a copy of it. You are recording in that messages - the radio log, what are you recording in that?
- A. I would record what I received from the machine in the radio log in every ten odd minutes.
- Q. You are recording messages.
- A. Yes, I would write down messages which I receive from other ships regarding communications and regarding messages sent out by their radio in the log book in every ten odd minutes. 40
- Q. These aren't the messages on the VHF radio you have told Mr. Lucas about.
- A. No.
- Q. You don't get many messages to be entered in the radio log on a trip to Macau, do you? 50
- A. Not many.
- Q. How many would you say on average you get a trip?
- A. It is hard to say. Maybe several messages are received within several minutes or maybe not even one within several ten odd minutes.

Q. Perhaps you could help me on your rough deck log. You record a time for Ching Chau Island. I am talking in general terms but not talking about the accident. You do record a time for Ching Chau.

A. Yes.

10 Q. And if you are going from Macau to Hong Kong, where is the next place the radio officer records a time?

A. Are you referring to the trip from Macau to Hong Kong?

Q. Yes.

A. That is the number 1 beacon from the Macau Wharf.

Q. Leaving Macau going to Hong Kong, you make a time at Ching Chau. After that where is the next recording made in the rough deck log by the radio officer?

20 A. First of all, I would record the time of departure from Macau.

Q. Then you record along until you get to Ching Chau. It is an island in the open sea. You make a recording when you are abeam of Ching Chau.

A. Yes.

Q. Where is the next place you make a recording of that journey?

30 A. It depends whether the vessel took the route round the south of Lantau or the north of Lantau.

Q. Assume it is going to the south of Lantau through the channel, where is the next place you make a recording?

A. The Fan Lau beacon.

Q. So far then as the radio officer is concerned and his rough deck log, he has no entries to make between Ching Chau and the tip of Lantau - Fan Lau.

40 A. Right, no, because there would be no time recording between the trip from Ching Chau to Fan Lau. The time was only recorded after we passed the Fan Lau Point.

Q. That's my point. He has no entry to make while he crosses that lengthy piece of open sea to Fan Lau.

A. That's right.

Q. And if there are no incoming messages, he can sit back and look out of the window.

50 A. He had to remain in his seat.

Q. I know, but his seat is facing the starboard windows.

A. Yes, that is what happened on the Flying Goldfinch.

Q. Yes, thank you.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

XXN. BY MR. CORRIGAN:

- Q. Mr. Woo, the various hydrofoils belonging to the company on which you serve have a different lay-out in a number of respects, is that right?
- A. Correct.
- Q. One thing we have touched on this afternoon in your evidence is the lay-out of the bridge and surrounding the bridge.
- A. Right. 10
- Q. Am I right the Flamingo was known in the company to be the hydrofoil with the smallest - indeed the most cramped bridge of all the company's vessels?
- A. No.
- Q. Was there a vessel that was particularly known to be the most cramped?
- A. But not the Flamingo.
- Q. I see. There was a lot more room on the bridge of the Goldfinch, for example, than there was on the Flamingo, is that right? 20
- A. By the look of it, they are almost the same.
- Q. We can look at the scale plans perhaps later on, but just dealing with the matter now, you have already said on the bridge of the Goldfinch, for example, the wireless operator had a seat at which he could look out of the starboard window, he was there on the bridge with the officers, wasn't he? 30
- A. Yes.
- Q. On the Flamingo on which you served, there was no such position for the wireless operator and you were tucked away by yourself in a little room off the back of the bridge, right?
- A. That's correct, but on the Flying Goldfinch the wireless officer was sitting at the -- inside the bridge on the starboard side.
- Q. Yes, yes. 40
- A. But the position of the wireless officer was almost the same in the Flying Flamingo, the difference is only that there was a ladder, a staircase leading down to the radio room, the engine room.
- Q. Yes. On the actual bridge level of the Goldfinch behind the officers on the bridge there was room and station and position for the wireless operator and that is where he sat, is that right? 50

INTERPRETER: In the Flamingo?

- Q. Goldfinch.
- A. Yes, on the Goldfinch.
- Q. There was no room on the bridge with the

	officers on the Flamingo for any other officer to have any room or station, is that right?	In the High Court of Hong Kong
	A. Correct.	
	Q. In fact, on the bridge of the Flamingo it was necessary, was it not, almost to squeeze behind the three seats provided for the three officers in order to pass across the bridge from one side to the other.	Prosecution's Evidence
10	A. Yes, because the way was blocked by the seat, he has to go sideways.	No.4 P.W.10 Woo Tat-chung
	Q. This is the bridge of the Goldfinch - Flamingo, I beg your pardon, the three officers' seats provided in this position.	Cross-Examination
	A. Yes.	(continued)
	Q. Behind the three officers' seats was this seating which you described as a sofa.	
20	A. Yes.	
	Q. Here is an exit door to the outside of the boat.	
	A. Yes.	
	Q. In here there was a well with steps leading down, is it, to the engine room.	
	A. Correct.	
	Q. On the other side, on the portside, was your wireless room furnished as such where you were stationed?	
30	A. Yes.	
	Q. So if you cut that off it shows, does it not, the extent of the room available and given to the three officers to carry out their duties on that day, do you agree? Is that right?	
	A. Right.	
	Q. And also on the Goldfinch and I think all the other hydrofoils, do you recall this, that immediately behind the bridge there were windows and visibility to allow the three officers or any one of them to look straight back and see what was happening behind the bridge.	
40	A. I am not very clear.	
	Q. I think we should see that from the plans of the Goldfinch. There was, if I may show you this, immediately behind the bridge of the Goldfinch, we can see from the profile here, the cabin was in the level lower, so obviously the officers could look straight back towards the rear of the boat, whereas here on the Flamingo we have the bridge and the passenger cabin, it was immediately behind it, wasn't it, behind where you were sitting on your side. Now, apart from the sofa, the three seats, behind the seats provided for the three officers	
50		

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

- on this bridge, there wasn't any other furniture whatsoever, was there, where anything could be put or placed by an officer or any member of the crew, personal belongings and so on, is that right?
- A. Large personal belonging or small personal belongings?
- Q. Either really, Mr. Woo.
- A. If the personal belonging is small, he can place it on the floor. 10
- Q. Well, yes, but in so far as the floor area would have to be kept clear for the purposes of passing and repassing, the only place to put anything down was on shelf space that was immediately followed or in front of the three seats provided for the three officers.
- A. No, they can place it on the sofa.
- Q. Or on the sofa, yes. Have we the photographs which are marked Exhibit 2? I don't know 20 whether the members of the jury have them, the coloured photographs, Exhibit 2. Now, may they be given please. Photograph 2 is a bundle of -- they are not numbered. Now, the fourth photograph from the top of the bundle. Photograph 4 shows the back of a chair with a helm or wheel, the lefthand side. Do you have that photograph? Do you see that photograph, Mr. Woo?
- A. Yes. 30
- Q. Now that, we understand, is a photograph of the righthand chair on the starboard side, that is the engineer's chair, isn't it?
- A. Yes.
- Q. And in front of him we see something of an instrument panel, those are the engineer's instruments. To the left we see immediately behind the helm the chair occupied either by the captain or the first mate when he is at the helm, is that right? 40
- A. Yes.
- Q. Now, the next photograph on from that is a close-up, is this right, of what is in front of the engineer's chair, that is the engineer's instrument panel and his controls for the engines.
- A. Yes.
- Q. Now, just going back to the earlier photograph, you see, we haven't unfortunately a picture 50 of the portside chair which is occupied by the captain or the helmsman, according to who is not steering at the time, but if you look at that first photograph again, Mr. Woo if we look carefully at the upper lefthand corner just to that side of the wheel, you can see something of a table top or desk top which runs to the left of the cabin, is that right,

to the portside. You can see the - what is in front of the officer who sits on the portside if you look closely there, there is a table top or a desk top, call it what you like, in front of him, is that the position? You can just see it if you look carefully from that position. Do you see that? You can see that, do you?

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

10

A.

Yes.

Q.

You can just see it. Now, what we can't see in the photograph but is there on the plan is that at the front of that area there is the radar set, is that right?

A.

Yes, it was placed on that side.

Q.

But apart from the radio set, the radar set, that area has no other instrumentation or controls of any sort upon it, is that right?

20

A.

Right.

Q.

Correct. That is an area of free space in this bridge cabin, is it not, where items can be placed in the normal way by officers or members of the crew.

A.

It is at the discretion of the captain or the deck officer.

Q.

And is that the place at which we saw this mysterious newspaper, no doubt the captain's Sunday newspaper, on this particular voyage?

30

A.

Yes, more or less in that place.

Q.

More or less in that place, yes. And more or less any personal belongings might be placed in that position, is that correct?

A.

Not that I know. I didn't place anything there.

Q.

Not yourself, no, but say, for example, officers were smoking or something, would they put cigarettes or other items, sundry items on that place in the normal way?

40

A.

I can't tell. I am not watching at that time.

Q.

No, of course not. But there would be nothing unusual in that, would there?

A.

I can't tell, I just don't know.

Q.

Now, you were asked about coming out of your wireless room for the purpose of going over to the starboard side in order to record the time of passing a particular point. Do you recall being asked about that?

50

A.

Yes, by standing at the entrance.

Q.

And you would look over to the right.

A.

Yes.

Q.

Yes. I think of all the fix points on Exhibit 19 on which you were to record the passing times, the only one of all of those items which in fact is to the starboard side is the

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination
(continued)

- Fan Lau light position, is that right,
all the others are port.
- A. Yes.
- Q. On the way to Macau.
- A. Yes.
- Q. And about how many minutes was it between
the last port reading before the Fan Lau
Light and the Fan Lau Light position -
you passed the south-east Lantau Buoy/Siu
A Chau - I can't read any of these 10
figures - and you would record that time.
How many minutes later would you know
you were going to pass the Fan Lau Point?
Would you like to look at the log. I can't
read the figures on this Exhibit 19, a
rough deck log. You had been recording
a number of positions on the portside, the
last one is the south-east Lantau Buoy/Siu A
Chau Light, do you see? What time is that?
- A. 0858. 20
- Q. And the next one which is the only star-
board side point, Fan Lau Light, what time
is that?
- A. 0915.
- Q. And so you would know from your everyday
experience when to pop out to see if you
were passing the Fan Lau Light Point, is
that the position?
- A. Correct.
- Q. So you just get up on that one occasion, 30
put your head round the door, look through
the bridge and make the precise record.
Is that what happened?
- A. Yes.
- Q. Day in day out, always the same routine.
- A. Yes.
- Q. Now, would you leave your wireless room
compartment and go out onto the bridge or
stay on the bridge for any other purpose
during the trip to Macau? 40
- A. Upon leaving the harbour I have to go
inside the bridge to make a broadcast to
the passengers by means of the public
address system, for example, how to use
life-jackets and such things.
- Q. I am not really interested in that part
of the journey immediately setting out.
Let's put it this way. From the time of
passing the Fan Lau Light when you go out
on that one occasion, look at the star- 50
board, go back, you say, and you make
your record in the rough deck log, from
then on until you get to Macau, would you
go out onto the bridge area or stay there
for any purpose?
- A. No.

Q. Because you would stay in your wireless room compartment carrying out the various wireless telegraphy and passing point deck log duties that you have told members of the jury about for the rest of the trip. Is that the position?

A. Right.

MR. CORRIGAN: Much obliged.

10

MR. LUCAS: My Lord, it seems I am deficient not only in knowledge of things nautical but legal as well. It is a matter of technical matter, but I haven't asked this witness to identify Captain Coull and Mr. HO. My friend has no objection to -- no dispute about it.

RE-XN BY MR. LUCAS:

20

Q. Witness, is Captain Coull, the first officer you are talking about, Captain Coull sitting at the far end and Mr. HO, the man sitting next to him?

A. Yes.

MR. CORRIGAN: There is only one Captain Coull, I think. There may be a number of HO's in Hong Kong. I don't know.

MR. LUCAS: Thank you, my Lord.

COURT: Members of the jury, any questions you would like to ask?

30

JUROR: If it is not the radio officer's responsibility to take bearings, whose is it?

COURT: Yes. You said you didn't record the bearings on the various landmarks.

A. No.

COURT: Nor the distance.

A. No.

COURT: Who in fact, do you know, does record that in the - what is known as a fair log?

40

A. I believe it was done by the deck officer.

COURT: Yes, thank you.

MR. LUCAS: My Lord, I call Dr. TIN Ohn, page 62 of the depositions.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Cross-
Examination

(continued)

Re-examination

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.10
Woo Tat-
chung
Re-examination

(continued)

MR. CORRIGAN: My Lord, all this evidence,
we understand - we've told my learned
friend - was admitted as far as the
defence is concerned.

MR. LUCAS: Could it be read? He is here.
For some reason he is here.

COURT: If it is not in dispute, you can
simply read it out.

P.W.11
Dr. Tin, Ohn
Examination

P.W.11
EVIDENCE OF DR. TIN OHN

10

P.W.11 - Dr. TIN Ohn (Forensic Pathologist)
XN BY MR. LUCAS: Affirmed in English

Q. Dr. you are a forensic pathologist and
your name is Dr. TIN Ohn.

A. Yes.

Q. And you hold a Bachelor degree in Medicine
and Surgery from the University of
Rangoon, Burma, a Diploma in Tropical
Medicine and Hygiene from England and a
Fellow of the Royal College of Physician,
Edinburgh. 20

A. Yes.

Q. Prior to joining the Hong Kong Government,
I think you were a professor of Medicine
at the University of Rangoon in Burma
from 1965 until 1979 and the National
University of Malaysia in Kuala Lumpur
between 1979 and 1981.

A. Yes.

Q. In July of this year, I think on the
12th of July, you were on duty at the
Victoria Public Mortuary where you
carried out a post-mortem examination
of a Chinese female WU Yuk-ngan who was
identified to you by her husband Mr. NG
Chun-wai. 30

A. Yes.

Q. As a result of that post-mortem, you found
the following, her age was 25, her height
146 c.m., she was of normal build,
Ecchymosis was found on both upper eyelids,
blood in the ears and nose, and I think
you also found two laceration wounds 7 x 2cm 40

	and 8 x 2 cm across the scalp and above the right ear. Could you just point that out?	In the High Court of Hong Kong
	A. Here. (Witness indicates)	
	Q. There. Abrasion on the right neck in posterior triangle.	Prosecution's Evidence
	A. This portion of the neck.	
10	Q. A bruise on the right cheek. Could you just point the place, doctor, as I read it out. Two by four bruise on the front of the right shoulder, 4 cm bruise on the chin, 5 linear abrasion below the right deltoid, laceration wound and compound comminuted fracture of the right humerus at the elbow, multiple superficial abrasions outer and posterior part of the right elbow to forearm. Where is that?	No.4 P.W.11 Dr. Tin, Ohn Examination (continued)
	A. Here.	
20	Q. Bruising of the right knuckle, a 6 x 1 cm bruise on the outer and back left elbow, 4 x 1 cm bruise on the outer and back of the left wrist, and multiple small bruises back of left arm and left forearm, 2 x 2 cm abrasion on the middle right leg, multiple bruising on both legs which was patchy. Would you describe that, doctor?	
	A. Small and pin-point regions.	
30	Q. You examined internally the Cranial cavity, did you not, and you found a 7 x 3 cm skull bone pushed into the right brain under laceration wound scalp. What does that mean?	
	A. A 7 x 3 cm piece of bone pushed into the brain itself.	
	Q. There was also a fracture at the right parietal to the left temporal passing just above eyebrows. Is that the skull bone itself?	
40	A. The skull bone.	
	Q. Right across the?	
	A. Across the front.	
	Q. A fracture of the right and left sphenoids, right anterior and middle fossal.	
	A. That's a fracture line extending right down to the base of the skull and involving the whole base in the bottom here.	
	Q. As a result the brain suffered laceration to the right parietal region of the ventricle. Where is that?	
50	A. The side of the brain.	
	Q. And bruising was found all over the brain, is that right?	
	A. Top.	
	Q. But no disease was seen. In the thoracic cavity, the cervical spine, nothing was detected, that's the...	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.11
Dr. Tin, Ohn
Examination

(continued)

- A. Intact.
- Q. There was a fracture of the sternum, there was a bruising on the right diaphragm.
- A. Inside.
- Q. The lungs - the right lung was collapsed and bruised, the left lung bruised at hilum but intact.
- A. That is where it joins the heart area.
- Q. And nothing was detected.
- A. No diseases found apart from these trauma. 10
- Q. The abdominal cavity, there was blood found in the right upper quadrant.
- A. Inside.
- Q. In the stomach, fluid, bruising of the surface of the front of the fundus. What's that?
- A. That's the top part of the stomach.
- Q. The intestines with bruising extensively.
- A. All the small intestines.
- Q. The liver had two small lacerations at hilum and right lobe, top and back, no disease seen. The spleen was intact, in the kidneys there was nothing detected, the uterus was empty, there was urine in the bladder, no blood alcohol. All other organs were healthy. I think the cause of death you found to be multiple injuries. 20
- A. Yes.
- MR. LUCAS: Thank you, doctor. No one wants to cross-examine him, my Lord. I do apologize for keeping you. 30

NO XXN BY MR. STEEL

NO XXN BY MR. AIKEN

NO XXN BY MR. CORRIGAN

MR. LUCAS: I call Mr. LO Kam-shing, whose evidence is at page 216 of the depositions.

P.W.12
Lo kam-shing
Examination

P.W.12
EVIDENCE OF LO KAM-SHING

P.W.12 - LO Kam-shing Affirmed in Punt
XXN BY MR. LUCAS: 40

- Q. Mr. LO, you live at 30, Mei Kwong Street, On Ling Building, Tokawan. Is that right?
- A. Yes.
- Q. And you are a radio officer, are you not?
- A. Yes.
- Q. And you work for the Hong Kong Macau

	Hydrofoil Company as a radio officer.	In the
A.	Yes.	High Court
Q.	Now, your qualifications -- I think	<u>of Hong Kong</u>
	you went to school in Hong Kong and	
	you went to the Polytechnic College,	Prosecution's
	is that right?	<u>Evidence</u>
A.	Yes.	
Q.	In 1978 I think you joined the company	No.4
	as a radio officer.	P.W.12
10	A. Yes.	Lo Kam-shing
Q.	And you had been assigned by the	Examination
	company to serve as a radio officer	
	on various hydrofoils since you joined	(continued)
	the company.	
A.	Yes.	
Q.	The hydrofoil company in fact transferred	
	you to various ships until finally in	
	July 1979 you were transferred as a	
	radio officer to the Flying Goldfinch.	
20	A. Yes.	
Q.	So you had been there over three years	
	when the accident occurred.	
A.	Yes.	
Q.	And since the beginning of January 1982	
	you worked under the command of Captain	
	KONG, is that right?	
A.	Yes.	
Q.	On the 11th of July you left Hong Kong	
	for Macau on the first trip at about	
30	7.35, is that right?	
A.	Yes.	
Q.	And at that time Captain KONG was a	
	captain on board and a deck officer	
	was Mr. NG Yui-kin.	
A.	Yes.	
Q.	Now, you arrived at Macau and picked up	
	some passengers and turned back to Hong	
	Kong.	
A.	Yes.	
40	Q. And was that -- at about what time, do	
	you recall?	
A.	The time we departed Macau?	
Q.	Yes.	
A.	9.02.	
Q.	Now, did you sit inside looking out the	
	side window behind the engineer?	
A.	I was sitting behind the engineer but my	
	view was obscured by the trans-receiver,	
	transmitter.	
50	Q. When you are sitting, as I understand the	
	position - it has been just explained to	
	us, the three of you sit in a row, the	
	engineer, the helmsman and the captain or the	
	deck officer sit in a row in front and you	
	sit on the right hand side just behind the	
	engineer facing starboard side.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Examination

(continued)

- A. Yes.
- Q. And my understanding is that there is a window in front of your desk looking out the starboard, is that right or not?
- A. Yes, I could see through the window if I stand up, but in front of me the trans-receiver blocked my view.
- Q. So actually sitting down, you can't see anything at all outside.
- A. I could see part of the view. 10
- Q. I mean -- sorry, just to get this right, you are looking sort of up into the sky from where you are sitting or?
- A. That's right.
- Q. To your left where the chief engineer is, are you below his level?
- A. Right.
- Q. So can you see at the front - sitting down, sorry. From a seated position, can you see to the front of the boat? 20
- A. The front of the boat?
- Q. Yes.
- A. No.
- Q. Now, do you remember passing any particular beacon or some sort of landmark on the way having left Macau?
- A. We left Macau and at 0907 hours we passed the first -- the number 1 beacon in Macau.
- Q. Did you make a note of that?
- A. I did. 30
- Q. You did that in the rough log.
- A. Right.
- Q. And what did you see next?
- A. At 0922 hours I saw Ching Chau of China.
- Q. Did you write that down as well?
- A. Yes, I did.
- Q. And then when you were sitting in the boat, who was helming the boat, who was steering the boat?
- A. I remember Captain KONG was on the helm. 40
- Q. And Mr. NG, was he sitting in the lefthand seat?
- A. That is what I remember.
- Q. Now, when you left Macau and were going along, did you hear any conversation or much conversation between them or didn't you listen or can you tell us anything about that?
- A. Within several minutes -- for the first several minutes of our departure from Macau, I heard Captain KONG give instructions on starting the engine. 50
- Q. And after that?
- A. I didn't hear any conversation after we had passed No.1 beacon in Macau.
- Q. What is the next thing happened as far as you were concerned?

	A.	I remained seated. I gave my full concentration to the trans-receiver.	In the High Court of Hong Kong
	Q.	And did you make any further notes in the rough log?	
	A.	At 09.22 hours I marked down Ching Chau Island of China in my log book and after that until the time of collision I didn't write anything further.	<u>Prosecution's Evidence</u>
	Q.	Tell us about the collision.	No.4 P.W.12
10	A.	Shortly after I had jotted down the notes at 0922 hours I heard a 'Lung' sound and then I lost my consciousness.	L0 Kam-shing Examination
	Q.	Now, you suffered injuries as a result of this collision, did you not?	(continued)
	A.	Yes.	
	Q.	What injuries did you suffer?	
	A.	My nose was bleeding. I felt pain over my body, especially my feet.	
	Q.	Especially your feet.	
20	A.	My feet.	
	Q.	Would you be good enough to look at Exhibit P.23 please. Do you see those marks on the front of that book?	
	A.	Yes.	
	Q.	What are they?	
	A.	Blood stains.	
	Q.	Whose blood.	
	A.	My blood.	
30	Q.	Now, what happened after you regained consciousness?	
	A.	The first thing I did after I regained my consciousness was to look at the watch and I saw that the time was 0926 hours.	
	Q.	And did you write that down then?	
	A.	Not immediately.	
	Q.	Now, you noticed a time and then what did you do?	
40	A.	I got to my feet slowly. I looked to the front of the boat. I saw that the bow of Flying Goldfinch ram into the starboard side of Flying Flamingo.	
	Q.	Then what happened?	
	A.	I returned to my own seat. What I mean is I returned to my own position because at that time the chair already disappeared.	
	Q.	Yes, and?	
	A.	I stood for a while and then Captain KONG went up to me.	
	Q.	Yes?	
50	A.	He instructed me to send distress signals which I did immediately.	
	Q.	And then after that, what did you do?	
	A.	I sent out messages.	
	Q.	Yes?	
	A.	About 20 minutes later I jotted down the time which I noticed after I regained my	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Examination

(continued)

- consciousness, that is 0926 hours onto the rough deck log.
- Q. Any other time that you wrote down?
- A. At 1005 hours I wrote something on the deck log.
- Q. And that was -- you did this at your radio area, in your area, is that right?
- A. Yes.
- Q. Now, I think at about 1030 that day, Captain Coull and Deck Officer HO, Chief Engineer YUEN and Mr. HO Ngau, all of the Flying Flamingo came over the Goldfinch. 10
- A. Yes, and Mr. HO Ngau, altogether there were four of them who had gone over to our boat.
- Q. I think just at about 11 -- precisely 11.11, at the request and with the consent of Captain KONG you were taken by a helicopter to Queen Mary Hospital for medical treatment and later discharged. 20
- A. Yes, I was taken to the hospital by helicopter at 11.10 with the consent of Captain KONG and at the request of Captain KONG. 1111 hours.
- Q. Now, you were subsequently discharged, you went home on the same day, did you not?
- A. Yes.
- Q. Now, that night did you receive a telephone call at home from Mr. NG, the deck officer of the Flying Goldfinch? 30
- A. Right. Mr. NG of the Flying Goldfinch telephoned me.
- Q. What did he tell you?
- A. He told me that Captain KONG wished to see me at the coffee house of Hong Kong Hotel that evening at 10 p.m.
- Q. Did you go that evening at 10 p.m. to the coffee shop of the Hong Kong Hotel? 40
- A. Yes, I did.
- Q. And tell us what happened please. Who was there, what happened?
- A. I was the first one who arrived. I saw Chief Engineer LAM Hok-chung. The two of us sat together at a table.
- Q. Yes?
- A. And then other people arrived.
- Q. I think you said five. Who were they? Who were those other people? 50
- A. I remember altogether including myself were 9 people.
- Q. Who were they?
- A. Officers of the Flying Goldfinch were Captain KONG Cheuk-kwan, Deck Officer Mr. NG Yiu-kin, Chief Engineer LAM Hok-chung,

myself, and then Deck Officer of Flying Flamingo Mr. HO Yim-pun and Chief Engineer of Flamingo Mr. YUEN Wing-yiu. Three other people, that is the wife of Captain KONG, Captain KONG's elder brother and the brother-in-law of Mr. HO Yim-pun, that is deck officer of Flying Flamingo

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

10 Q. When you were gathered, could you tell us what was said, what was discussed?

P.W.12
Lo Kam-shing
Examination

A. Captain KONG discussed with his deck officer Mr. NG Yiu-kin about the route of that particular trip.

(continued)

Q. Yes, what did they say about the route?

20 A. Captain KONG said during that trip the boat was sailing -- sorry, the boat was keeping the righthand side. As a result of that discussion, it was agreed as said by Captain KONG that the ship, the boat was travelling at an angle of five degrees per second.

Q. Yes, go on, to which side?

A. Towards the starboard side.

Q. Yes, go on? What else was said?

30 A. At that time Chief Engineer LAM Hok-hung also discussed with Captain KONG whether there was any shouting to stop the engine. Eventually it was decided that Captain did order to stop the engine. Then Captain KONG asked me the time prior to the collision and the time after the collision.

Q. Yes?

40 A. Which was jotted down by Captain KONG's wife. AT that time Captain KONG also suggested to me that I heard that he, that is KONG Cheuk-kwan, had ordered to stop the engine. During that juncture, Chief Engineer LAM Hok-chung objected, saying that it was not necessary. However, Captain KONG said it would be better if I said -- it would be better if I admitted that I heard him giving the order to stop the engine.

Q. Yes, go on.

50 A. I didn't give comment to that and as a result it ended without any result. And then the deck officer of Flying Flamingo, that is Mr. HO Yim-pun, stated, said about the collision. He said the Flying Flamingo was taking its normal route and it was noticed that the Flying Goldfinch was on her starboard side. All of a sudden he noticed that the Flying Goldfinch was flying towards him. He said that he immediately

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Examination

(continued)

shouted to the chief engineer saying,
"Look, the ship is coming, is rushing
at us." The chief engineer immediately
looked to the starboard side. He saw that
the other boat was only several ten feet
away and then collision occurred. That
is what he said.

Q. Stopping there for a moment. Do you
recognize the lady sitting at the back
of the court? 10

A. Yes.

Q. Who is she?

A. Captain KONG's wife.

Q. Would you be good enough to look at the
gentlemen in the dock please, starting
from the man next to the prison officer
closest to you. Would you tell us who
they are?

A. Yes, I know.

Q. Would you tell us who they are? 20

A. The first one Captain KONG, Mr. NG Yui-
kin, the deck officer of Flying Goldfinch.
The third gentleman is the deck officer
of Flying Flamingo Mr. HO Yim-pun.
The fourth gentleman is the Captain of
Flying Flamingo Mr. John Coull.

Q. Mr. John Coull was not there on that
particular occasion.

MR. LUCAS: My Lord, it is 4.30. I would be 30
a little longer. I wonder in the
circumstances if this witness might be
asked not to communicate with anyone.

COURT: I think you agree with counsel that
Captain Coull was not at the meeting.

A. No, he was not.

COURT: We will adjourn to 10 o'clock tomorrow,
members of the jury. Would you please
come back then to finish your evidence.
In the meantime, you must not discuss 40
this matter with anybody at all.

A. Yes, I understand.

COURT: 10 o'clock.

4.35 p.m. Court adjourns

9th March, 1983

10th March, 1983

In the
High Court
of Hong Kong

10.15 a.m. Court resumes

Accused present. Appearances as before.
Jury present.

Prosecution's
Evidence

Mr. Corrigan applies to have the case
adjourned as D.3 is sick.

No.4
P.W.12
Lo Kam-shing
Examination

Application granted. Case adjourned to
tomorrow, 10 a.m.

(continued)

10.20 a.m. Court adjourns

10 11th March, 1983

Accused present. Appearances as before.
Jury present.

P.W.12 - LO Kam-shing O.f.a.

XN. BY MR. LUCAS (continues)

Q. Mr. Lo, the day before yesterday you
were giving evidence about what happened
on the night of the accident, of the
collision, at the Hong Kong Hotel Cafe
shop?

20 A. Yes.

Q. And you have told us in general terms what
was said?

A. Yes.

Q. What I want you to do is take your mind
back to that particular occasion starting
from the beginning, if you would. Now
you were the first one to arrive?

A. Yes.

Q. Now when the others arrived would you tell
us what you were doing there, what was
discussed at the beginning, what was said
at the beginning of this meeting?

30 A. In the beginning Capt. Kong spoke to Deck
Officer Ng first.

Q. Yes, what did he say?

A. They talked about the route on the day of
the collision.

Q. What did they say about the route on the
day of the collision?

40 A. It was said that prior to the collision the
hydrofoil was sailing towards the starboard
side.

Q. At what rate, did they mention that?

A. I did not hear.

COURT: You said, "it was said," who said?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Examination

(continued)

- A. Capt. Kong said.
- Q. What did Mr. Ng say in response to that?
- A. Upon hearing that Mr. Ng agreed to what Capt. Kong said, saying, "Yes, yes."
- Q. Going back to your evidence, there were discussions about Capt. Kong shouting to stop the engine, do you remember that?
- A. It was something which was mentioned later after he spoke to the deck officer and then Capt. Kong spoke to the chief engineer. 10
- Q. I think you told us the other day that at some time Capt. Kong suggested to you that you heard that he ordered to stop the engine?
- A. Yes.
- Q. Now you said that you did not make any comment about that?
- A. Right.
- Q. You also told us, Mr. Lo, that at some stage Mrs. Kong was writing down some times? 20
- A. Yes.
- Q. Where did she get those times from?
- A. I gave the timing.
- Q. Did you ask why or did anyone say to you why they wanted these times?
- A. No.
- Q. Now, Mr. Lo, you have been working for this company for a number of years, have you not? 30
- A. Yes.
- Q. And I think you work four days on and two days off?
- A. Right.
- Q. And that is so with all the crews of your company?
- A. No, some work for two days and then off one day, some work four days and off two days. 40
- Q. And the result of that, is it not, is that you at the end of your voyage in Macau, there are a number of crews staying together?
- A. But some of them are not inside the bridge. They are inside the room where they can take a rest.
- Q. The crew members stay on the ship, is that what you are trying to say? The actual sailors stay on the ship but the officers stay in a hotel in Macau when you sleep in Macau, when you stay over-night? 50
- A. As far as I know five senior officers would be staying in a hotel, three other officers would remain on the boat.

	Q. And the people in the bridge usually stay in a hotel?	In the High Court of Hong Kong
	A. Yes, when they pass the night in Macau.	
	Q. How many hydrofoils are there in your company?	<u>Prosecution's Evidence</u>
	A. Are you saying the number of ships prior to the collision or after the collision?	No.4 P.W.12
10	Q. At the time of the collision.	Lo Kam-shing Examination
	A. I remember there were nine hydrofoils.	
	MR. LUCAS: I have no further questions. Thank you.	(continued)

XXN. BY MR. STEEL:

Cross-Examination

	Q. I wonder if the witness could be shown copy of the rough log for the Goldfinch and the members of the jury as well, and also the fair log, exhibits 23 and 22? While that is being dug out, Mr. Lo, you do usually fill in the rough log, I understand?	
20	A. Yes.	
	Q. And you were filling it out, I gather, on the day of the collision, is that right?	
	A. Yes.	
	Q. Is all the writing on this document, which is the rough log for the day of the collision, yours?	
30	A. Yes.	
	Q. You record four times, is that right, in the second column?	
	A. Yes.	
	Q. Just look at the document, there are four times, is that right?	
	A. Yes.	
	Q. Reading up the page in chronological order, and those times are: 0902, 0903, 0907 and 0922?	
40	A. Yes.	
	Q. Did you record all those four times before the collision happened?	
	A. Yes.	
	Q. Was the usual practice on your vessel for the deck officer later to write out the fair log times from the rough log times?	
	A. Yes.	
	Q. Are you able to help us as to why the fair log does not have the times 0907 and 0922?	
50	A. I don't know.	
	Q. Is the explanation that you wrote one or both of those times onto the rough deck log after the collision?	
	A. No.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- Q. I notice, if I may say so, in the rough deck log that the entry for 0922 is in a large firmer and clearer writing than any of the other entries that day?
- A. Yes.
- Q. There are also some times at the bottom of the page. I think you have to look at the original for this. My Lord, perhaps I may just tell your Lordship and the jury what appears to be written under the blood at the bottom of the page. It says, "0926 collision with" - this is the first entry, you could just see "coll." as "collision" and something afterwards "with", and then "1005 all messages sent out (by tuck Calvo and Condor)" Then another time, I think it is "1055 helicopter" and then "1106 one crew from helicopter." Have I accurately read out the entries at the bottom of the page? 10
- A. Right.
- Q. I am sorry, I am told I have inaccurately read one. It should be "passengers" not "messages".
- A. Yes, "passengers".
- Q. And were those entries made by you?
- A. Yes.
- Q. And were they made before you left the scene of the collision?
- A. You mean before I left the scene by helicopter? 30
- Q. Yes.
- A. That's right.
- Q. The 0926 entry, the time seems to be superimposed on some other times?
- A. That's right.
- Q. Could you help us what the time was below the new entry and the reason for the change?
- A. My intention was to write 0926 hours, but in a hurry I wrote 0928. So I made the correction. 40
- Q. When did you record the time of the collision?
- A. I presume it was about 20 minutes after the collision.
- Q. Is the 0926 a calculation, an estimate, or is it something that you had mentally recorded earlier?
- A. When I regained my consciousness I looked at my watch, the time was 0926. So I remember the time 0926. 50
- Q. I suppose it is impossible to answer this question. Had you been unconscious for long?
- A. I don't know.

Q. Is this a possible explanation that when you came to you noticed it was 0928 and you estimated the collision happened a couple of minutes earlier?

A. No.

Q. Why are you so certain about that?

A. Because I looked at the watch and the time showed 0926. So I mentally recorded the time as 0926.

10 Q. Now you were writing in the rough deck log as you went along the times; the times for passing various places you recorded as the vessel went along?

A. Yes.

Q. And you had the rough deck log on your lap or on the table in front of you?

A. Yes.

Q. And where was the fair log?

A. Not kept within my area.

20 Q. Was it lying on the chart table?

A. I don't know.

Q. What was the usual practice with Mr. Ng, did he borrow the rough deck log from you at the end of the day in order to make up the fair log?

A. There is no regular practice. Sometimes he may ask for the rough log during the journey and sometimes after the boat arrived at the destination and was berthed.

30 Q. Anyway, Mr. Ng had not borrowed the rough deck log to use during the course of this particular passage?

A. When he took away the rough log he did not have to ask me.

Q. That is not an answer to my question.

MR. LUCAS: Sorry to interrupt. I think the witness did answer it first and said, "I am not sure," and then went on to explain why. Mr. Interpreter, I am sorry.

40 INTERPRETER: I am sorry, I asked him again after he had given the last answer. I said, "Did you say you don't know?" He did not confirm. So I did not translate that part.

MR. LUCAS: I apologise, my Lord.

MR. AIKEN: But did you think he said "I don't know"?

INTERPRETER: He said, "I don't know" at first, and then he went on to say, "When Mr. Ng took away the rough log he did not have to ask me." And when I heard the answer I asked

50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

him again, "Did you say you don't know at first?" He did not answer. So I did not translate that.

MR. AIKEN: But it must be translated with due respect.

COURT: His first answer was "I don't know", and then he went on to say, "Mr.Ng did not have to ask me." That's what he said?

INTERPRETER: That's right.

- Q. Mr.Ng borrowed the rough log after the collision to fill in the fair log, didn't he? 10
- A. I don't know.
- Q. He had not asked or taken the rough log before the collision to fill in the records for the day?
- A. I don't know.
- Q. You know perfectly well, Mr. Lo. You had been using the rough log for the passage out to Macau and for the passage - or part of the passage back towards Hong Kong and you know perfectly well Mr.Ng had not borrowed or taken the rough log to make up the fair log for any part of that day? 20
- A. I don't know.
- Q. He could not possibly have used it without your knowing, could he?
- A. That is possible. He might have taken away without my knowledge. He would not tell me. 30
- Q. But during the course of the passage from Macau out to where the collision happened you had the rough deck log and not Mr.Ng, is that right?
- A. When I plotted the time when we came to Ching Chau the rough log was still with me.
- Q. It is a very circuitous way of answering my question. I ask you again. During the course of the passage out to where the collision happened you had the rough log and not Mr.Ng? 40
- A. When I plotted the time of parting Ching Chau the log was still with me. I did not notice whether the log was still with me afterwards.
- Q. Mr. Lo, do you have a recollection of what happened on the day of the collision?
- A. I remember the collision.
- Q. You did not see anything and you did not hear anything, the only thing you could conceivably remember is filling in the rough log? 50

	A.	After I filled in the log I listened to the trans-receiver.	In the High Court of Hong Kong
	Q.	And your next landmark was what after Ching Chau?	
	A.	About ten odd minutes after we part Ching Chau we would arrive at the Fanlau beacon.	<u>Prosecution's Evidence</u>
	Q.	And you, as was usual day in day out, fill in the rough log during the whole course of the passage and it remains with you throughout the course of the passage?	No.4 P.W.12 Lo Kam-shing Cross-Examination
10	A.	No.	
	Q.	There is no point in giving it to somebody else during the passage, is it?	(continued)
	A.	Sometimes the deck officer may have taken it away during the course.	
	Q.	One can imagine all sorts of possibilities, but the standard practice was for you to keep possession of the rough log during the course of the passage and to fill in the times, that's right, isn't it?	
20	A.	That's right.	
	Q.	And this collision day was no exception?	
	A.	No.	
	Q.	Now I gather that that evening somebody telephoned you to ask you to go to the Hong Kong Hotel?	
30	A.	Yes.	
	Q.	Who was that?	
	A.	Deck Officer Ng Yui-kin.	
	Q.	And he told you that it was Capt.Kong who wanted you to go there?	
	A.	He said Capt.Kong wished to see me at Hong Kong Hotel at 10 p.m. that night.	
	Q.	But you have no personal knowledge as to who had called the meeting?	
40	A.	I did not know.	
	Q.	Were you content to go to the meeting?	
	A.	It did not occur to me. I did not have any comment.	
	Q.	When you got there and waited for the others to gather it became clear, did it not, that people were waiting in the hope that Capt. Coull would join the party?	
	A.	Yes.	
50	Q.	Indeed Mr. Ho and Mr. Yuen were from time to time expressing the view that Capt.Coull would come?	
	A.	Yes.	
	Q.	And indeed, I think, that Mr. Ho and Mr.Yuen from time to time went off with the apparent intention of trying to contact Capt.Coull by telephone?	
	A.	Yes.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

Q. In fact Capt.Coull did not emerge and so the discussion about the collision was relatively desultory, wasn't it - the meeting never really got underway, is that right?

A. No comment.

COURT: You have been asked the question: did the meeting never really get underway in the absence of Capt.Coull?

A. Yes.

10

COURT: You agree that?

A. Agree.

Q. Some of the people present had been injured in the collision, is that right?

A. You mean the crew only?

Q. Yes, obviously Mrs.Kong and others who were not on board had not been injured, but some of the people present had been hurt?

A. Yes.

20

Q. And the crew who were present at the meeting gave the impression of being in - some of them in a state of shock, is that right?

A. I have no comment.

Q. I ask you to comment, if you would. Do you agree with me?

A. I disagree.

Q. People were in rather a distressed and depressed state, were they not?

A. I agree.

30

Q. One of the other features of the meeting was that things tended to get repeated time and time again?

A. Some of it, yes.

Q. The discussion tended to be circular, if you understand the expression?

INTERPRETER: Sorry?

Q. The discussion tended to be rather inconclusive and repetitive, is that right?

40

A. I don't know.

Q. You certainly remember, I think, Mr.Ho explaining that the Goldfinch had - now I'm afraid I have two versions of what you say - had remained to starboard or had gone to starboard; now which was it?

COURT: This morning he said it was said, or Kong said that the Flying Flamingo was on the starboard side.

	MR. STEEL: Kept on the starboard side is what I thought he said in chief. I'll check it later.	In the High Court of Hong Kong
	Q. But which was it, Mr.Lo, that Mr.Ho had said that the Goldfinch had kept to starboard or had turned to starboard?	<u>Prosecution's Evidence</u>
	MR. CORRIGAN: This is a complete record with respect, of that. The witness' evidence in chief about what Mr.Ho, that is the 3rd accused, was reported to have said in the meeting was very short and very clear. "Then the deck officer from tbe Flamingo, Mr.Ho, talked about the collision. He said Flamingo was taking its normal route. It was noticed that Goldfinch was on the starboard side. All of a sudden it was noticed that Goldfinch was flying towards him and he immediately shouted to his chief engineer." That's all.	No.4 P.W.12 Lo Kam-shing Cross- Examination (continued)
10		
20		
	MR. LUCAS: That is our record, my Lord.	
	COURT: His evidence in chief, according to my note, Mr. Steel, is that Capt.Kong said something about the boat travelling at 5° a second.	
	MR. STEEL: Yes.	
	COURT: Not Mr.Ho.	
30	MR. STEEL: No, quite, that was in an earlier part -- your Lordship is quite right, I am sorry. I am confusing the comment that Capt.Kong had made with the comment of Mr.Ho.	
	Q. You remember, as I understand it, Mr.Ho explaining how he had seen the Goldfinch go to starboard?	
40	MR. CORRIGAN: With respect, my Lord, that is not right either. Mr.Ho is never reported by this witness at the meeting having said that he saw the Goldfinch make any turn. He simply said he saw her sailing on the starboard side. All of a sudden he noticed the Goldfinch was flying towards him ten feet away and then the collision occurred. Nothing about having seen any turn, with respect.	
	COURT: That's right.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- Q. So it is right, isn't it, that Mr.Ho in these discussions never suggested that he had seen the Goldfinch turn to starboard, is that right?
- A. That's right.
- Q. And he never during these discussions complained to Capt.Kong about any turn to starboard by the Goldfinch, is that right?
- A. I did not hear. 10
- Q. He just observed that at some stage he had seen the Goldfinch flying towards the Flamingo?
- A. Right.
- Q. And is that in fact the way in which these discussions got underway with Mr.Ho's comment about the Goldfinch having been seen to starboard and then having been seen flying towards the Flamingo?
- A. Right. 20
- Q. And how did the discussion about the rate at which a turn to starboard by the Goldfinch had been made arise?
- A. I don't know.
- Q. In so far as there was any discussion about the rate of any turn to starboard you would be unable to make a contribution, is that right?
- A. No.
- Q. Because not only did you see nothing, you don't know the handling characteristics of these hydrofoils, is that right? 30
- A. Correct.
- Q. There was a discussion at some stage about the engines of the Goldfinch?
- A. Yes.
- Q. And did the chief engineer of the Goldfinch observe or comment that at collision the engines were stopped but he couldn't remember why or how? 40
- A. I did not hear.
- Q. How did the discussion about stopping the engines start?
- A. I just roughly heard that.
- Q. You roughly heard what?
- A. I roughly heard about the engine and stopping of the engine, but I did not pay much attention to that.
- Q. Did you hear Capt.Kong say to the chief engineer that he had seen that the chief engineer had moved to the telegraph to stop? 50
- A. I don't understand your question.
- Q. Did you hear Capt.Kong say to the chief engineer that he'd seen the chief engineer move the engine forward to stop just before the collision?

A. I did not hear.
 Q. Did you hear Capt.Kong also comment that although the chief engineer couldn't remember why, the mere fact he had done it showed that he must have heard Capt.Kong give his order of stop, is that right?
 A. I did not hear.
 10 Q. As I gather, you have, if I may say so, to use your own words, a fairly rough recollection of these discussions?
 A. Right.
 Q. Just reverting to the hydrofoil itself for a moment, the cockpit or wheelhouse is a fairly noisy place, is that right?
 A. Not very noisy.
 Q. There was,I think, a suggestion some years ago that the crews on hydrofoils should wear earphones inside their cockpits?
 20 A. I don't know.
 Q. And doesn't the engine create a considerable noise inside the cockpit?
 A. A little.
 Q. Well, is one of the great attractions for people to travel in jetfoils than hydrofoils they are so much less noisy, is that right?
 A. No comment.
 30 COURT: You either agree with that suggestion or you disagree with that suggestion or you say you don't know.
 MR. LUCAS: My Lord, I do apologise again. Perhaps we could ask him whether 'mo yee geen' also means "I have no comment, I have no views on it", as distinct from "no comment"?
 COURT: When you say "no comment" does that mean in fact you don't know?
 40 A Right.
 COURT: Now if you don't know the answer to a question would you simply say, 'I am sorry, I don't know,' not "I have no comment"?
 A. Yes.
 Q. When you are standing at your radio console are you listening to a loudspeaker or do you have your earphones on?
 A. There are several loud-speakers. I don't wear earphones.
 50 Q. And given the noise from the engines and perhaps starting on the loud-speakers it is not surprising that you do not hear everything that is said in the cockpit?

In the
 High Court
 of Hong Kong
 Prosecution's
 Evidence

No.4
 P.W.12
 Lo Kam-shing
 Cross-
 Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- A. I would be able to hear to some extent.
- Q. Now in the Hong Kong Hotel do you remember whether there was any discussion about where the collision had occurred?
- A. I don't.
- Q. Do you remember whether there was any discussion about the timing and procedure and the events of the rescue operation?
- A. It was not mentioned.
- Q. The party were in the Hong Kong Hotel, I think, for about an hour and a half, weren't they? 10
- A. Almost about that time.
- Q. The party disbanded at about midnight?
- A. Yes.
- Q. And much of that time was consumed in discussions about which rescue vessels had attended and when and matters of that kind, is that right?
- A. That is not the case as far as I remember. 20
- Q. And didn't Capt.Kong ask you that night at the Hong Kong Hotel to give to him the following morning your record of times and events from the collision right through to the end of the rescue operation?
- A. Yes.
- Q. But you didn't have the records with you, and so there was a fair bit of discussion that night as to what other people's recollection was of those times, isn't that right? 30
- A. No.
- Q. Was there any discussion of any times?
- A. Yes, I was asked.
- Q. What?
- A. Time of collision, when the hydrofoil started sailing.
- Q. Any other times?
- A. The time when I left after the collision.
- Q. And Mrs.Kong appeared to be taking notes of the details you were giving and the details that other people were giving, is that right? 40
- A. Yes.
- Q. The following day you did give to Capt. Kong a list of times of the sequence of events leading up to the collision and through to the completion of the rescue, is that right?
- A. Yes, I did. 50
- Q. And if you look at the fair deck log there is a long narrative, is that right? And am I right in thinking that the times that were given for the sequence of events from 0922 departure through to 1130 when Capt. Coull was asked to take over command -- sorry, until 1111 when you left by

helicopter were the times that you were able to give, is that right?

A. Yes.

Q. On the 16th August were you arrested in connection with the events of this collision?

A. Yes.

Q. What was the charge?

A. Conspiracy.

10 Q. Conspiracy to do what?

A. It was not mentioned. There was a blackboard showing 'conspiracy'.

Q. The blackboard that was held up in front of your face - below your face when a photograph was taken, is that right?

A. Yes.

Q. And it just had 'conspiracy' written on it?

20 A. Other details were my name, my age, nationality - that's all I remember.

Q. And 'conspiracy'?

A. That's right.

Q. I assume it's an unusual event, were you not inquisitive enough to ask what you had been accused of conspiring to do?

A. I did ask, but I was told by the police officer, or police officers that I had to give some other statement first.

30 Q. Do you speak English?

A. Yes.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

MR. STEEL: Thank you.

11.17 a.m. Court adjourns

11.40 p.m. Court resumes

Accused present. Appearances as before.
Jury present.

P.W.12 - LO Kam-shing O.f.a.

XXN. BY MR. STEEL (continues)

40 Q. Just one other question. Am I right in thinking that you were arrested on the potential charge of conspiring to pervert the cause of justice?

A. I was only told conspiracy.

Q. That's all you have chosen to remember, is that right?

A. I remember the charge was conspiracy.

COURT: I take it from that answer your evidence is you were not told at any time what the

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

conspiracy was alleged to be?
A. Correct.

XXN. BY MR. AIKEN:

Q. Dealing first of all with the logs, we have heard how you completed exhibit 23, that's the rough deck log?

A. Yes.

Q. We have also heard how the, what has been described as the fair deck log, which is exhibit 22, is completed by the deck officer?

10

A. I don't understand your question.

Q. It is called the fair deck log you have in front of you, it's exhibit 22. The times are there recorded by the deck officer?

A. Yes.

Q. You also told us that in order to get the times the deck officer borrows your rough deck log?

20

A. Yes.

Q. And you said about that there is no regular practice, sometimes he comes over during the journey and takes it, other times he completes it at the end of the journey?

A. Yes.

Q. And we know that the deck officer steers the hydrofoil for half the trips in any day?

30

A. Not necessarily.

Q. But he does steer some of them on a given day, doesn't he?

A. Yes.

Q. And when he is steering he will borrow your rough deck log and complete his fair deck log at the end of the trip?

A. Of course not when he was on the helm.

Q. That's one of the occasions that he will fill in the fair deck log at the end of the trip?

40

A. Yes.

Q. Now you told us a moment ago that after you have recorded the time for Ching Chau there is a ten-minute gap, there is no other time to be recorded in the rough deck log until you reach Fan Lau Point in Lantau?

A. Yes.

Q. And we know that's a ten-minute gap at open sea?

50

A. It should be more than ten minutes.

Q. How long is it?

A. It would normally take 13 to 14 minutes from Ching Chau to Fan Lau Point.

Q. So that's 13 to 14 minutes during which you'd have no entries to make in the rough deck log?

In the
High Court
of Hong Kong

A. Correct.

Q. Now you have already told my learned friend Mr. Steel that you don't remember whether Mr. Ng borrowed your rough deck log after Ching Chau on the accident voyage, if I may call it that, you don't remember?

Prosecution's
Evidence

A. Correct.

Q. Now your attention was drawn to the fact that the rough deck log which you completed records times right up to Ching Chau, it records four times?

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

A. Yes.

Q. Whereas the fair deck log kept by the deck officer Mr. Ng records only two, that's 0902 and 0903? Your attention was drawn to that earlier this morning. You were shown that this morning. It's in the documents.

(continued)

A. Correct.

Q. You will probably remember it because my learned friend Mr. Steel said is? an explanation for the fact that four times were in your rough deck log and only two were in the fair deck log, he said as an explanation that you wrote the extra two times, that's 0907 and 0922, after the collision and you denied that?

A. That's correct.

Q. Is this an explanation, Mr. Lo, you recorded all four times, including the time for Ching Chau, that's 0922, and then you were in the 13 to 14 minute gap and Mr. Ng borrowed your rough deck log but only managed to get down two times, that's the first two, 0902 and 0903, before the collision?

MR. LUCAS: I am sorry to interrupt my learned friend. How could that witness possibly answer that?

COURT: He could only answer that if he did in fact borrow the deck log and he saw him write the figures down. Perhaps it could be split into two. First of all, did he borrow it?

MR. AIKEN: My Lord, yes, if you force me to do that, there is no point in pursuing since he said he could not remember whether he has borrowed it.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

Q. Mr.Lo, I can leave that point. My learned friend does not wish you to comment on that aspect of the documents. I shall leave it there.

MR. LUCAS: Well --

MR. AIKEN: My Lord, I see the force of my learned friend's objection.

Q. You look at exhibit 22, that is the fair deck log, the page in question is torn, isn't it? Look at the edge, it has been torn right along the page. It has been torn out of the book. You could easily see it by just folding up the other end. You agree with that, don't you? It's a fact. Can you see it?

10

A. Agree with what? I don't understand.

Q. That is torn at the end.

A. I didn't tear it.

COURT: No, is it torn?

MR. AIKEN: My Lord, my learned friend says it hasn't been answered. I agree that it hasn't been answered. But I should think it is obvious it has been torn.

20

COURT: Do you agree with that or you don't? I am not asking you who tore it, but has it been torn?

A. Perhaps.

MR. LUCAS: With respect, my Lord, I will take this point up. The witness has answered that question. I will take it up in re-examination, if I may.

30

COURT: Yes, very well.

Q. Now, apart from keeping the rough deck log, as a radio officer you have to complete a radio log, don't you?

A. Yes.

Q. And I think we have heard from another radio officer Mr. Woo that you are supposed to record incoming messages at the time they come in.

40

A. Part of it.

Q. Yes, and what else are you supposed to put in the radio log?

A. I don't understand your question.

Q. It is your radio log, you are the radio officer. What are you supposed to record in it?

A. Communication with other boats and also

communication with the controlling station.

Q. Is the controlling station communication done every ten minutes?

A. Not necessary.

Q. I thought Mr. Woo told us something about having to make an entry every ten minutes to keep in radio contact. Isn't that right?

10 A. That is not correct. I think what he means is that in every ten minutes he has to write down what he heard in the trans-receiver.

Q. It may well amount to the same thing. So you are saying the radio officer has to make an entry every ten minutes.

A. Yes.

20 Q. That is the - this phrase has been used quite a lot in this case - that is the standard practice.

A. Yes.

Q. It is what a radio officer is supposed to do.

A. Yes.

Q. Can we have a look at the radio log please. They are not exhibited yet. Let's start with yours, shall we? Again I think you will agree that that is the page.

30 MR. AIKEN: My Lord, my learned friends are correct. There are no copies for anybody. There's only the original. It's probably more sense ...

COURT: Do you wish to produce this?

MR. AIKEN: Yes.

COURT: The nearest copying machine is in the Old Supreme Court Building. I am afraid we won't be able to have copies in ten minutes.

40 MR. AIKEN: Can I see how far I can get without it?

COURT: That's P.37.

Q. I am doing this blind because I don't have a copy. You will see at the bottom of the page the beginning of the accident journey, you recorded 'leaving Macau'.

A. Yes.

Q. What time was that?

A. 0102.

50 Q. And these are Greenwich Meantime.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.12

Lo Kam-shing
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- A. Yes.
- Q. So you add 8, is that right?
- A. Yes.
- Q. And the next time?
- A. 04.
- Q. Sorry?
- A. 04.
- Q. That is standard, isn't it? As soon as you commence the journey you make a call in to check the equipment. It's a matter of minutes, not ten minutes, just one or two minutes after any journey starts. 10
- A. No.
- Q. Very shortly after leaving you make a call.
- A. Yes, to notify the controlling station that the boat was leaving.
- Q. And then what is the next entry please?
- A. Then 15 to 18.
- Q. What does 15 to 18 mean?
- A. SPO. 20
- Q. What is SPO?
- A. Silence Period Observe.
- Q. What does that mean, Mr. LO?
- A. Silence Period Observe.
- Q. Yes, I know, but what does that mean in lay terms? I don't understand that.
- A. That means the three minutes -- that period of three minutes could only be used for distress signals. No other -- sorry, other communication would stop, so that's called a silence period. 30
- Q. What is the next entry?
- A. I continued to listen. I expect to write something -- I expected to write something upon my listening.
- Q. That doesn't answer my question.
- A. 32.
- Q. And the next entries - there are a number of them - deal with the rescue operation, I believe, is that right? 40
- A. Yes.
- Q. Now, I'd like you to look at the Flamingo's radio log. I know you didn't complete that. It was completed by Mr. Woo. Can you find please on that - in that log his journey when he was leaving Hong Kong on the accident journey? You found it.
- A. The time of the departure.
- Q. I'd like you to do the same exercise please. What is the time of departure? 50
- A. The time of departure from Hong Kong is 0042.
- Q. And the next time?
- A. 43.
- Q. That is when he is checking, as you have told us, checking the equipment, making contacts and then the next time?

10 A. 45 to 48.
Q. And the next time ?
A. No more.
Q. No more entries.
A. No more entries.
Q. So the 10-minute rule in that log
is broken because after 8.48 there are
no more entries, between 8.48 Hong
Kong time and the collision there
were no entries.
A. Correct.
Q. Standard practices aren't always
observed, are they?
A. Yes.
Q. It's a fact of life that there is
often a difference between what the
regulations say and what happens in
practice.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

20 COURT: It's a general philosophical comment
or in relation to

MR. AIKEN: My Lord, I think it is a fair
question.

COURT: Well, he has already said standard
practices are not always observed.

MR. AIKEN: Yes. Again I don't need to
pursue the point.

30 Q. I now want to move on to your position
on the bridge. Now, we know that you
are sitting behind the engineer facing
out to the starboard.

A. Right.

Q. And you have a swivel chair.

A. No.

Q. What sort of chair do you have?

A. Black iron chair with sofa.

Q. The seat - cushion, you mean?

A. Yes, cushion.

Q. Is it the design of chair which allows you
to turn the seat?

40 A. No.

Q. So it is fixed facing starboard.

A. I can carry the chair and move it to other
position.

Q. It is not fixed to the floor.

A. No.

Q. And it is right, isn't it, you have a piece
of radio equipment in front of you under
the starboard window.

A. Right.

50 Q. We have heard that you have other radio
equipment directly behind you on a wall.

A. Not right behind my back but to the right

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- of my back was a trans-receiver.
- Q. And we have also heard from Mr. Woo about the Goldfinch that it is common for the - I am not saying you do it, but it is common for radio officers to sit with their back astern, in other words, they are facing starboard bows.
- A. Well it is not my position.
- Q. You don't do it, I am sure, but others do, do you agree with that? 10
- A. I don't know.
- Q. You sit with your legs under the little desk and face directly as the regulations say?
- A. Yes.
- Q. And in the open sea when those 13 to 14 minutes - not a great deal - are going on, you never turn round and look at the view ahead to starboard? 20
- A. No.
- Q. You just sit facing your radio equipment on the little desk by the starboard wall?
- A. If I have to stand up, then I would stand up.
- Q. I see. Do you have to stand up every time you pass a landmark to record in the rough deck log?
- A. Yes. On most occasions I do.
- Q. But 'most' isn't helpful. Do you mean you can see some of them and not the others when you are seated? 30
- A. That's correct.
- Q. Which can you see when you are seated?
- A. For example, the upper part of a hill or mountain.
- Q. And which landmark is that?
- A. For example, Lantau.
- Q. The point of Fan Lau is on an upper part of the mountain, is it?
- A. Upper part of a mountain. 40
- Q. And you see that through the window directly in front of you?
- A. Yes.
- Q. And if we look at the plan, there is the window you are talking about, this big window.
- A. Right.
- Q. You are sitting in the desk here looking directly through the window?
- A. Yes. 50
- Q. If you look beyond it, it comes to the door. There is a longer window in the door, isn't there?
- A. Yes.
- Q. And you look through that window, all you have got to do is to avert your eyes

slightly towards the bow and you get a view out like that of the starboard. When you are sitting down, you can look through that window. You can't remember?

In the
High Court
of Hong Kong
Prosecution's
Evidence

- 10 A. I don't remember.
Q. There is another window beyond it.
A. Yes.
Q. And then all those windows are on the same level, save the fact this one comes down lower, and then you get to the bow windows which are slightly raised up?
A. Would you repeat the question?
Q. All these windows, they are placed on the same level but when you get to the front windows, they are slightly higher?
A. Yes.
20 Q. I am suggesting to you, Mr. LO, if you turn your head you can see the sea and you can see out the starboard.
A. No.
Q. And you don't have to keep jumping up to fill in your rough deck log.
A. Incorrect.
Q. Now, going back to the radio log that is yours, you told us that the last time you recorded was the silence period between 9.15 and 9.18, that is the last entry you made in the radio log.
30 A. Yes.
Q. And the last entry you made in your rough deck log was 9.22 when you passed Cheung Chau.
A. Yes.
Q. And so you had no other entries to make after 9.22 until the collision.
A. Right.
40 MR. AIKEN: My Lord, my learned friend has been of great assistance and shown me a photograph which is not exhibited. Perhaps the witness can be shown that.
Q. That is the position where you sit, isn't it, in the Goldfinch?
A. Yes, I was sitting here.
Q. So we can see the window in front of you, quite a big window. We can see two windows there.
50 A. Yes.
Q. And we see the other window to the starboard side of the engineer.
A. Yes.
Q. You will stick by your answer that you cannot see the landmarks when seated at your radio desk?

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- A. I don't understand the question.
Q. A moment ago you told me when you were at your -- sitting properly at your radio desk, you couldn't see the landmarks except the top of one of the hills on Lantau.

MR. AIKEN: May the jury be shown that, my Lord, and may it be marked.

COURT: Yes. You are being asked - we have seen that photograph - do you still say that you cannot see landmarks from your desk without standing up apart from the higher points of Lantau? 10

A. I don't mean -- what I mean is that I could only see the upper part of the landmark. For example, I have to stand up in order to see the buoy in the sea.

Q. Which point?

A. For example, south-east Lantau buoy and Siu A Chau lighthouse. 20

Q. The buoy is very low in the sea, isn't it, it is a little thing on the surface of the water.

A. Yes.

Q. You would see another jetfoil or another hydrofoil through those windows, wouldn't you?

A. No, I cannot see.

Q. I want now to move on to the evening when you all assembled in the Hong Kong Hotel. It would be fair to say, wouldn't it, that Captain KONG staged, managed or was the chairman of this meeting. I will use a different phrase if you are confused by that. Mr. KONG was the one who was instigating the discussion, he would go and talk to someone and he would go and talk to someone else? 30

A. Yes.

Q. You have told us in-chief that Mr. KONG discussed with the deck officer NG and you said Mr. KONG discussed with the engineer LAM and then you said, "Mr. KONG asked me the time of the collision," so Mr. KONG was conducting the meeting? 40

COURT: Do you remember giving that evidence?

A. Yes, I did say that.

Q. And in fact when Mr. NG telephoned you, he actually said to you over the phone, "KONG wished to see you at Hong Kong Hotel." 50

A. Yes.

	Q.	And Mrs. KONG was there taking notes.	In the
	A.	Yes.	High Court
	Q.	And, am I right in this, Mr. KONG's	<u>of Hong Kong</u>
		brother-in-law?	
	A.	The elder brother of Captain KONG.	Prosecution's
	Q.	Another relation of KONG's.	<u>Evidence</u>
	A.	Yes.	
	Q.	You told us that you saw and you	No.4
10		overheard part of a conversation	P.W.12
		between KONG and the deck officer Mr.	Lo Kam-shing
		NG.	Cross-
	A.	Yes.	Examination
	Q.	And you were asked by Mr. Lucas	
		"What did they say" and your answer	(continued)
		was "KONG said that during the trip	
		the boat was keeping to the righthand	
		side."	
	A.	Yes.	
20	Q.	And you were asked by my learned friend	
		Mr. Steel what NG had said and your	
		evidence was he just said, "Oh, yes, yes".	
		In other words, Mr NG was just agreeing	
		with Mr. KONG.	
	A.	Yes.	
	Q.	So the idea that the Goldfinch had	
		moved to the starboard was Mr. KONG's	
		idea?	
	A.	Right.	
30	Q.	I think Mr. KONG decided that it should	
		be alleged that the Goldfinch had moved	
		five degrees to the starboard per second.	
	A.	It means that the ship would go five	
		degrees to the starboard per second.	
	Q.	Yes, I know that, but Mr. KONG decided	
		that.	
	A.	Yes.	
	Q.	And all Mr. NG was saying, "Oh, yes, yes."	
	A.	Yes.	
40	Q.	And then KONG moves on to have words with	
		the engineer Mr. LAM.	
	A.	Yes.	
	Q.	Once again Mr. KONG does the talking, Mr.	
		KONG told LAM to mention about the engines	
		being switched off.	
	A.	Yes.	

MR. AIKEN: Yes, thank you very much.

XXN BY MR. CORRIGAN:

50	Q.	Mr. LO, you told members of the jury that
		since I think January 1982 - it's about 6
		or 7 months - that you had been under the
		command of Captain KONG?
	A.	Yes.
	Q.	And there had been on board the Goldfinch
		during that time apart from Captain KONG and

In the
High Court
of Hong Kong

yourself the same officers as were
there sailing on this fateful day the
11th of July?

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

INTERPRETER: Sorry, I don't understand you.

Q. There had been throughout the period the
same officers as were on board the vessel
on the 11th of July, is that right?

A. Right.

Q. Same deck officer, same chief engineer,
same team of officers.

10

A. Right.

Q. And you told members of the jury how you,
I think, did four days duty and then had
two days off, is that the picture?

A. Yes.

Q. And on each of your duty days, you would
take, was it invariably, seven trips
back and forth Hong Kong/Macau and Macau/
Hong Kong, seven trips in all.

A. Right.

20

Q. There is a great deal of routine in the
job, is there not?

A. Right.

Q. I suppose a bus driver would experience
in his daily work from day to day really
rather more variety in his journeys than
you would experience going back and forth
Hong Kong to Macau on seven occasions,
would you agree? Perhaps you don't wish
to comment. Perhaps it's a matter of
comment.

30

A. I don't want to answer it.

Q. But none of these journeys, none of these
daily journeys are really very memorable.
One day is very much like the next until
something terrible happens like it did
on the 11th of July. Would that be a
fair picture?

A. Would you please repeat your question?
I don't understand.

40

Q. All right. One day is very like the next,
nothing very memorable happens, does it,
until something awful happens as it did
on the 11th of July.

A. That's correct.

Q. Did you get bored from time to time?

A. No.

Q. Never got bored with your work, with this
company?

A. No.

50

Q. Now, on Sunday, the 11th of July, the
day with which we are principally concerned,
this was, I think, was it not, your third
day on duty out of four?

10 A. Right.

Q. Now, did you by any chance spend any part of the evening or the night preceding, that is the Saturday night, the night of Saturday the 10th, together with Captain KONG?

A. You mean after duty?

Q. Yes, Saturday evening, Saturday night, early hours of Sunday morning, were you with Captain KONG at any time during that night?

A. No.

Q. You are sure of that?

A. Sure.

Q. By the 11th of July, did you know whether or not Captain KONG had resigned from the company?

A. Yes.

20 Q. Did you know when he was leaving the service of the Company?

A. On the 15th.

Q. On the 15th.

A. Of July.

Q. Yes. And was it the position that Sunday the 11th of July was the second last day on which Captain KONG was to be in command of this or any other of the company's vessels?

30 A. Captain KONG had spoken to me. He told me that he would work for us for only two more days, that is the 11th and the 12th.

Q. I think the answer then to my question is as far as you knew, having been told by Captain KONG, he was to be in command on the next day which was the Monday the 12th, and that would be his last day's work.

A. Well, it doesn't mean that.

40 Q. I thought that is what you were telling us.

A. Sometime ago I heard him saying that he would be away from his duty on the 15th and the last day of his work was the 14th.

Q. All right. That is as you understood the position from the captain himself, is that right?

A. Yes.

Q. Now, to come at once to the meeting at the Hong Kong Hotel on the evening of the 11th of July 1982. Did you sit together with the others in the main body or the main hall of that coffee shop? It is, I think, on the ground floor of the Hong Kong Hotel. Is that the place we are referring to?

50 A. Coffee shop.

Q. On the ground floor of the Hong Kong Hotel. Is that the place we are referring to?

A. Yes.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- Q. And I think you said that altogether there were 9 people including yourself.
- A. Yes.
- Q. And did you sit together round one table?
- A. Two tables put together.
- Q. And everybody, so to speak, was in reasonable hearing distance of the other. Would you not agree?
- A. No.
- Q. No question about engine noise on the bridge in the coffee shop, I take it? 10
- A. Right.
- Q. For example, when Captain KONG spoke out during the course of this meeting, you had no particular difficulty in hearing what he was saying. Is that the picture generally speaking?
- A. I heard some of his conversation but as I was not paying full attention I didn't hear all because I had pain. 20
- Q. Yes, of course. And now this meeting went on, I think it is your evidence, for some one and-a-half hours before it finally broke up.
- A. Yes.
- Q. And you told members of the jury in answer I think to my learned friend Mr. Steel that you really only have a rough recollection of what was said at that meeting. 30
- A. Yes.
- Q. You mean by that, do you, that you are not able to come here and tell members of the jury all that was said or even a great part of what was said during the whole of that one-and-a-half hour's discussion.
- A. Correct.
- Q. And nobody, I hope, would expect you to be able to remember everything that had been said by everybody at the meeting. 40
- A. Correct.
- Q. But although you described your recollection of that meeting as a rough recollection, you remember very well, do you not, the main highlights of that long meeting?
- A. What do you mean by the main highlights?
- Q. The main highlights are the matters about which you have told members of the jury, are they not?
- A. In my opinion, those are important. 50
- Q. Of course. They are very important indeed. I agree with you. And you have, do you not, a clear recollection of the main highlights or the main gist of what happened at that long meeting, right? Do you not understand the question?

	A.	I don't understand.	In the
	Q.	I am putting to you you have a very clear recollection, do you not, about those matters which you have described as the most important matters, which I described as the highlights of that long meeting?	<u>High Court of Hong Kong</u>
	A.	It is not a matter of importance. It is a matter of my memory.	Prosecution's Evidence
10	Q.	You remember the most important things like everybody else sees, looking back to the event.	No.4 P.W.12 Lo Kam-shing Cross-Examination
	A.	Perhaps.	
	Q.	Perhaps? You clearly remember, do you not, the main items on the business that was discussed at that one-and-a-half hour meeting?	(continued)
	A.	If it doesn't fail my memory.	
20	Q.	The highlights of that meeting were the two matters, were they not, of which you have told members of the jury a number of times and we will come to them. One matter is this, Captain KONG was giving a version of how the Goldfinch immediately before, indeed throughout the course of the voyage before the collision earlier that day had been travelling to its right at an alarming rate of five degrees per second. That's one matter, is it not?	
30	A.	Yes.	
	Q.	You are quite clear in your memory about him having said that?	
	A.	Yes.	
	Q.	And the second matter, the second highlight that you recall is that Captain KONG also talked about his having ordered his chief engineer to stop engines on board the Goldfinch before the collision?	
40	A.	Yes.	
	Q.	You are quite clear, are you, that you yourself were asked to agree to your having heard Captain KONG order stop engines sometime before the collision?	
	A.	Yes.	
	Q.	And you at the meeting were unable to agree with that suggestion, were you not, because you had never heard Captain KONG having ordered stop engine before the collision had taken place?	
50	A.	Right.	
	Q.	Not just a case that you didn't remember whether or not Captain KONG had ordered stop engines before the collision occurred, you remembered, did you not, that he had not given any such command or order on the bridge of Goldfinch?	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

A. Are you referring to the time of the meeting or referring to the time of the collision?

Q. I am referring to both, Mr. LO.

COURT: Are you saying that he cannot - he is positive that he did not hear at the time?

MR. CORRIGAN: Indeed.

COURT: Are you positive that you did not hear any such command?

A. You mean at the time of the collision or at the meeting?

COURT: At the time of the collision.

A. I did not hear.

COURT: And is that what you said at the meeting?

A. I didn't say anything at the meeting.

Q. Well, I think your evidence was that, Mr. LO, you told the meeting when these matters or this matter was being suggested to you that you ...

COURT: No, I think he said he remained silent.

Q. You made no comment but you didn't agree, you didn't say "I agree". That's the point. You didn't say to Captain KONG or anybody else at the meeting "I agree with the suggestions you are making". That's right, isn't it?

A. I did not.

Q. You see, you were asked by my learned friend Mr. Steel a number of questions about engine noise and the level of noise on the bridge of a hydrofoil and you disagreed with him when he put to you that the bridge was very noisy.

A. Right.

Q. You said "The wheel-house isn't very noisy"

A. Right.

Q. Because it is not, is it?

A. It is not.

Q. If the helmsman gives an order such as stop engines on the bridge of this vessel, that order is directed to the chief engineer, is this right, who sits immediately to his right on his righthand side.

A. Yes.

Q. And in the normal way on a voyage on Goldfinch when you are sitting just behind the chief engineer, day in day out, you

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30

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would hear yourself, would you not,
perfectly clear any orders of command
that were given out by the Captain or
other officer at the helm of the boat?

A. I should be able to hear.

Q. It was even suggested to you by Mr.
Steel that one of the reasons, I think
he put it to you, passengers prefer
going on jetfoils rather than hydrofoils
is because the jetfoils are a lot
quieter?

A. Yes, but I have no comment on that.

Q. That is right, isn't it?

A. I have no knowledge.

Q. You know, don't you, that passengers
often prefer to ride on the jetfoils
rather than the hydrofoils, one, because
they are a lot faster. They are a lot
faster, aren't they?

COURT: Well, I think it is almost true that
jetfoils are faster.

A. Yes, faster than hydrofoils.

Q. And the second reason is this, is it not,
it is well known in the trade and in the
business that jetfoils give you a much
smoother ride, this is why they are
much preferred to the hydrofoils which
tend to throw you around when turns are made,
for example.

A. I don't know.

Q. No comment again, I suppose, right?

MR. CORRIGAN: I see it is 1 o'clock.

COURT: Yes, 2.30.

1.00 p.m. Court adjourns

2.32 p.m. Court resumes

All accused present. Appearances as before.
Jury present.

COURT: We have copies made of the radio log.

MR. AIKEN: My Lord, I understand that's copies of
both radio logs, Flamingo and Goldfinch.

COURT: I've got the one of the Goldfinch.

MR. LUCAS: My Lord, he produced the Goldfinch
of course and wished to ask questions about
the Flamingo radio log. In order to save
a lot of trouble, could that be marked?
I don't think anybody objects to the

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

introduction of that document.

COURT: Yes. Goldfinch will be P.38. No, the photograph is P.38. The radio log is P.37. The second one will be now P.39. So the Flamingo's radio log will be P.39. Yes?

P.W.12 - LO Kam-shing o.f.a.
XXN BY MR. CORRIGAN (continues)

- Q. Members of the jury apparently are studying the document. They have just been given the exhibit. Mr. LO, you told my learned friend Mr. Steel that you were unable, I think, to join in the discussions in the Hong Kong Hotel about Goldfinch having gone to starboard during the journey before the collision took place. 10
- A. Right.
- Q. And you agreed with Mr. Steel that you were unable to contribute anything to that discussion as he put to you because you hadn't seen anything before the collision? 20
- A. Yes.
- Q. Now, at any time during your service on hydrofoils, had you experienced an occasion when a hydrofoil on which you were serving during the course of a voyage had gone into any pronounced or uncontrollable veering to starboard or indeed to portside?
- A. Never. 30
- Q. No, you never experienced such a phenomenon.
- A. No.
- Q. Now, generally speaking, when a hydrofoil on which you are travelling makes any pronounced turn or movement to one side or the other, all officers on the bridge are aware of that movement taking place, are they not? You feel it, don't you?
- A. Sometimes.
- Q. Sometimes. When, for example, the weather is particularly good and the sea is particularly calm and you are proceeding on a normal straight course, if the hydrofoil for any reason goes to one side or another, officers on the bridge such as yourself are aware that that happens, are you not? 40
- A. Will you repeat your question please.
- Q. The hydrofoil is going along on a normal ordinary course, the weather is fine, the sea is flat calm. Now, in rough weather the boat is moving all over the place and has to be corrected in its turns a lot of the time, doesn't it? 50

A.	I don't have any knowledge in steering. On the rough sea when the boat is rolling, I would be moving about.	In the High Court of Hong Kong
Q.	Yes, and everybody is aware of it in a rough sea. I am asking you about very calm, perfect conditions. On such a voyage if a hydrofoil makes any pronounced movements, particularly if they were to one side, say, the starboard, over a considerable length of the voyage, you as radio officer, any officer on the bridge would be aware of that, you would feel it, wouldn't you, apart from anything else?	Prosecution's Evidence
10		No.4 P.W.12 Lo Kam-shing Cross-Examination
		(continued)
A.	Yes.	
Q.	Now, cast your mind back, if you will, to the voyage on the morning of the 11th of July, outward bound from Macau up to the point of this collision with Flamingo. Now, never mind that you didn't see anything. Never mind for the moment that you didn't hear anything. You were never aware during the course of that voyage at any time up to the moment of collision, were you, that your vessel Goldfinch was making any pronounced or unusual movement to the starboard side?	
20		
A.	That's right.	
Q.	That's correct. You never heard Captain KONG, did you, at any time before the collision occurred say that his vessel was for one reason or another swinging to the starboard side?	
30		
A.	That's right.	
Q.	You never heard Captain KONG say in any way, did you, that this vessel Goldfinch was in any way out of control?	
A.	Right.	
Q.	You never heard, did you, the 2nd defendant Mr. NG who was the duty officer at the time, the deck officer at the time say to Captain KONG during the course of that voyage that the vessel was going for one reason or another too much to starboard or couldn't be controlled or any words to that effect?	
40		
A.	That's right.	
Q.	You see, what was being discussed at the meeting in the Hong Kong Hotel on the evening of the day of this accident was this, was it not, that throughout the trip from Macau the Goldfinch had developed an uncontrollable swing to starboard at a rate of five degrees per second or whatever it was?	
50		
A.	Right.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- Q. Captain KONG was saying Goldfinch had sheered to the starboard at that rate, a matter over which he would say he had no control. Is that not right?
- A. I did not hear.
- Q. Did not hear what?
- A. I did not hear Captain KONG say the boat was out of control.
- Q. All right. What you recall hearing from him was that the boat had been sheering to starboard, is it, at a rate of five degrees per second? 10
- A. Right.
- Q. Something which you had not been aware of at any time, as you have told members of the jury during the voyage.
- A. Correct.
- Q. Because what happened at the meeting in the Hong Kong Hotel coffee shop in relation to how this collision had occurred was this, was it not, Captain KONG was seeking to persuade his officers, principally Mr NG who is the 2nd defendant here and Mr. LAM, the chief engineer, to agree to two accounts of the matter which had not in fact happened at all. 20
- A. Right.
- Q. Captain KONG was alleging these two matters, about Goldfinch having gone to starboard before the incident and secondly about the engines having been ordered by him to be cut off. 30
- A. Yes.
- Q. With a view to accounts of those matters being fabricated by himself and if possible by the officers to whom he was talking in the coffee shop.
- A. Yes.
- Q. And it was anticipated by everybody present, was it not, that officers of the Goldfinch would have to go the next day to the company to enter up an account of this collision in the official log of the boat? 40
- A. I was not notified by the company.
- Q. No, but it was said at the meeting, wasn't it, by somebody, Everybody understood - never mind your part, you are not here, you are not being accused of anything - it was anticipated and talked about, wasn't it, at the meeting words to the effect "Tomorrow we have got to go to the company to give an official account."? 50
- A. I think so.
- Q. And also you anticipated and it was mentioned at the meeting, wasn't it, that sooner or

later an account of this collision would have to be given to the officers of the Marine Department, Hong Kong Government?

In the
High Court
of Hong Kong

A. I think so.

Prosecution's
Evidence

10 Q. And Captain KONG was saying, was he not, to his officers "These are the versions that we will give. You support me in putting forward these versions." or words clearly to that effect?

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

A. I did not hear.

Q. You didn't hear. It was at any rate at least clear to you that he was seeking to persuade Mr. NG and Chief Engineer LAM to support him in these particular stories, was it not?

(continued)

A. Yes.

20 Q. There was no doubt in your mind whatsoever, was there, Mr. LO, that these accounts of the incident that were being spoken of by Captain KONG during that meeting were out and out fabrications?

A. Yes.

Q. No doubt about it.

A. I regard that is the case.

30 Q. Now, Mrs.KONG, you told members of the jury, was making notes at one time during these discussions, during this 1½ hour discussion.

A. Yes.

Q. About certain timings, matters of that sort.

A. Yes.

Q. She was also, was she not, busily noting down on pieces of paper these fabricated accounts of what had happened allegedly before the collision between Goldfinch and Flamingo?

40 A. I remember she did.

Q. She did. And later on after the meeting was over, she distributed pieces of paper to some at least of the nine persons who had been present throughout the meeting, is that right?

A. She only showed to one or two persons. I do not remember to whom.

50 Q. At any rate, you were not the lucky recipient of any of these pieces of paper, nor were you shown any of these accounts of what she had written, is that right?

A. No, no, not shown to me.

Q. And when Mrs. KONG, you say, showed one or two people these pieces of paper on which she had been busily writing during this meeting, did you happen to hear any conversation or snatches of what Mrs. KONG was saying

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
Lo Kam-shing
Cross-
Examination

(continued)

- to these people as they looked at her notes?
- A. I did not.
- Q. You didn't. And now, this meeting and these discussions on the evening of the day of the collision were; I suppose, a sort of post-mortem discussion about the events, tragic events of that particular day.
- A. Yes. 10
- Q. It couldn't be a completely comprehensive discussion between all the parties who had been involved because of course Captain Coull, the 4th defendant, wasn't there.
- A. I think so.
- Q. He was waited for but never turned up.
- A. Correct.
- Q. What I didn't understand in your evidence earlier, Mr. LO, was this, when my learned friend Mr. Steel put it to you, his words "The discussion about the collision was desultory", do you understand what that means, "And the meeting never really got underway". You said eventually that you agreed with what he was putting. Did you understand what he was asking? 20
- A. I understand.
- Q. What did you understand he was asking you? 30
- A. Asked me about things that happened that night.
- Q. If you please! This was the question: "Captain Coull did not come so the discussion about the collision was desultory. The meeting never really got under way" and you said, "I agree". What did you agree to?
- A. I agreed that we talked that night in that manner. 40
- Q. Do you agree that this was a one and a half hour's discussion when nothing never got under way or what do you agree with?
- A. I agree that I had told the court what I heard that night.
- Q. So far as Captain KONG was concerned who you agreed was more or less the chairman or moving spirit at the gathering, I suppose it was a perfectly satisfactory discussion so far as you were aware. He apparently achieved his purpose in talking to his officers about his version of what had happened before the collision, right? 50
- A. That is his business. I don't know and I can never think of what is in his mind.
- Q. So far as it appeared to you, Mr. LO, in

so far as you were, I agree, a rather minor actor at this meeting, there was a full discussion between Captain KONG and his officers, the other officers, before the meeting broke up. They said everything to each other that they wanted to say, had they not, before the meeting broke up one and a half hours later?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- 10 A. I can't give an opinion whether the discussion was in full.
- Q. The meeting wasn't adjourned, was it, for any further discussion elsewhere or at a later date or anything like that?
- A. No.
- Q. Now one thing you agreed with when Mr. Steel, my learned friend, cross-examined you was in relation to the sequence of the events at the meeting and you agreed that the discussions that evening had started with Mr. HO - who is the 3rd defendant here - telling people at the meeting about what he had seen of the collision from Flamingo.
- 20 A. Captain KONG spoke first.
- Q. That is what you said in-chief when you told us in some detail. You said you - at the end of the discussion the 3rd defendant, Mr. HO that is, had then given his picture of the events as he had seen them from Flamingo, did he? You see, let me just put it: in your evidence in-chief, you told us about Captain KONG's discussions with his officers and trying to bring you into it as well, asking you to agree about the hearing of stop engines; all those details, then you said the deck officer from Flamingo, Mr. HO, talked about the collision and you told us what he said at the meeting, you see?
- 30 A. Right.
- Q. Now Mr. Steel, my learned friend, when he cross-examined you, he put to you that Mr. HO, the 3rd Defendant, had started off the discussions, that is how they got under way, with Mr. HO saying about how he had seen Goldfinch flying towards Flamingo and you agreed.
- 40 A. Yes.
- Q. You see, I was instructed to put the same thing to you on behalf of Mr. HO, that is why I may take it the picture was this, wasn't it; at the beginning of the meeting Mr. HO from Flamingo gave an account of what he had seen of this collision from his vessel, later on Captain KONG started to talk to his officers on the Goldfinch, including
- 50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

you, about these fabricated stories of what happened on Goldfinch, isn't that the sequence?

- A. That is not what I remember.
- Q. Now you can't remember the sequence, all right, but what you do recall is this, is it not: so far as Flamingo and its officers were concerned at this meeting at the cafe shop in the Hong Kong Hotel, Mr. HO gave that short account of what he remembered having seen from Flamingo before the collision had occurred that morning, right? 10
- A. Yes.
- Q. That is all that was heard from any officer of Flamingo, is that right?
- A. That is what I remember.
- Q. The great bulk of this meeting was concerned, was it not, with Captain KONG giving out his versions and discussing with officers of Goldfinch about these fabrications? 20
- A. Yes.
- Q. Now Mr. LO, it is right, is it not, that during the whole course of that meeting in the cafe shop, nobody - principally Captain KONG - ever sought to blame the actions of Flamingo or its officers as having caused or contributed to its collision?
- A. I did not hear.
- Q. You did not hear it because it was never said. 30
- A. Might be.

COURT: Well I think all he can say is he didn't hear.

- Q. The meeting wasn't concerned, in any way, was it, with trying to deal with who was to blame. It was simply the story that was to be given out by Captain KONG and if he could persuade other officers to agree as to what had happened before the collision. 40
- A. I think so.
- Q. You were asked by my learned friend, Mr. Steel, about the state of shock or injury that anybody was in - any of the 9 people was in, of the officers, I suppose, at this particular meeting.
- A. Right.
- Q. Did you notice anything at all that was apparently wrong with Captain KONG on the evening of the 11th of July? 50
- A. I didn't notice.
- Q. He appeared to be able to play an active, if not a leading, role or the leading role throughout the whole of that one and a half

	hour's meeting, is that right?	In the
A.	Yes.	High Court
Q.	I think in particular, on many occasions during that long meeting he was jumping up from the table and going off to make telephone calls, was he not?	<u>of Hong Kong</u>
		Prosecution's
		<u>Evidence</u>
	A. Are you saying Captain KONG?	No.4
	Q. Yes.	P.W.12
	A. Yes.	Lo Kam-shing
10	Q. Did you know to whom he was telephoning?	Cross-
	A. I did not know.	Examination
	Q. Did he tell you anything about the nature of the calls that he was making?	(continued)

INTERPRETER: Sorry, I don't quite understand.

20	Q. Did he tell you anything about the calls, the nature of the calls, the purpose of the calls that he was making during that meeting, during the evening. In other words, having come back from the telephone, or on the way to the telephone, did he say what sort of calls he was making? It is a simple question.
	A. No.
	Q. He didn't. Did you receive any communications by telephone or any other means after the occasion of this meeting, after the evening of the 11th from Captain KONG about these matters?
	A. Not that I remember.
30	Q. Not that you remember. I am not talking necessarily about the next day which is the 12th, but within the next few days. Do you recall having received any telephone calls from Captain KONG in hospital or anywhere else?
	A. Yes, I did.
	Q. Who was in hospital, Captain KONG or you?
	A. I do not understand your question. You said Captain KONG telephoned me.
40	Q. Very simple question.
	A. I have been in hospital. What are you referring to?
	Q. Captain KONG apparently spent some time in the Peak Hospital. Were you aware of that?
	A. I was told about that.
	Q. Well he was well enough, apparently, to attend at the company's offices on the 12th and to write in the official log book and sign it, but later he went to hospital. Were you aware that he was in hospital at the time? Were you aware that he was in hospital?
50	A. After we went to our company, Captain KONG told me that he would be going to hospital.
	Q. You didn't know for what reason he found it

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- necessary to go into hospital, I suppose.
- A. I did not know.
- Q. He didn't tell you. What I was asking you was this: after he went to hospital, did he telephone you?
- A. Yes, once.
- Q. And what did he ask you to do. What did he say to you over the telephone, do you remember? 10
- A. I remember a little.
- Q. All right, a little, or the gist. What was the purpose? Why did he call you?
- A. There's nothing particular over the telephone. He just greeted me. At the beginning it was not Captain KONG who telephoned me. It was Captain KONG's wife who telephoned me first.
- Q. What did she ask you to do?
- A. Just sent her regards to me, saying that her younger sister was sending her regards to me. 20
- Q. Were you asked any questions over the telephone about whether you had been interviewed by the Marine Department, or what account you had given of this matter, the collision, or anything like that at all?
- A. Yes.
- Q. What did they say to you about that? 30
- A. I was asked if I had been to the Marine Department.
- Q. Who asked you that?
- A. Captain KONG.
- Q. What did he say to you? Could you tell us all you remember?
- A. He asked, "Have you been to the Marine Department?" I said, "No, not yet." And then I said, "Well I will say the same thing." 40
- Q. I see, you said to Captain KONG over the telephone you would say the same thing. He did not ask you about what you would say, reminding you, or what?
- A. Yes, he did.
- Q. In what way did he remind you of what to say to the Marine Department? What did he say to you? Tell us, Mr. LO, please.
- A. He said, "You remember to mention what you said that night." 50
- Q. What was that in particular, do you remember? What did he have in mind as far as you could understand? What were you told to remember about what you had said that night, tell us, Mr. LO?
- A. It was something about the engine.

	Q.	Tell us Mr. LO. Don't hedge, please. Something about the engine, just tell us.	In the High Court of Hong Kong
	A.	That means he tried to remind me to say that he had mentioned to stop the engine.	<u>Prosecution's Evidence</u>
10	Q.	He was telephoning you, was he, from the hospital, to remind you to say when you were interviewed by the Marine Department that you had heard him before the collision say, "Stop the engines".	No.4 P.W.12 Lo Kam-shing Cross- Examination
	A.	Yes.	
	Q.	Did you agree with that suggestion that he was reminding you of over the telephone?	(continued)
	A.	At that time I promised him.	
20	Q.	So he thought, at any rate, from what you told him, is this right, you would repeat to the Marine Department that false account of your having heard him shout, "Stop engine"?	
	A.	Right.	
	Q.	And now you were asked by my learned friend Mr. Steel about having been arrested on the 16th of August on some charge of conspiracy.	
	A.	Yes.	
30	Q.	In fact you were never charged with any offence? You were never formally charged with any offence, were you?	
	COURT:	What do you understand by the word "charge" as opposed to being arrested? Do you understand what is meant by the word "charge"?	
	A.	I don't understand.	
	Q.	You have never been charged or prosecuted for any offence, is that not the position, in connection with this collision?	
40	COURT:	You have never appeared in court in connection with this?	
	A.	No, no, I never appeared in court.	
	Q.	You eventually gave to police officers a statement of what you recall about all these matters, about the collision and about the meeting in the Hong Kong Hotel, did you not?	
	A.	Yes.	
50	Q.	I beg your pardon! You in fact had given your witness' statement about these matters several days before the 16th of August which was the day on which you were arrested, is that right?	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- A. Yes.
- Q. I think you have given your statement about these matters on the 14th of August, two days before the police officers arrested you.
- A. No, the statement was taken at 7 p.m. on the 1st of August.
- Q. Yes, I think that was to an officer of the Marine Department, was it not? 10
- A. No.
- Q. You see, I have been supplied with your statements in this matter, Mr. LO, supplied by the prosecution. Now the first time you were interviewed by the police about these matters, you were interviewed by Snr/Insp. LING, weren't you, who sits at the end of this table.
- A. Yes.
- Q. Police, not Marine Department, police.
- A. Prior to my interview by the police, I was interviewed by the Marine Department officers. 20
- Q. I am not asking you about that and your interview. The statement you gave to Snr/Insp.LING, that was the only statement that you gave to police officers about all these events, wasn't it?
- A. No, altogether I had given two statements on the 1st of August and on the 16th of August. 30
- Q. To the police?
- A. To the police.
- Q. At any rate, both of those statements were before any police officers ever declared that you were arrested for conspiracy of any sort, is that right?
- A. No.
- Q. What do you mean no? You agree when you made your witness' statements on these occasions, no one had mentioned to you anything about your being arrested or prosecuted for any offence, had they? 40
- A. I disagree.
- Q. But what was the position?
- A. The first interview took place on the evening of the 1st of August at 7 p.m. Two police officers went to my home. I was told to go to the Marine Department to assist in enquiries. I went there that evening. Insp. LING told me that he would be going to take a statement from me. 50
- Q. And he took a statement from you. Will you answer the question?
- A. No, he asked me --

COURT: You will probably get on a lot faster if you let the witness say it. Yes, what happened?

In the High Court of Hong Kong

10 A. I told him. He questioned me for one odd hour. At 9 p.m. Insp. LING left. His junior officer told me that he would take a statement from me in Chinese. It was some time after midnight that the statement was completed. I was then taken to see Insp.LING. Insp.LING asked me some more quest ons. I was told to sign my name there, and then I was told that I could leave at that time.

Prosecution's Evidence

No.4
P.W.12
Lo Kam-shing
Cross-Examination

(continued)

Q. And so you went home?

A. Yes.

Q. That was on the 1st of August?

A. Yes.

20 Q. You gave one later statement to Insp. LING, is that right?

A. Yes.

Q. On the 16th of August. I think you are mistaken about the date. Will you just deal, please, with one thing at a time. You gave one later statement only to Insp.LING.

A. On the day of my arrest, I was asked to give another statement. The day of my arrest was the 16th of August.

30 Q. It was, indeed, the date of your arrest was the 16th. Would you please - might I call for the original of this witness' statement? Would you look at the statement, please? The witness' statement in the depositions. It is page 216 of the depositions.

COURT: Did you make your statement in English or Chinese? Did you make your statement in English or Chinese?

40 A. Two statements were in Chinese. I signed an English statement in the end of October.

COURT: We are talking about this one in August which you say was made on the day of your arrest.

A. In Chinese.

COURT: Would you look, please, at the Chinese?

50 Q. You have been shown a document in English. Would you look at the last page of the document? My Lord, page 219 of the depositions. Do you see your signature there?

A. Yes.

Q. LO Kam-shing.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Cross-
Examination

(continued)

- A. Yes.
- Q. Is that your statement which you signed on this occasion?
- A. This statement was signed in the end of October.
- Q. Would you look at the top of that statement, Mr. LO? You see, it purports - you read English, don't you?
- A. Yes.
- Q. "Taken by D/Snr/Insp. J. LING at 11.10 hours on the 14th of August, 1982" 10
- A. Yes, I now see it.
- Q. Do you recall having made this statement to Insp.LING at Marine Police Headquarters during the morning hours of a day in August, 1982?
- A. No, it was given on the 16th of August, the date of my arrest.
- Q. So you say, do you, that Insp.LING, or somebody, has incorrectly recorded the date on which you made this witness' statement? 20
- A. Yes, it was a mistake.
- Q. At any rate, what you were doing in October before the committal proceedings in this case was simply signing again and acknowledging the correctness of the statement that you had originally made to Insp. LING way back in August, is that right?
- A. Yes. 30
- Q. All I am suggesting to you - all I have been attempting to put to you during this period is simply that all the witness' statement that you had given either to the Marine Department or to Insp.LING connected with this case, this collision, were given before anybody ever said to you that you were under arrest for conspiracy or anything else. That's right, isn't it? 40
- A. It is not correct.
- Q. No further questions.

MR. STEEL: My Lord, may I just raise one small question with this witness. It arises out of something that he has been asked. It is a very small point, just about on one question that.

FURTHER XXN. BY MR. STEEL:

- Q. Captain KONG told you, Mr. LO, that after leaving the Hong Kong Macau Hydrofoil Company he was going to join the Far East Hydrofoil? 50
- A. Yes, he did.
- Q. Thank you.

REXN. BY MR. LUCAS:

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.12

Lo Kam-shing
Re-examination.

- 10 Q. Just one or two matters, if I may, Mr. LO. Mr. LO, on that last topic, there seems to be some confusion in your evidence as to when Captain KONG was leaving the company. It was put to you by my learned friend Mr. Corrigan that this was his second last day driving boats for the Hong Kong Macau Hydrofoil Company and you seemed to agree with that, but then you also seemed to say that he was leaving the company on the 15th. Now this incident took place on the 11th, the 12th was a working day. Were the 13th and 14th for your crew holidays, two days?
- A. Yes.
- 20 Q. So that in fact both answers are correct it was his second last day sailing or helming, but he did leave - was due to leave on the 15th after he had had his two days' holiday.
- A. I agree.
- Q. Now at this meeting that you have told my learned friend Mr. Corrigan so much about, did you have log books and rough log books for the times, etc., with you at that meeting?
- A. No.
- 30 Q. Did anyone have any log books or any books of any sort?
- A. No, not that I remember.
- Q. Did anyone have any sheets of paper?
- A. Yes.
- Q. Who had sheets?
- A. I don't recall, but I knew that someone brought sheets of paper.
- Q. What sort of sheets of paper, do you remember?
- 40 A. White paper.
- Q. But there are all sorts of sizes and shapes of white paper and some paper have stuff on it, some not. Can you describe it a bit more than simply just white paper?
- A. I didn't notice.
- Q. I mean are you talking about blank sheets of paper that people wrote on, or are you talking about sheets out of a book, or a form of some sort?
- 50 A. That is what I remember.
- Q. What? Sorry.
- A. I recall that those are ordinary papers.
- Q. Blank sheets of paper.
- A. That is the case, I remember.
- Q. Where did you get the times from that you are talking about, the various times that

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Re-examination

(continued)

- were given to Mr. KONG to write down?
- A. Well during the journey I jotted the times down. On that day I copied, I remembered.
- Q. Sorry, Mr. LO, just to see if I have got you right. Are you suggesting that these figures were still fresh in your memory and you were able to remember them at this meeting, or you have written them down on something else? I am not sure what you say. 10
- A. I didn't write down. I mean I remembered the times because I was the one who jotted the times down.
- Q. Did anyone else remember the times, or they just came from you this time?
- A. I don't know.
- Q. Now were you able to remember the times for the last trip, the trip of the collision, or both trips that you did that day? 20
- A. I only remembered the trip when the collision occurred because I intended to supply him with the information that evening.
- Q. You intended to. Why did you intend to, Mr. LO?
- A. Because I realized that he had to make a report.
- Q. So you came prepared with the times?
- A. I remembered the times. 30
- Q. Now Mr. LO, on those times, you have been asked a number of questions by my learned friend Mr. STEEL and by my learned friend Mr. AIKEN about the transfer of times from the rough log into the official log, into the fair log - from the rough into the fair, is that right?
- A. Yes.
- Q. And you've said that you do not recall when or if Mr. NG took the book, the rough log, from you on that day. 40
- A. I did not know whether he had taken it.
- Q. Now the questions you were asked were the transfer of - can he be shown the rough log and the fair log?

(Exhs. P22 and 23)

- Q. The questions you were being asked, Mr. LO, were whether in fact you could recall when Mr. NG took the figures that you had written in the rough deck log and put them into the fair deck log on that day. That is what the questions were about, do you recall - the questions you were asked about. 50
- A. Yes.

Q. And you were shown, were you not, the rough deck log and the fair deck log. The question was: when did these figures shown in the fair deck log make their way into that book. (reminded by Mr. Aiken in private) I beg your pardon! The times are certainly put to you.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Re-examination

10 MR. LUCAS: As I understand, my Lord, Mr Aiken says he didn't ask these questions. Certainly the times "902" "903" in the fair deck log were mentioned and shown to the witness at some stage.

(continued)

COURT: Yes.

20 MR. LUCAS: And it was made clear that the witness was being asked about when these entries were made - those entries plus the ones on the previous trip - into that book. If I'm mistaken, my Lord --

COURT: My understanding was that it was alleged --

30 MR. AIKEN: (interrupting) I don't remember if I had asked the question. My recollection is my learned friend, Mr. Steel, asked him about the two extra times in the rough deck log and put it to him that those might have been written after the accident and I wanted to ask him if he could explain their absence from the fair deck log in another way, and my learned friend, Mr. Lucas, objected. I was about to ask the question.

COURT: He was asked, "Could you remember the rough log being taken away"? and he said he couldn't.

MR. AIKEN: And that is why I wasn't allowed to pursue the matter when my learned friend objected.

40 Q. Do you have anything to do with the fair deck log, normally, Mr. LO?

A. No.

Q. You have before you your rough deck log, do you not?

A. Yes.

Q. And you also have now before you the rough deck log of the Flying Flamingo - the radio deck log, I beg your pardon! Does that have any marks on it at all, Mr.?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.12
Lo Kam-shing
Re-examination

(continued)

A. Nothing particular.
Q. Have a look at yours, the radio log.
A. Some blood stains.
Q. During the course of this meeting, my learned friend Mr. Corrigan asked you some questions about what you told him had happened.

A. Yes.

MR. LUCAS: I'm sorry. That is a ridiculous question. I'm not sure what he is answering yes to.

10

Q. You told my learned friend Mr. Corrigan about the conversations at the cafe shop between Captain KONG and the others.

A. Right.

Q. And did Mr. NG and Mr. HO remain there throughout that meeting until it broke up at about an hour and a half later?

A. Yes.

BY COURT:

20

Q. Mr. LO, if I understand your evidence in relation to this statement that you made and shown to you, you made that, you say, on the day of your arrest, on the 16th of August?

A. Yes.

Q. And I also understand your evidence is that you did not make it before your arrest?

A. I did give a statement on the 1st of August.

30

Q. We know about that. The statement made on the day of your arrest, you did not make it before your arrest?

A. No.

Q. Do I take it then you made it after your arrest?

A. Yes.

Q. You see, Mr. LO, the normal thing is that once a person has been arrested, any statement made is preceded by a caution. He is told he is not obliged to say anything unless he wishes to do so. Now this statement does not have a caution. There is no caution at the beginning. In the light of that, are you sure you made this statement after you had been arrested?

40

A. Sure.

COURT: Members of the jury, any questions you would like to ask?

50

A JUROR: I would like to ask Mr. LO:
where do you usually put your deck
log, rough deck log? Is it in front
of you or on your working table?

In the
High Court
of Hong Kong

COURT: Where do you normally keep your
deck logs?

Prosecution's
Evidence

A. On my right-hand side.

No.4

COURT: On the desk in front of you.

P.W.12
Lo Kam-shing
Re-examination

10 A JUROR: What is the normal journey from
Macau to Hong Kong, not on the day
of the collision? At what distance
away would you expect to pass Ching Chou?

(continued)

COURT: Going from Hong Kong to Macau?

JUROR: No, from Macau to Hong Kong.

COURT: Coming from Macau to Hong Kong, about
what distance would you expect to pass
Ching Chou. I know you said you don't
recall distances, but about what distance
would you expect?

20 A. I don't know.

COURT: Thank you.

P.W.13
EVIDENCE OF RAYMOND TANG
CHUNG-KEUNG

P.W.13
Raymond
Tang Chung-
keung
Examination

MR. LUCAS: I call Mr. Raymond TANG, page
144 of the depositions, my Lord.

P.W.13 - Raymond TANG Chung-keung
Affirmed in English:

XN BY MR. LUCAS:

30 Q. Your full name, sir?

A. TANG Chung-keung.

Q. Do you have an English name as well?

A. Yes, Raymond.

Q. And you are employed by the Marine
Department?

A. Yes.

Q. And your occupation is Senior Surveyor of
Ships?

A. Yes.

40 Q. Would you tell us, please, your qualifications?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

(continued)

- A. I hold an Extra First Class Engineer Certificate, Chartered Engineer and a Member of the Institute of Marine Engineers.
- Q. What does a surveyor of ships do, Mr. TANG?
- A. It is very - I have been - well - doing survey for passenger ships and cargo ships. For the survey of passenger ships, that means survey of their ships every year, machinery and hull, every year. 10
- Q. Now on the 12th, 13th and 14th of July 1982, I think you were asked to survey the damage of the hydrofoil called the Flying Goldfinch which at that time was in a slipway at the Hong Kong Macau Hydrofoil shipyard at Laichikok, Kowloon, is that right?
- A. Yes, that's right. 20
- Q. Now I understand that you had a number of photographs taken, had you not?
- A. Yes, I did.
- Q. And you also drew a number of plans, etc.
- A. Yes.
- Q. In this exercise. Do you have the photographs and the plans with you?
- A. Yes, I have.
- MR. LUCAS: The photographs, my Lord, are Exhs. P2, and the sketches are P6 to P8 - sorry, P10. 30
- Q. Mr. TANG, as I understand it, you did five sketches?
- A. Yes, I did.
- Q. And you also took a number of photographs and you have a number of photographs.
- A. Yes.
- Q. Could you explain to us what you found on both the Goldfinch - in relation to both the Flying Goldfinch and the Flying Flamingo as a result of your survey, using the photographs and the maps and the sketches? 40
- A. Well do you want me to describe the damage first or the damage in relation to the collision?
- Q. Yes - no, no, describe the damage.
- A. Now, well, the bow of the Goldfinch has collapsed aft and in the middle, about 0.9 metre from the deck, and up to the collision bulkhead, and the bow stem plate and the frame was cut open and the starboard stem plate was folded aft. 50
- Q. If you refer to photograph 1 --
- Q. What I would like you to do, Mr. TANG,

is this: would you be kind enough to demonstrate what you are saying with the use of the photographs and the sketches. In that way we might understand something of what you say.

A. Certainly, sir.

In the
High Court
of Hong Kong

Prosecution's
Evidence

COURT: These are colour photographs, are they?

MR. LUCAS: These are the colour ones.

10 A. Yes, okay. Now as you can see, the photograph 2 here, the bow of the Goldfinch was smashed.

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

(continued)

MR. CORRIGAN: None of our photographs are numbered. I don't know that these photographs have been numbered.

A. Could I have your set please?

Q. Would you be good enough to use - do you want the black-and-white ones as well?

20 A. Yes, if I can.

Q. Sorry, Mr. TANG, Mr. LING has just suggested that the reason there is some confusion is the colours in your survey are in fact our black-and-whites.

A. Thank you.

COURT: I would have thought the most helpful ones are the P1 black-and-white --

Q. Can you just go through the photographs?

A. Yes.

30 Q. Would you be good enough to indicate whether you are looking at the black-and-white or the colour as you do so and show us which photograph you look at.

A. It is photograph 17 here, as you can see the bow.

COURT: P1(17)

Q. Is that the one that shows --

A. -- that shows the bow of Goldfinch was smashed and it's cut about middle height, right into the collision bulkhead.

40 Q. What is that called?

A. Collision bulkhead. Now as you can see from the photograph, the bow is slightly pushed towards starboard side, slightly, not too much, and photograph 18, you can see the starboard stem plate is folded up again towards the collision bulkhead, photograph 18.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

(continued)

Photograph 16 shows the port stem
plate cut and pushed in a little bit.

MR. LUCAS: I do apologize, my Lord. I take
responsibility for it. There still
seems to be total confusion in these
photographs.

Q. Could you make sure when you comment
about a particular photograph, you show
us yours so that we can all see it?

A. I think this is 16 because the pencil
mark at the back is 16. 10

COURT: Members of the jury, is yours No.16?

A JUROR: Ours is 17.

Q. Would you take these? I suspect those
aren't in sequence with everyone else's.
Could I have yours? NOW we'll try. Mine
has a red number.

A. I am still referring to 16. We are
looking at the port side of the bow.

COURT: Could I see it? It is the same P16
as I have got, not the same as everybody
else's. 20

MR. CORRIGAN: My Lord, may I suggest that all
these photographs be taken back over the
weekend and be stamped with numbers, as in
any one robbery case they would have been.

COURT: I think we will have to get ours
sorted out. Would it be easier if we
start to do that now?

MR. LUCAS: I think that the pain of going
through this for another 20 minutes is
more than most of us could bear and it
is a Friday afternoon. I hesitate after
having taken yesterday off, but perhaps
this might be, in all the circumstances,
convenient time for us to sort out our
affairs at this end of the Bar table. 30

COURT: I think if Mr. TANG is going to go
through all these photographs, obviously
we have got to have unanimity as to what
photographs he is referring to. 40

A. Yes, very well.

COURT: And you've got some sketches.

A. Yes.

COURT: They have been produced, have they, the sketches?

In the
High Court
of Hong Kong

MR. LUCAS: They have not been produced, my Lord. Mr. TANG will produce them. They are in the bundle. There are copies of it. I could, of course, if the Court wish to, read some statements into the record between now and half-past to avoid any waste of time.

Prosecution's
Evidence

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

10

MR. AIKEN: I would ask that that is done because I am rather anxious about the time.

(continued)

COURT: Yes, very well. Yes, Mr. TANG, we will have to sort out these photographs. I'm afraid will you now stand down and come back on Monday.

MR. LUCAS: May it please you, my Lord. It has been agreed that we can read out under the Criminal Procedure Ordinance a number of statements.

20

The first is at page 183 of the depositions. This is the statement of TING Lee-wah at Western Police Station, police constable 22823, and it is agreed that his statement is true, namely, that:

30

" I am Police Constable 22823, TING Lee-wah, single and presently attached to Team 1 Uniform Branch of Western Police Station.

Between 0750 and 1600 hours on the 11th of July, 1982, I was on 'A' shift duty.

40

At 1055 hours, I was instructed to proceed to the Casualty Ward of Queen Mary Hospital to assist injured persons in a hydrofoil collision, to maintain order in the Casualty ward of Queen Mary Hospital and to obtain particulars of injured persons in the collision.

At 1230 hours I learnt that two Chinese females were killed in the collision, and I learned that one of them was named WU Yuk-ngan. I was instructed to escort the dead bodies of these two Chinese females to Victoria Public Mortuary.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

(continued)

" At 1258 hours the deceased Wu Yuk-
ngan and the unknown woman were taken
to the mortuary.

At 0845 hours on the 12th of July,
1982, in Victoria Public Mortuary,
I together with Police Constable 4758
of Marine Police and Chinese male NG
Chun-wai made formal identification on
Chinese female WU Yuk-ngan and the
unknown woman.

10

The above statement consisting of
two pages has been read over to me by
Detective Senior Inspector LING Hung-hay
and is true and correct to the best of
my knowledge."

Let me read first the statement of KONG Shing-
shun. It is an additional statement. He is
not one of the depositions. He is a police
officer, Chief Inspector of Police, attached
to Marine Police Headquarters, Tsim Sha Tsui,
Kowloon, and his statement reads - and it is
agreed to be true that :

20

" I am Detective Chief Inspector KONG
Shing-shun of the Royal Hong Kong
Police Force. I am at present attached
to the Criminal Investigation Department
of Marine Police Headquarters.

On 16.8.1982 at 06.55 hrs., I
executed an Arrest Warrant No.7024 of
San Po Kong Magistracy at Block 'C',
15th floor, Hon Kung Mansion, Tai Koo
Shing and arrested a Chinese male NG Yui-
kin in connection with a case of
'Manslaughter'. I later brought him
back to Marine Police Headquarters for
further enquiries.

30

On 16.8.1982 at 14.15 hrs., I
recorded a cautioned statement from
Chinese male NG Yui-kin. The statement
finished at 15.54 hrs. the same day.

40

The above statement consisting of one
page has been read over to me by Detective
Senior Inspector J.LING Hung-hay and is
true and correct to the best of my
knowledge. "

My Lord, in relation to that particular state-
ment, that will be produced by consent, subject
to a couple of deletions in various statements
of all the accused persons. My Lord, they made

statements to the police which will be presented to your Lordship and the jury on Monday, subject to some deletions from those statements, as having been voluntarily made by each of the four accused persons. The statements I am reading now are the police officers who actually took those statements and they are simply formalities to that extent.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

10 So another statement is the statement of CHEUNG Man-kam, also CID, Marine Police Headquarters, police officer, and it is agreed that, pursuant to the Criminal Procedure Ordinance, Cap.221, section 65(b), that this statement is true. (reads)

(continued)

20 " I am Detective Police Constable No.9765 CHEUNG Man-kam of the Royal Hong Kong Police Force, at present attached to the Regional Crime Unit of the Criminal Investigation Department, Marine Police Headquarters.

30 In the course of my enquiries into a hydrofoil collision case occurred on 11.7.82 morning off west of Lantau Island, I have on 1.8.82 morning interviewed a Chinese male NG Yui-kin, Deck Officer of the hydrofoil 'Flying Goldfinch', who was invited back from his home to Marine Police Headquarters to assist in my investigation. The 'Flying Goldfinch' was one of the hydrofoils involved in the said collision.

Later in the same morning, I have taken a statement in Chinese consisting of six pages from NG Yui-kin and I certify that the said 6-pages statement is a true and original copy that I have written and recorded from the said NG Yui-kin at Marine Police Headquarters.

40 The above statement of one page has been read over to me by Detective Senior Inspector J. LING Hung-hay and is true and correct to the best of my knowledge."

At page 118 of the depositions, the statement of Mr. NG Chi-hung who is a member of the photographic section, Identification Bureau, CID, and he is the Special Photographer Class II of the Royal Hong Kong Police Force. His statement is agreed to be true and he says:

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

(continued)

" I am NG Chi-hung, a Special Police Photographer Class II, at present attached to the Photographic Section of the Identification Bureau, Criminal Investigation Department, Police Headquarters.

On 10.9.82, I received from Detective Senior Inspector LING Hung-hay of Marine Police 5 colour negatives for printing and also 9 colour Polaroid photographs for copying and printing.

10

On 17.9.82 I handed over the painted photograph together with the negatives back to Detective Senior Inspector LING.

The above statement has been read over to me by Detective Senior Inspector LING Hung-hay and is true and correct to the best of my knowledge and belief."

Page 122:

" I am CHING Kwok-tai, a Special Police Photographer Class II, at present attached to the Photographic Section of the Identification Bureau, Criminal Investigation Department, Police Headquarters.

20

On 10.9.82, I received from Detective Senior Inspector LING Hung-hay of Marine Police a total of 31 black and white negatives for printing.

On 17.9.82, I handed over the printed photographs together with the negatives back to Detective Senior Inspector LING.

30

The above statement has been read over to me by Detective Senior Inspector LING Hung-hay and is true and correct to the best of my knowledge and belief."

And then a statement, page 125 of the depositions, who was Mr. NG Kwai-wing and who is a member of the Government Information Services Department, Beaconsfield House. He is an Assistant Information Officer, Class I, who says - and it is agreed that it is true - that:

40

" I am NG Kwai-wing, holder of Hong Kong Identity card no. B 387544. I was

born in Canton, China on 13.11.43
and came to Hong Kong in 1962.

In the
High Court
of Hong Kong

I am at present an Assistant
Information Officer Class I attached
to the photographic section of the
Government Information Services
Department. I joined the Government
Services on 23.12.77.

Prosecution's
Evidence

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

10

On 12th, 13th and 17th July, 1982,
respectively, I was assigned to take
photographs on two damaged hydrofoils
at the Hong Kong Hydrofoils Company
Shipyard at Lai Chi Kok, Kowloon
together with Mr. Pyrke of Marine
Department.

(continued)

20

On 12.7.82, under the instruction
and in the presence of Mr. Pyrke, I
took a total of 135 shots of pictures
on the damaged vessels. The job
No. is 26039.

30

On 13.7.82, under the instruction
of Mr. Pyrke and in his presence, I
took a total of 34 shots of photos on
the damaged vessels. The job No. is
26043.

On 17.7.82, on the instruction of
Mr. Pyrke again and in his presence,
I took a total of 53 shots of photos
on the damaged vessels. The job No.
is 26077. "

At page 130 of the depositions, the statement
of Mr. SIT Cheung-kan, Photoprinting Unit,
Architectural Office, Building Development
Department, whose occupation is Photoprinter,
has been agreed, and that it reads as follows:

" I am SIT Cheung-kan, a Photoprinter
Class II, at present attached to the
Photoprinting Unit of the Architectural
Office, Building Development Department.

40

On 13.9.82, I received from Detective
Senior Inspector LING Hung-hay of Marine
Police five sketch plans on tracing paper
for copying.

On 14.9.82, I handed over the copied
plans together with the tracing papers
back to Detective Senior Inspector LING.

The above statement has been read over

In the
High Court
of Hong Kong

to me by Detective Senior Inspector
LING and is true and correct to the
best of my knowledhe and belief."

Prosecution's
Evidence

No.4
P.W.13
Raymond
Tang Chung-
keung
Examination

(continued)

And then the statement at page 133 of the
depositions. It has also been agreed that
Mr. CHEUNG Chun-chung, Technical Officer,
Reprographic, attached to Survey Division
Lands Department:

" On 17.9.82, I received from Detective
Senior Inspector LING Hung-hay of Marine
Police four general layout plans of two
vessels and an Admiralty Chart for
reproducing.

10

I produced five transparency prints
out from the four respective layout
plans and the sea chart and later
handed them over to Mr. LAU Kwok-iu,
Photoprinter Class II for copying.

The above statement has been read
over to me by Detective Senior Inspector
LING and is true and correct to the
best of my knowledge."

20

And then LAU Kwok-iu, Survey Division, Lands
Department, Photo Section. His statement
is also agreed and he says:

" I am LAU Kwok-iu, a Photoprinter
Class II, at present attached to the
Survey Division of the Lands Department.

On 21.9.82, I received from Mr.
CHEUNG Chun-chung, Technical Officer
(Reprographic) five transparency prints
on two ships and a sea chart for
copying.

30

Later on the same day, I handed
over the copied prints together with
the original copy of the shipping plans
and chart to Detective Senior Inspector
Ling of Marine Police.

The above statement has been read
over to me by Detective Senior Inspector
Ling and is true and correct to the
best of my knowledge."

40

My Lord, that permits us to produce, as I
understand it, the exhibits, the photographic
exhibits. And so that introduces Exhs. P1,
P2, a set of 14 colour photos.

P6, 7, 8, 9 and 10 are the sketches drawn by Mr. Raymond TANG and he will be producing them himself.

In the
High Court
of Hong Kong

P11, 12 and 13 are also matters to be produced, dynamic oil plans schemes of the Flamingo and the Goldfinch and, Exh.P13, a certificate of the dynamic oil plans which are the plans at the back of the court.

Prosecution's
Evidence

No.13
Raymond
Tang Chung-
keung
Examination

10 There are also produced as Exh.15, my Lord, the general plan of the deck of the Flying Goldfinch and a certificate of the general plan.

(continued)

The official log of the Flying Flamingo, the deck log of the Flying Flamingo and translations; the two logs of the Goldfinch and the Flamingo and the deck log are all already before the court.

20 Admiralty chart No.341 that has been shown as Exh.P27 is now before the court.

So far as the formalities are concerned, we will be calling only at the moment Mr. TANG and Mr. Pyrke; Mr. LING to produce some of the statements that he took; some of my friends wish him to be called.

In so far as the witnesses are concerned, there is one man Mr. KWOK Sum, who returns to this colony, hopefully, this morning. He will be called, my Lord.

30 There are also two sailors who may or may not be called depending on whether my friend wishes to.

Substantially, the evidence for the Crown, I hope, will be completed within two days. I would think Mr. Pyrke would be in the witness-box for some time.

40 In those circumstances, a firm promise that we will turn up on Monday both the statements prepared and the photographs in order. This would be a convenient moment to adjourn.

COURT: Very well, Monday morning.

4.30 p.m. Court adjourns

11th March, 1983.

In the
High Court
of Hong Kong

14th March, 1983
10.05 a.m. Court resumes

Prosecution's
Evidence

No.4
P.W.14
Kwok, Sum
Examination

All accused present. Appearances as before.
Jury present.

MR. LUCAS: My Lord, I am sorry about that, but there is a gentleman called Mr. KWOK Sum who appears at page 26 of the depositions. He's a passenger who has been out of the Colony and has just returned and will be disappearing again. I would like, if I may, to interpose him at this stage. I have the consent I think of my friends. I call Mr. KWOK Sum. 10

P.W.14 - KWOK Sum Sworn in Puntì
XN. BY MR. LUCAS:

- Q. Where do you live?
A. I live in Des Voeux Road West.
Q. And your occupation?
A. I am an import and export merchant. 20
Q. Mr. KWOK, our interest here of course is the events of the 11th of July 1982.
A. Yes.
Q. Now, I think you caught the hydrofoil, the Flying Flamingo from Macau to Hong Kong on that day.
A. Yes.
Q. And that you actually sat downstairs on the lower deck on the righthand side.
A. Yes. I sat on the fourth row near the window starboard stern of the lower deck. 30
Q. We have actually a plan of the Flamingo, Mr. KWOK, which is the first plan, the one on the righthand side of that board.
A. Yes.
Q. Now, and you said that you were on the fourth row, is that the fourth row down the bottom?
A. Yes, the bottom row.
Q. Down here.
A. Yes. 40
Q. Now, whilst you were on your way to Macau, as I understand it, do you recall that the Flamingo stopped at one stage, reversed its engines and then went on again, is that right?
A. Yes.
Q. And that lasted, on your evidence as I understand it, for about a minute that it stopped, is that right?
A. About that time. 50
Q. That stoppage was where, can you recall whereabouts approximately?

A.	It seemed somewhere past Cheung Chau. I didn't pay particular attention.	In the High Court of Hong Kong
Q.	Right. Now, after it commenced on its way, could you tell us the events that had happened in your own words slowly and in as much detail as you can remember?	<u>Prosecution's Evidence</u>
A.	I was reading newspaper at that time. I finished reading newspaper at about 9 o'clock. I took a nap. Ten odd minutes later I woke up and I saw that the boat was out in the public sea.	No.4 P.W.14 Kwok, Sum Examination (continued)
10	Q.	Yes?
A.	I smoked a cigarette, and at the time when I threw the cigarette butt I looked out through the window and suddenly I saw another boat sailing horizontally towards us.	
20	Q.	How far away was that other boat?
A.	I presume several hundred yards away.	
Q.	What sort of boat was it?	
A.	The boat of the same company.	
Q.	Hydrofoil of the same company.	
A.	Yes.	
Q.	Did you watch it thereafter?	
A.	When I noticed the boat I was surprised why this boat flying towards us horizontally.	
30	Q.	What was your reaction apart from surprised if you had one?
A.	I took no particular action, but when I was trying to sit down I noticed that the boat was already very close, so I shouted out "The boat is going to collide", and at that time I heard a bumping sound and I was thrown away from my seat.	
40	Q.	Now, what happened -- did you notice before the collision if there had been any change in the direction or any sudden movements on your boat, the one that you were in?
A.	I didn't notice.	
Q.	The other boat was coming towards you horizontally. Did you notice any change in the direction of that boat or not?	
A.	I didn't pay attention because it was all of a sudden.	
50	Q.	You say that you saw the boat horizontally. We have two models which actually stick to that board magnetically. Now, the Flamingo, the one you were travelling on, is travelling in this direction. Would you be good enough to take the other boat and place that in approximately the place you first saw it? I am not talking about distance so much as the angle of the other

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.14
Kwok, Sum
Examination
(continued)

boat. At the moment all I want from
you is the --

- A. This direction.
- Q. Thank you. Mr. KWOK, you have told us
in your evidence that when you first saw
the boat it was a few hundred yards,
is that right?
- A. Yes.
- Q. So you, as I understand your evidence,
leant down to put out a cigarette. 10
- A. Yes.
- Q. Looked out the window and saw this boat
coming towards you as you have shown us.
- A. Yes.
- Q. And you were at that time surprised,
is that what you said?
- A. Yes.
- Q. You kept watching it, did you?
- A. Yes.
- Q. And you called out, is that the position? 20
- A. I talked to myself "Why this boat is
sailing horizontally?"
- Q. And then there was a collision.
- A. I then sat down. I took a further look
and at that time the other boat already
came at us.
- Q. You looked, sat down, continued to look,
did you? Did you continue to watch?
- A. Yes, I was paying attention to the other
boat. 30
- Q. And then there was a collision and then
you were thrown out of your seat.
- A. I was thrown to the middle passage.
- Q. Did you suffer injuries as a result of
this collision, sir?
- A. Yes.
- Q. Where?
- A. This part.

INTERPRETER: Showing the left shoulder and
the right thigh and the right loin. 40

- Q. Are you able to say how long approximately
this took in time from the first time you
saw it until the time of the impact?
- A. I think it was about ten odd seconds.
It occurred all of a sudden.

MR. LUCAS: Thank you very much, I have no
further questions.

Cross-
Examination

XXN. BY MR. STEEL

- Q. Mr. KWOK, would you come back and put the
model where you first saw it in relation 50
to the model of your own vessel.

COURT: You mean in terms of distance?

In the
High Court
of Hong Kong

MR. STEEL: Yes. I want him to put the second model in a position relative to his own vessel.

Prosecution's
Evidence

A. I am not sure but at the time when I looked out of the window I saw that it was coming towards us horizontally.

No.4
P.W.14
Kwok, Sum
Cross-
Examination

10

Q. You mean you cannot put the model or make an assessment as to where it was in relation to the position and size of your own vessel, is that right?

(continued)

A. You mean the direction?

Q. No, I don't mean the direction. I mean the direction and the distance.

A. I can't be sure.

Q. As far as you are concerned, as I note your phrase, "Things are all over suddenly". Is that right?

20

A. Right.

MR. STEEL: Thank you.

NO XXN BY MR. AIKEN

NO XXN BY MR. CORRIGAN

MR. LUCAS: May this gentleman be released?

BY COURT:

Q. Mr. KWOK, do I take it from the time you first saw this other vessel coming towards you, you were watching it from then on until the actual collision?

30

A. No. I noticed the other boat and then I sat down and then I looked at it again - sorry. I first noticed that boat. I sat down. I talked to myself and then I looked at it again.

Q. When you looked at it again, from then on you kept it in sight until it actually hit.

A. Yes.

Q. Can you remember now what part of the boat you could see?

40

A. I saw the bow.

Q. Do I take it from that that your impression was it was coming straight towards you?

A. Right.

Q. You said in your evidence you did not notice or did not pay attention as to whether it was turning. If it has been turning either way, do you think you would have noticed?

A. I would not have noticed it because I had no idea about the direction.

50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.14
Kwok, Sum
Cross-
Examination
(continued)

COURT: Members of the jury, any questions
you would like to ask?

MR. AIKEN: My Lord, I wonder if I can ask
one or two questions arising out of
those questions.

COURT: Yes.

XXN BY MR. AIKEN:

Q. You say when you first saw it, then you
took your eyes off it and sat down.

A. Correct.

Q. When did you think a collision was
imminent?

A. Immediately after I sat down. I had a
look at it for the second time and at
that time I noticed that the boat already
arrived, so I shouted "There is going
to be a collision" and then the
collision occurred.

Q. Did you have time to do anything to
protect yourself?

A. The time was too short. I didn't have
time to do it.

MR. AIKEN: Yes, thank you.

COURT: Thank you.

MR. LUCAS: I recall Mr. Raymond TANG

P.W.13
Raymond Tang
Examination
(continued)

P.W.13
FURTHER EVIDENCE OF RAYMOND TANG

PW.13 - Raymond TANG (recalled) o.f.a.
XXN. BY MR. LUCAS (continues)

Q. Do you have with you, Mr. Tang, the
photographs?

A. Yes.

Q. Would you be good enough to start your
evidence again with the photographs,
save and except that you do not need
to tell us about your experience and what
we are doing is discussing your visits
to the Flying Goldfinch in the slipway
of the Hong Kong Macau Hydrofoil Shipyard
in Kowloon on 12th, 13th and 14th of
July, what you saw and what you found
there.

A. Yes.

Q. Could you demonstrate by use of the
photographs and the sketches, and would

- you mind mentioning the number of the photograph you are looking at as you go along.
- 10 A. Yes. I intend to describe first of all the damage briefly on those two hydrofoils and then after describing the damages I will try to relate the damages from one hydrofoil to the other. I will try to illustrate the process of the collision and also the final angle of penetration.
- Q. Mr. Tang, to simplify life for you, would you go over to that board?
- A. Yes, certainly.
- Q. Because we have there the two plans and also the models. Would you mind coming over here?
- 20 A. Certainly, yes. Now, this is the general profile of the Flying Goldfinch. This is what we call the bow and this is the forward foil. The engine is here. We have the passenger space below the deck here and also another passenger space below that. This is the engine room. And we have also passenger space above....
- COURT: Mr. Tan, what you are saying has to be taken down, so would you please slow down.
- 30 A. The Goldfinch was hit in the bow as we can refer to the photograph 18. You can see here the bow is cut in the middle. If you refer to the photograph 16, that is the lefthand side, we are looking at the lefthand side of the bow of the Goldfinch. Now, you can see the bow plate is collapsed. If you refer to the photograph 28, you can see the collision bulkhead. What I refer to the collision bulkhead is here, the partition here between the fore-peak and the passenger space. This is the wall, the partition wall. And if you look at the photograph it has collapsed aft and the seats in the photograph shows the seats have collapsed. The collision bulkhead or the wall here had collapsed aft up to about 3 to 4 frame space on the lefthand side, about 2 to 3 frame space in the centre, in the centre line.
- 40 Q. Were those seats buckled with their back to the bulkhead?
- 50 A. Yes, the seat is -- all the seats back are adjoining to the bulkhead. So this one - because the collapse of the bulkhead, so the seat has collapsed aft as well. If we refer to the photograph 18, you can see here the window, that is about here, also collapsed

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13

Raymond Tang
(Recalled)
Examination

(continued)

- a little bit towards aft. How, that is the damage of the bow on the Goldfinch.
- Q. Sorry, can you just give us the photograph number again? Perhaps show it to us. Which one is photograph 18?
- A. Sorry, it should be photograph 17. Photograph 17 is showing the lefthand side of the bow, so the window here has also collapsed here a little bit. 10
- Q. That is the corresponding window...
- A. Yes, the window is here, it has collapsed. Now, the forward foil of Goldfinch also has suffered damage. The Goldfinch starboard foil tip, I mean the righthand foil tip, also suffered damage as it is illustrated in my own report, photo 3. This is the damage here. That relates to the photograph ...
- Q. Mr. Tang, sorry, could you just slow down please. 20
- A. That relates to the black and white photograph 15.
- Q. Black and white 25.
- A. That is the righthand side forward tip of Goldfinch. That is the damage of the foil tip at the leading edge, photograph 25. Perhaps this photograph gives a better illustration here. That is the damage. It is about 320....
- Q. Which photograph is that? 30
- A. You haven't got it. Well, not only the damage on the foil tip but also the foil attachment to the hull was also snapped off. It is shown in the photograph 21 here.
- Q. What I suggest to you, if you be kind enough, is to watch me, because if I am keeping up with you, I am sure everyone is. Now, we are on 21 now. What does that show please? 40
- A. That shows the foil has been detached or has been snapped off from the hull, from the foil box.
- Q. Next to the figures 12 and 13 ...
- A. Yes. Can I have sketch 3 please?
- Q. That is exhibit number what?
- A. This is the profile of the Flying Goldfinch forward foil. That is what I have shown previously and the starboard foil leading edge damage is about 320 ... 50
- Q. That is Exhibit P.8.
- A. And also there is a cut mark here.
- Q. Just wait until everybody gets a copy of this. Yes, please go on.
- A. And also there is also a little damage here about a hundred millimeter on the

port foil between the foil arm and the strut here.

In the
High Court
of Hong Kong

Q. I am so sorry, Mr. Tang, just to make it quite clear, you, the drawer of this, are standing in front of the boat looking towards the back.

Prosecution's
Evidence

A. Yes.

Q. Thank you. And you say there was some slight damage on the portside or that side.

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

A. At this position. Yes, on the left-hand side.

Q. Yes, please go on.

A. Other than these three damages and also the snap-off of the foil from the vessel, we have also some scratch marks on the surface of the port foil.

(continued)

COURT: What we are concerned with, Mr. Lucas -- no doubt we can have a great deal of it about the damage to the vessels, scratch marks on the foil, are they particularly relevant to the issue?

A. Because this foil penetrate into the hull of the Flying Flamingo, this part of the foil doesn't penetrate into it, that's why ...

MR. LUCAS: My Lord, to answer your question, you presuppose knowledge in me that I do not have. In order to short-circuit things, one needs to know what is and is not necessary. I don't have that knowledge, first of all. I assume that those who took the statements from this gentleman indicate that it is required to do this. I understand, for example, whether there was or was not damage to the lefthand side negatives any impact from that side.

A. If you refer to the photograph 27, you can see the scratch marks on the surface of the port foil.

Q. Which photograph is that?

A. 27.

Q. Thank you.

A. Now, this is Flying Flamingo. If you look at the photograph 1

Q. Sorry, it might be simpler - could you tell me if it's simpler for you - to explain why you are showing us these photos as we go along, what, if anything, do they indicate?

A. I try to illustrate those damage that incurred during the collision, one vessel incurred to the other, and from the damage we can tell the angle of blow and also the final angle of penetration. That is the sole purpose.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

- Q. I see
- A. Those damages that are not so relevant to the angle blow and penetration would not be discussed. Now, if you look at photograph 1, you can see the righthand hull was damaged. If you look at photograph 7, that gives you a better idea of the damage. The damage is from 32 to 51. It is about here. 10
- Q. From there to where?
- A. To 51.
- Q. Mr. Tang, rather than mark those plans, would you just indicate whereabouts ...
- A. The damage on the righthand hull is from about here to there. In other words, the forward engine wall is not damaged.
- Q. It actually went in at the engine room area.
- A. Yes.
- Q. So it missed the passenger compartment to the front and the passenger compartment to the back. 20
- A. Yes.
- Q. And did it go under the passenger compartment on top as well?
- A. Yes.
- Q. Yes?
- A. Other than the damage here, the hull and also the passenger space at the top, we also have as you can see here, there is a V-cut. 30
- Q. Mr. Tang, I would be very grateful if you don't mark it but just indicate it, if you will. Thank you. You are looking at photograph number 7 and the cut you are talking about is where?
- A. Other than the damage in the passenger space above the engine room and also the engine room, there is a V-cut here. The cut is below the floor of the passenger compartment at the back, and it is from about frame 20 to 31. The V-cut is about from frame 20 to 31. The damage at the bottom here is from that part to that part. And also you can see the I bracket which is the support for the -- it is also hit. The Flamingo's righthand foil was also hit at the bottom. Photograph 8. 40
- Q. Would you be good enough to look at the colour photographs, Mr. Tang, and look at No.2. 50
- A. Yes.
- Q. Is that the cut that you are talking about?
- A. Yes, that is the cut I talked about and also from that I can determine the angle

	of the cut. It is about 27 degrees from the horizontal.	In the High Court of Hong Kong
	Q. When you say 27 degrees down, which end?	
	A. From a horizontal line 27 degrees. This is the cut. It is about 27 degrees.	Prosecution's Evidence
	Q. Thank you. Tell us what exhibit number is it, please.	
	A. Sketch 5.	No.4
10	Q. P.10.	P.W.13
	A. Now, after talking those damages, I try to relate those -- the damages in those two vessels to each other. That is what I am trying to do. I assume this is the Flamingo travelling in that direction.. This is the Goldfinch. Well, the Goldfinch is coming into this direction. It is about 60 to 80 degrees from the longitudinal centre line of Flamingo, 60 to 80 degrees.	Raymond Tang (Recalled) Examination (continued)
20	Q. Can you tell us how you came to that conclusion?	
	A. I will substantiate my conclusion later, but now I try to relate the damages to each other for those two vessels. Now, the Flying Goldfinch is coming to that direction and it first hit the Flamingo on the righthand side, the passenger space above the engine room, in other words, behind the wheelhouse as you can see here.	
30	Q. Can you show us on the other one please?	
	A. Okay. As it is coming into that direction, you can see here the stem plate is -- well, it cuts into the Flamingo, the stem plate is being buckled aft. That is why you can see the photograph here for the stem plate, the starboard stem plate is buckled. It is damaged in a buckling fashion. I refer to photograph 19.	
40	Q. Photograph what?	
	A. 19.	
	Q. What does that show?	
	A. It shows the bow plate is folded up. That indicates -- just like a piece of paper, when it is hit in the front, it fold just like this. So it continue to go into the passenger space here and now the foil comes into contact with the Flamingo's foil. In the process it cuts the bottom of the foil. Because of the cutting acti n, this foil is snapped off before the foil completely pass each other, and because the resulting force here, cutting on here, and also the Flamingo is moving in that direction, so Goldfinch swing. The Goldfinch swing but	
50		

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

- still continue its penetration and finally comes into this angle. Now, this one you can -- if you refer to the port stem plate of the Goldfinch, the stem plate is being pushed inside because it is resting in this angle, so the stem plate or the bow plate is being pushed inside. If you refer to the other photograph, photograph 17, you can see the lefthand side stem plate or the bow plate is being pushed inside, unlike the starboard side which is folded. But one thing I have recollected is the penetration is not that deep because the bow has been collapsed aft, so it doesn't go beyond that, that's why it's drawn in a dotted line. And also the Flamingo when it is hit, it heeled towards the portside. It is not possible for me to draw the angle before the blow and also after the blow on the same sketch, so I presume it is not listed. It is drawn in a not listed position. I have mentioned earlier the lefthand foil of Goldfinch has scratch marks because it penetrates into the double bottom.
- Q. Sorry, I didn't catch that.
- A. I have mentioned earlier the lefthand side of the foil on Goldfinch has scratch marks. Those scratch marks are incurred because the foil penetrated into the double bottom space. 10
- Q. That is in that cut that you saw?
- A. Yes, the cut we saw, the V-cut we saw. And if you refer to the photograph 18 and 10 -- 20
- Q. Photographs 18 and 10?
- A. Yes.
- Q. Could we have those?
- A. Yes, you can see the bow is cut in the middle and the 10 is the back here buckled. That shows the deck here is penetrating into the Goldfinch bow here, cut into it, right to the collision bulkhead. 40
- Q. So photograph 10 shows the sides that fit into photograph 18, is that the position?
- A. Yes. Now finally, we have to assume - suggest to me why could I determine the angle of blow is between 60 and 80. I have to substantiate now. Now assuming that the vessel - this is the Flamingo and this is the Goldfinch. Say, for example, they are running in parallel direction, if those two foils are hit against each other, that means their foils will cut each other at the leading edge. 50

10 Q. I think they are both the same.
A. Identical. So now if this is the Goldfinch - sorry, if this is the Flamingo and this is the Goldfinch, if they are running in parallel direction they will cut each other on their leading edges. But Goldfinch's leading edge was damaged, Flamingo's leading edge was not damaged, so that is not possible for a thorough collision. Not only that. If they are running in parallel direction, Goldfinch's right-hand foil was snapped off but Flamingo's right-hand foil was not snapped off. If they are running in parallel they will subject to the same bending movement. So that is ruled out. That possibility is ruled out.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

20 Now if Flying Goldfinch hit Flamingo at the right angle - now will it be possible for Goldfinch to penetrate or to hit Flamingo at the right angle?
It is not possible because now the hit at the foils - well the damage at the foil of the Flamingo and also the damage on the Goldfinch determine their position of hit against each other, so that determines the position of Goldfinch, but it could be in that direction, or in that direction.

30
40 Now if Goldfinch is hitting Flamingo in the right angle, you can see here as I mentioned before the collision bulkhead is not damaged - if they are hitting at right angle the collision bulkhead - no, not the collision, sorry, the engine-room bulkhead, the forward engine-room bulkhead would have been damaged. But the engine-room bulkhead is not damaged. I have photograph to - now this is the photograph showing --

50 Q. Do we have any of those?
A. No, you haven't got it.
Q. Sorry, Mr. TANG.
A. So you will have to take my word for it. The bulkhead here is not damaged, so Goldfinch is not possible to hit it at the right angle. So when you hit it from the back --
Q. Can't you use the models? It is clearer. From here it is very difficult for his Lordship and the jury to see. Could you use the two of them and sort of - if it is

(continued)

possible, please say so.
A. Could it be possible, for Goldfinch to hit from the back? If it is hitting from the back, well the left-hand foils for the Goldfinch will subject to the greatest impact force, but the Goldfinch port foil was not damaged and also the penetration is not deep enough to suggest that it penetrated from the back, and also if it penetrated from the back here, the right-hand foil would not hit Flamingo's right-hand foil. 10

So that only leaves us with the question at what angle between parallel direction and the right angle the Goldfinch hit Flamingo? Between parallel direction and the right angle it is about 90°. So we will have to find out which position between those angles the two hydrofoils hit each other. 20

Now I presume if it is hitting at about 45°, then because the line of force will induce about the same bending movement on the Flamingo's foil and Goldfinch's foil, but Flamingo's foil not only suffers no damage - I mean on the attachment - the foil attachment not only suffers no damage, there is no looseness, it is intact, and no suggestion of looseness, so that suggests the angle must be greater than 45. 30

Now the angle of hit is between - either it is from 45 to about 90°. But 90° is ruled out, so the more likely angle is between 60 and 80, but if the angle is smaller, the angle is smaller - if we assume the angle is smaller, then the Goldfinch will hit further aft than the damage Goldfinch actually has suffered.

Now if it is at a narrow angle, it will cut the foil at the bottom, continuing its direction but swing a little bit, then it will cause - it will hit Flamingo further aft in the passenger space. 40

COURT: If you could use the models, it is very much easier for us to see. I can assure you.

A. Yes. Now as I have suggested before, the angle of hit would be between 45 and 90°. If the angle of hit is at, for example, 50° or 45°, they would subject to about the same bending movement. 50

MR. CORRIGAN: Sorry?

In the
High Court
of Hong Kong
Prosecution's
Evidence

A. If it is a 45°, now if it is a 45°, sorry, I draw here, 45, then the Flamingo will subject to a bending movement. The foil will subject to a bending movement to bend it.

Q. The foil of the Flamingo will be bent.

A. The Flamingo will be hit because at 45°, the same angle of force will apply to the Goldfinch foil and also at 45° --

Q. -- which would mean, as I understand it --

A. -- they will subject to about the same bending movement.

Q. And you would expect the same damage on both.

A. Yes.

Q. Whereas in fact it was not the same amount of damage on both: one, it had been sheared off altogether and the other one, it was still firmly placed there.

A. Yes.

Q. Right, thank you.

A. So that left us with the damage between 45, from here, to 90°. The damage should be 45 to 90°, but 90° is ruled out.

Now that is how I arrived at between 60 and 80 because at smaller angle, at narrow angle - at narrower angle, the ship --

Q. They are in fact to scale, Mr.

A. Yes. That will penetrate - continue its penetration and turn, it will hit further aft into the passenger space. So it should be at a broader angle or greater angle than 45.

Q. Let me see if I have got this right. You've negatived 45° because you would expect the same amount of damage to the two foils.

A. Yes.

Q. You've negative 90° or more because otherwise the direction of impact - there wouldn't have been a collision between the two foils in that way.

A. Yes.

Q. So it is not 90 and it is not 45. It is somewhere in between that.

A. Somewhere in between, yes.

Q. You say that you could tell at 60 to 80 on the basis that had it been broader - narrower than that, the impact would have been further back --

A. Yes.

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

- Q. -- into the passenger cabin rather than the engine-room --
- A. Yes.
- Q. -- of the Flamingo.
- A. Yes.
- Q. So by looking then at the point of impact, you arrive at your conclusion of 60 to 80°.
- A. Yes.
- Q. Now had the foils, Mr. TANG, missed - if that angle that you gave is right and had there been no impact on the foils - in other words, they only caught each other by a margin, a very small margin, what would have happened? 10
- A. If they don't hit each other on the foils, that means the Goldfinch will go into the passenger space at the back, probably cut it into two.
- Q. Probably cutting it into two. 20
- A. Yes.
- Q. It was in fact those foils are held on - they are of tensile steel, are they not, and are very very strong?
- A. Very very strong. As a matter of fact, I have got --
- MR. STEEL: My Lord, I object to this continuous leading of this witness. The last three questions have been classic examples.
- MR. LUCAS: I'm sorry, my Lord, that is absolutely right. 30
- A. This is the one-inch high tensile steel holding the foil to the hull, 24 of them.
- Q. What happened to those?
- A. They are all snapped off, 24 of them. And there is some - I think there is a previous case of a hydrofoil colliding with a ferry. It cut open the ferry's hull and caused the ferry to sink by cutting the hull. The hull, of course, is also made of steel, very sharp and very strong. As a matter of fact, because the foil is supporting the whole weight of the ship, if the body is about 80 tons, so each foil is supporting at least 40 tons, plus a factor of safety; it is very strong. 40
- Q. If you look at photograph 26, what does that show, if anything?
- A. Yes.
- Q. Could you tell us what that photograph shows? 50
- A. That shows the Goldfinch starboard foil being snapped off from its hull. All the

bolts are bent and some are snapped, some have fallen into two, some of the bolts.

In the
High Court
of Hong Kong

Q. Mr. TANG, before you move on, you examined the boat the Goldfinch for damage. Did you find any damage other than the damage that you showed us?

Prosecution's
Evidence

A. Now --

No.4

10

Q. Sorry. Did you find it - let's not go on - did you find any damage that was unrelated to the collision?

P.W.13
Raymond Tang
(Recalled)
Examination

A. Damage unrelated to the collision? No. I have missed some --

Q. Sorry. What about the foils? Are there any other marks on the foils?

(continued)

A. Which vessel are you suggesting?

Q. Both, or either.

A. That will come later - about the angle of the flaps - that will come later.

20

Q. In relation to the Goldfinch, sorry, were there any marks or damage to the foils unrelated to this accident which you could see?

A. The steering of the Goldfinch is at 11° port turning and the flap is a little bit deflected in port turning direction.

Q. We are talking about damage to the foils, unrelated to the damage - damage unrelated to the impact.

30

A. No, no.

Q. I'm sorry.

A. As a matter of fact, the collision force was taken up by the foil as well as the engine and the gear box. The engine was pushed aside and the gear box was also lifted. The entire collision force is taken by the foil and the machinery.

40

Now how shall I determine the final angle of penetration? I haven't described it yet. (puts up another plan on the board)

Q. What number is that?

A. Sketch 5, but I have made some comment, but it is the same.

Q. Is that the same one as we have already - it's already there.

A. Yes, it is the same one, the same one, but I have made some comments here and some (unfinished). I refer to photograph 3, the colour photograph 3. You can see the V-cut here as I have described earlier, the V-cut at the double bottom of Flamingo below the aft passenger space.

50

COURT: Sorry, it is photograph no.?

A. 3, colour ones. The colour one is a close-up

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination
(continued)

of the black-and-white photograph 7.

- Q. Photograph 7 of the black and white.
A. Yes.
- Q. Whereabouts? is that the cut at the --
A. Yes, the V-cut at the bottom of the passenger space, and this is the close-up - the colour one is the close-up photograph of the V-cut and you can see the damage at the I bracket, the bracket holding the shaft. 10
- Q. It is that thing that is jutting out at the bottom there on the right-hand side of the colour photograph?
A. Yes. The I bracket is about here and also the cut is indicated here. The cut at the I bracket corresponds to a cut at the Goldfinch foil. (puts up another sketch)
- Q. And what sketch is that?
A. Sketch 3.
- Q. Exh. No.8, my Lord. 20
A. (replacing the two models on the board) Now this is the I bracket. The position of the I bracket over there and the cut mark also there and this is the - well, the Goldfinch port foil. The damage is at this position. By projecting it down again at the same position, so in other words I have the Goldfinch foil and the I bracket fixed in that position. If that is fixed - if the damage at the I bracket is fixed and if the damage in the Goldfinch port foil is also fixed to the I bracket, that leaves with the angle of - final angle of penetration either in that or in that (indicates). But the reason for me to suggest it at 104 is because we have the damage here on Goldfinch, the starboard side, Goldfinch, and this damage corresponding to a cut at the chime of Flamingo. This is the cut I refer to (indicates on a photograph) 30 40
- Q. What is that photograph?
A. You haven't got that photograph.
Q. Is it in the black-and-white photographs?
A. I don't think so. I have given the whole negatives to the police to make prints.
- Q. Okay.
A. So we get a cut mark here at the final angle of penetration because that cutting at the chime of the Goldfinch - that determines to locate the position of Goldfinch once stuck with the Flamingo. 50
- Q. Could you look at photograph 9, please, black-and-white?
A. Yes, it is there, sorry.

Q. Could you point it out to his Lordship and the jury? In the High Court of Hong Kong

A. Will you please refer to the photograph 9 which shows the cut at the chime here of Flamingo which corresponds to the cut in Goldfinch port foil here. Now this is the Goldfinch port foil hitting at the chime of Flamingo, so that determines - that locates the angle of penetration and again Hong Kong Macau Hydrofoil has made a mock-up of the foil for the Goldfinch and the angle of the foil arm and also the angle at the foil here matches with the V-cut at the double bottom, so again it substantiates the foil goes into there. Again, I have made a photograph of the --

Q. Yes, go on.

A. Now after that, well, I would have to --

Prosecution's Evidence
No.4
P.W.13
Raymond Tang (Recalled)
Examination
(continued)

10

20 COURT: Would this be a convenient moment for the mid-morning adjournment?

11.35 a.m. Court adjourns

11.55 a.m. Court resumes.

Appearances as before. Jury present.
All accused present.

P.W.13 - Raymond TANG O.F.A.

XN. BY MR. LUCAS continues:

Q. Mr. TANG, have we now finished with the collision damage and your conclusions?

30 A. Yes, so I carry on with other items.

Q. Yes.

A. Now the next question is: how shall I determine at the time of collision both hydrofoils are flying?

40 If you refer to photograph 6 and 2, black-and-white, if you look at the photograph here, that is photograph 6 - sorry, photograph 2, Flamingo's right-hand foil flap was fully down and if you look at the - because the foil is damaged here, it is difficult to determine whether it is fully down, but if you look at the other photograph, photograph 6, the inside end of the flap here, I have taken measurement which is equal to 31 mm. from the neutral position down - 31 at the inboard end, 31 mm., which is an indication of full flap travel.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

Q. Full flaps. Yes, please go on.

A. So in other words, the vessel is turning towards port by the use of the flap.

Q. This is the Goldfinch?

A. No, that is the Flamingo. Now the rudder was in neutral, in neutral position. In other words, well the boat is turning towards port entirely by the use of flap only. The rudder was in neutral position. 10

Now if you look at photograph 5, the colour photograph, you can see the throttle, the control for the main engines, is at full speed ahead, the Flamingo.

So the reason for me to come to the conclusion that Flamingo was flying because if the vessel is hull borne you can't steer the vessel by the use of flaps. You have to use the steering gear, you have to use the rudder; and the flaps for the engines are at full throttle so the engine is full power, so it is flying. 20

Now as regards the Goldfinch, well, the Goldfinch has about 11° rudder angle, port turning. The starboard flap for Goldfinch is down a little bit by about 10 mm. and the port flap is up, negative flap, about 10 mm., very little port turning, very little. 30

COURT: Sorry, the starboard flap was down --

A. Down 10 mm. measuring from the trailing edge of the foil to the trailing edge of the flap down by 10 mm.

COURT: And the port flap was --

A. -- up by the same amount.

Q. Indicating what?

A. Slight port turning if it has any movement, very slight.

Q. Yes. 40

A. Now if we can determine Flying Flamingo is flying, then you can see here - this is Flamingo and that is Goldfinch, when it is foil borne it has about a 1.5 mm. foilborne draft, the same for both vessels. if it is on hull then the draft would be about 3.5 mm. So, in other words, there is a draft difference between flying and on hull of 2 mm. Now if Flamingo is flying and the Goldfinch was hit at the middle of the bow, so 50

Goldfinch must be also flying. If not, the bow of the Goldfinch will bury into the engine room of Flamingo

In the High Court of Hong Kong

Now that is the peak of the Goldfinch the peak of the Goldfinch here, the forepeak. Now if Goldfinch is on hull, the peak of the Goldfinch will be 2 m. down, about this line, the red line here, the red line here. So if Goldfinch was not flying, the bow here will go below the passenger deck and entirely buried into the engine-room.

Prosecution's Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

So I deduce that both vessels were flying at the instance of collision.

Q. Apart from deciding that they are both flying, what else did you elicit in your enquiries?

A. I tried to find out whether the collision is due to any mechanical failure.

For Flying Goldfinch, on the 16th of July, when the vessel was still on the slipway, I went to survey - we test as a matter of fact, we test the flap and also the rudder in the presence of Hong Kong Macau Hydrofoil Superintendent and also ship builder's representative. We used - because the vessel was on the slipway, we can't run the main engine on Goldfinch, so we used a hydraulic pump from shore to supply hydraulic power to the vessel and operate the flaps and also the rudder.

Q. Yes, what did you find?

A. We take some measurement on the rudder, port and starboard and also with the flap up and down. We found it satisfactory.

Q. What do you mean by "satisfactory"?

A. Well because it operates as it was designed in the opinion of the builder representative.

Q. What about your opinion, Mr.?

A. Well I regard it as satisfactory. Would you like to take down the measurement of the flaps --

Q. Yes, please.

A. -- travel up and down and also the rudder? When we test the port bow flap, when it is down, positive, port bow flap, down, outboard travel, outboard flap travel, by 150 mm. down.

Q. Yes.

A. The inboard end of the flap was 29. Well because the flap at the inboard end is smaller,

(continued)

narrower, at the outboard end it is wider, so when it travels - just like a piece of paper (demonstrates with a piece of paper) This is the foil flap, at the inboard end, outboard end. If it is travelling by the same degree, the measurement will be different, if measure it down. I am measuring from the foil, measuring it from the foil, so the measurement is different: inboard end, outboard end. So we measure both. 10

The flap is moving like that. So when it is moving down, because at a greater radius, by the same angle of deflection, it will have greater travel. At the inboard end, the travel measurement is less, at the inboard end. So we have a measurement of about, port bow flap, outboard travel, 152 mm., inboard flap travel is 29. Starboard bow flap, 156 mm. outboard flap travel; 26 mm. inboard travel, positive. Both are positive. 20

Now we come to negative. Port bow flap negative, outboard travel 35 mm., inboard flap travel negative 18 mm. Well starboard bow flap, inboard travel, negative, 29; outboard travel 16 - sorry outboard travel 29; inboard travel 16, negative.

Now if you look at the figure here for Flying Goldfinch, the inboard flap travel varies between 29 and 26. 30

- Q. What does that mean?
A. Flap down, but whereas on Flying Flamingo, I have taken measurement on the inboard flap travel which is 31. That is an indication it is fully down, the flap is fully down on Flamingo.
Q. What conclusions does that lead you to?
A. That leads us to the flap was operating satisfactorily, even after the collision, and the rudder was operating satisfactorily. 40

Again, I am not quite satisfied with myself because I don't know whether the engine was running okay or not. So at another occasion, when the vessel was at the sea again, - I think that was the 21st of July - we have both engines started and I again tested both flaps on Flying Goldfinch and found them satisfactory.

- Q. That is the Goldfinch? 50

10 A. That was the Goldfinch, and both engines are running without any problems.

Q. You couldn't test the Flamingo, of course, because that was --

A. Yes, that is ruined.

Q. What conclusions does all this lead you to, Mr. TANG?

A. For Goldfinch, I would conclude the collision would not be due to mechanical failure.

Q. Yes, go on, anything else?

A. Now I have based my original assumption in saying Flaying Flamingo was flying simply for the fact that the flap was down.

Q. Yes.

A. The flap was down, but would the flap be influenced by after the collision?

20 Q. And would it?

A. Well my conclusion is no.

Q. Why?

A. Now if the vessel sinks into the bottom, if it rests on the sea bed the flap, if it can be - at the most if it yields to the pressure of the weight of the boat, the flap will move up, it will not be in a downward position.

Q. It was in a downward position?

30 A. It was in a downward position, and I also have concluded the flap was hydraulically locked in that position, it is not possible to manipulate even though both engines - even though port and starboard engine supplied hydraulic power to both flaps.

Now if the starboard engine was knocked off, as a matter of fact, toppled off from its foundation, so the hydraulic power was lost.

40 There is no hydraulic power to operate the flaps after the collision.

Q. So they were locked in that position.

A. It was locked in that position, and I have also tested the hydraulic pipe. From the control, from the wheelhouse up to the hydraulic cylinder inside the foil arm, I found the hydraulic pipe was intact, so it was hydraulically locked in that position.

Q. Could that have been moved just before the collision?

50 A. Moved just before the collision?

Q. Could it have been?

A. Yes.

Q. The control of that particular type of vessel has two hands rather than one, two flaps, two hands --

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

- A. Yes.
- Q. -- to operate the flaps.
- A. Yes.
- Q. So the movement of one, could that cause what you found or not?
- A. I think we have to look at another plan.
- Q. Leave the plan aside, Mr. TANG, please. Rather than go through the plan, would you just answer the question? 10
- A. Okay.
- Q. Would one pulling one suffice?
- A. Now I would say the starboard engine for starboard flap - are you talking about Goldfinch or Flamingo? Sorry.
- Q. Flamingo.
- A. The starboard engine controls the port and starboard flap and the windlass and the port engine controls the steering, supplies the hydraulic power to the engine gear. 20
- Q. Sorry, Mr. TANG, perhaps you would just listen. The point I am interested in is this; you found the rudder in a particular position.
- A. Yes.
- Q. You've told us, I think, the rudders are individually controlled.
- A. Yes.
- Q. Two separate heads. The flaps are, I beg your pardon!, the flaps. Could what you found be caused by a movement on one of these just before the collision? 30
- A. Yes, that is why I have to refer to the plan. I can't remember exactly. I must be sure myself.
- Now I have made some comment after study of the plan. I would conclude that when you are operating the starboard flap, you cannot operate the port flap. That is from the study of the plan. So you can only operate one after the other. 40
- Q. And you have no idea as to when that was operated before the collision.
- A. Before the collision and before the engine was knocked off.
- Q. But not when, at what precise time, of course, you would not know.
- A. No.
- Q. In relation to the Goldfinch, you've told us something about the rudder there, have you not? 50
- A. Yes, the rudder was at 11° port turning.
- Q. What did you conclude from that?
- A. As a matter of fact, when the vessel was flying, to have a speedy turning and

speedy control, the flap should be used and, well, I would say the starboard engine controls the starboard flap and the windlass, but the windlass was destroyed during the collision. But the destroy of the windlass has no influence on the control of the flap and the steering because when you are flying you have to, before you can apply hydraulic power to the flap, you have to change over cork, that means the windlass hydraulic pipe is isolated.

10

Q. The windlass?

A. The windlass, for the anchor, you know, the anchor, the windlass in the bow.

Q. I'm sorry. I don't understand that at all. Could you explain what you are saying?

20

A. The windlass is the machine - it is a machine situated at the forepeak at the bow, at the deck of the bow, and to wind up an anchor.

Q. Right.

A. In this particular vessel, the hydraulic power for the operation of the windlass also comes from the starboard engine, but when the vessel is at sea, in order to operate the flap, you have to change over the hydraulic power to the flap by passing the hydraulic power to the windlass, so the damage of the windlass has no influence to the steering and would not incur any loss of hydraulic power.

30

Q. Does that mean that you operate both at the same time, that is distinct from the Flamingo?

A. Yes, yes.

40

Q. Both flaps operate together.

A. You can operate both flaps together, you can operate.

Q. And what I am asking you is not that. What did you conclude, if anything, from the rudder of the Goldfinch? What conclusions did you come to finding the rudder of the Goldfinch in the position that you did, if any?

A. From their angle of the rudder?

50

Q. Yes.

A. Well, the Goldfinch was turning port with the rudder and after - perhaps, you know, the man at the wheel turns the vessel with the steering and then he hasn't got sufficient time to turn both flaps.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13
Raymond Tang
(Recalled)
Examination

(continued)

COURT: Will you help me again, sorry,
Mr. TANG? Your conclusion is that at
the time of the collision the Goldfinch
--

A. Yes, yes, with the rudder turning to port
and a little bit on the use of the flap,
a little bit --

Q. It was turning to port a little bit on
the use of the flap.

A. Because the flap travels very little. 10

Q. Because the flaps turn was very little.

A. Yes.

Q. That was at 11°.

A. The rudder was at 11°.

COURT: Your conclusion was the Flying
Goldfinch was turning to port, the
rudder was 11° and there was use of some
flap but not very much?

A. Not very much. The use of rudder, when
the vessel was flying is all right, up to 20
about 10° normally. Excess use of
rudder would cause drag would overload
the engine and the vessel may come to
a hullborne condition.

Q. You say at 10° is the maximum you could
use the rudder?

A. Yes, according to the manual.

MR. LUCAS: Thank you, I have no further
questions.

Cross-
Examination

XXN. BY MR. STEEL:

30

Q. Mr. Tang, how long have you been attached
to the Marine Department here in Hong Kong?

A. Over 6½ years now.

Q. And you are an Acting Senior Surveyor?

A. I am a Senior Surveyor now.

Q. Since August 1982 you have become not
a Senior Surveyor rather than an Acting
Senior Surveyor?

A. As a matter of fact, I was promoted in
April last year. At the time of writing 40
the statement I was not confirmed yet,
but it was back dated to April 1st
last year.

Q. I don't understand.

A. I was paid as a Senior Surveyor from April
1st, last year.

Q. But you didn't receive the status of a
Senior Surveyor until after August?

A. Yes.

	Q.	How many Acting Senior Surveyors were there in the department when you carried out the survey?	In the High Court of HongKong
	A.	Maybe five - well, I can't remember now, because some of the senior surveyors have gone on leave then we have to get somebody to act on behalf of him. So it varies from time to time.	<u>Prosecution's Evidence</u>
10	Q.	And what were your duties as a Senior Surveyor?	No.4 P.W.13 Raymond Tang (Recalled) Cross- Examination
	A.	My duties vary. I am an engineer and ship surveyor. That means I am responsible for machinery and hull, and I have surveyed jetfoils, hydrofoils. I also have surveyed the catamarans built under my supervision, on machinery and on hull.	(continued)
	Q.	This is for classification purposes, isn't it?	
20	A.	No, for passenger ships we don't delegate hull and machinery to classification society. For passenger ships we survey on every bit of them, hull and machinery.	
	Q.	So for passenger ships registered in Hong Kong the Marine Department carry out the hull and machinery and other statutory surveys?	
	A.	Yes, and also plan approval before a vessel was built.	
30	Q.	And the sort of jobs that this involves is inspecting vessels to find out whether they satisfy minimum strength requirement?	
	A.	Exactly.	
	Q.	Whether the vessels are suitably fitted with safety equipment?	
40	A.	Again I would repeat, for passenger ships it is not a matter of safety equipment, but hull and machinery, because before the vessels can carry any passengers they require passenger safety certificates. Without a passenger ship safety certificate the vessel cannot carry any passenger and no classification society is empowered to issue passenger ship safety certificates. The responsibility is entirely with the Marine Department.	
	Q.	I don't understand why you disagree with me. I was suggesting that part of the Marine Department Surveyors Department's job was to assess the safety equipment of passenger ships registered in Hongkong?	
50	A.	Safety equipment only relates to cargo ships. The hull and machinery would be delegated to classification society. But as a Government surveyor, the surveyor would be responsible for hull, machinery as well as safety equipment.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- Q. I still can't understand why you disagree with the point that I am making. Passenger ships have safety equipment, don't they?
- A. Yes.
- Q. And one of the jobs of the Marine Department Surveyors Department is to inspect the safety equipment of passenger ships registered in Hongkong?
- A. Yes, but also on hull and machinery.
- Q. I did use the word "part of the job", didn't I? 10
- A. I am sorry.
- Q. And it also involves, I suppose, inspecting the results of repair work on passenger ships?
- A. Yes, that's right.
- Q. In what circumstances have you had to prepare a damage survey?
- A. Just like Flying Goldfinch and Flamingo, I have to prepare a damage report. 20
- Q. What other collision damage reports have you prepared?
- A. We don't have collision very often in Hongkong, so this is my first time to prepare the collision damage report.
- Q. So the answer is that you had not done one before?
- A. No.
- Q. This was the first collision survey that you had ever undertaken? 30
- A. Yes.
- Q. It was also presumably the first time that you had been ever invited to prepare an angle of blow survey report?
- A. Yes.
- Q. Captain Pyrke who has, I believe, considerably more experience than you in these matters has told us that it is exceptionally difficult to be very precise about speed and angle of blow when confronted with severe and extensive damage? 40
- A. I don't agree with you. Mr. Pyrke is a nautical surveyor, is also a master mariner, but he may not be a naval architect. I don't think he may be more experienced as far as naval architect, hull damage and survey of hull is concerned because as an engineer and ship surveyor I am responsible for hull and machinery, not on navigating matters.
- Q. But you would not bow to Capt. Pyrke? 50
- A. Even if he is senior to me, no.
- Q. I am not suggesting that you just bow because he is senior, but I understand you would not bow to Capt. Pyrke's opinion that it is exceptionally difficult to be precise when you are faced with heavy damage?
- A. No, not in this particular case. I am quite

	confident to my findings.	In the
	Q. You see there are some people who almost spend their lives inspecting collision damage and assessing angles of blow, but you don't think that that is an expertise which is difficult to pick up?	<u>High Court of Hong Kong</u>
	A. It is difficult to pick up. That's why I leave the angle of blow between 60 and 80. I am not pin-pointing a particular degree. I have made allowance on that difficulty already.	<u>Prosecution's Evidence</u>
10	Q. But it is right to say, isn't it, that you disagree with Capt. Pyrke's view of the angle of blow?	No.4
	A. It is difficult. I have made allowance for the difficulty already.	P.W.13
	Q. Now listen to the question. It is right, isn't it not, that you disagree with Capt. Pyrke's opinion of what the actual angle was?	Raymond Tang (Recalled)
	A. I don't remember his suggestion of angle of blow. Because we worked independently I don't know his suggestion. The angle of blow is entirely based on my damage survey and damage report, so I don't know his opinion.	Cross-Examination
20	Q. Are you telling me that you are wholly unaware of Capt. Pyrke's statement as to what the angle of blow was?	(continued)
	A. Now because we were in a rush to finish the report, and he was the investigating officer, he had to submit his report within two weeks after the accident. I was under the same pressure. So after finishing my report I submitted it to him, and at the time of submitting the report he had not even finished his report. So my report is entirely basing on my opinion, not influenced by him. I have not interviewed any passenger, any crew and the angle of blow is entirely on the damage only.	
30	Q. I have never asked you the question whether you had been influenced by Capt. Pyrke's views or any other piece of evidence. Just listen to the question quite carefully. I gather you disagree with Capt. Pyrke's opinion as to what the angle of blow actually was?	
	A. I think so, yes.	
40	Q. You know very well what's Capt. Pyrke's opinion of the likely and probable angle of blow, don't you?	
	A. No.	
	Q. Have you not seen the statement he has prepared?	
50	A. No.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- Q. Which deals with that matter?
A. No, I haven't seen his statement.
Q. Have you not discussed it with him and has he not told you what his views are?
A. Yes, he has discussed with me and he has told me his opinion.
Q. And therefore you are fully familiar with the fact that you are not eye to eye on the angle of blow?
A. No, I don't think so. 10
Q. Now, before we come to the detail of the evidence that you have given about the damage and what lessons you have learned from it, let me make sure that I have understood your observations about matters not connected with the damage. You have found that the flaps of the Flamingo were in a hard to port turning position?
A. Yes.
Q. And that at some time which you don't know, she started to turn left, to port before the collision? 20
A. Yes.
Q. And since the extent of the damage was to destroy the hydraulic apparatus operating the flaps, those flaps were locked and could not have been moved after the collision?
A. No.
Q. You also found that the engine control of the Flamingo was in the hull ahead position at collision? 30
A. Yes.
Q. Could that have been moved after the collision?
A. It could be, yes.
Q. Was there any indication from your inspection as an engineer as to whether the engines had been working and, if so, how at the time of impact? 40
A. The Flamingo was surveyed at the end of March last year, only after the collision happened, less than four months after the survey on hull and machinery by the Marine Department surveyor. So I believe it would be operating in a satisfactory condition only just 3 to 4 months after the survey.
Q. Was there any evidence from your inspection of the Flamingo after the accident as to whether the engines were working full or half ahead or anything immediately before the collision? 50
A. I think so because the port -- I think they are operating in full ahead position because on port engine the Vulcan coupling, I mean the coupling between the engine and

gear box was sheared. If the engine was not operating at full ahead position it would not have such high power to break the coupling. If the engine was operating idly or at a slow speed the engine would be stalled instead of shearing off the Vulcan coupling. So I believe both engines should be operating in --

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

10

Q. So your conclusion is that at some stage, you don't know when, prior to the collision the Flamingo was making a port turn under full power?

A. Yes, I believe so.

Q. Now the Goldfinch you found that the rudder was angle 11° to port?

A. Yes.

20

Q. You have told us a bit about how a hydrofoil should be operated. Have you ever navigated a hydrofoil?

A. No, my opinion is from the manual.

Q. So what the manual says is as good as what you know?

A. Exactly, as far as navigating matters are concerned.

Q. What does the manual say about the use of rudder?

30

A. When the vessel was flying it should be limited to 10°.

Q. I think you have said earlier that what the manual said was it should be limited to a maximum of 10°?

A. Yes.

Q. What the manual actually says is that it should be limited to about 10°. Are you seriously saying that there is anything wrong in accordance with that instruction about using either 9° or 11°?

40

A. Because the use of rudder excessively would cause drag on the vessel and overload the engine and would cause the speed of the vessel to drop.

Q. I'll come to that in a moment. Are you seriously saying that you disapprove of using either 9° or 11° in the light of what the manual says?

A. No, I am not a navigator. It is not in my position to say that.

50

Q. You told us that the impact of using a substantial angle of helm is to -- well, or what does it do; what is the effect of using substantial degrees of helm, say 10°?

A. As I have said before, I am not a navigator. What I said on the use of navigation and the use of rudder may not be correct.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

Difficult for me to say that. I have never driven a ship before.

COURT: What is the effect of using substantial amounts of rudder angle?

A. It will slow down the ship.

Q. What do you find so terrific about that?

A. I don't know.

Q. Assume, would you, that a hydrofoil is moving at its full speed and 10° of rudder is applied, how quickly and to what extent is speed lost?

10

A. I don't know.

Q. What other effects would the reduction of speed have?

A. Again I am not a navigator, I don't really know. I have never driven a hydrofoil. I don't want to give some opinion which I am not certain myself.

Q. Would it increase the draft?

A. It would, yes, if the speed is reduced the draft would be increased.

20

Q. Is that a linear relationship or does it lose more draft quickly and then --?

A. I don't know.

Q. But anyway, as a turn develops, the speed reduces and the draft increases, is that right?

A. Yes.

Q. Did you look at the rudder indicator in the wheelhouse of the Goldfinch?

30

A. Yes, I did.

Q. What did you find?

A. I found it at 1°, but it doesn't really tell much because there is no electric power so the indicator may not be working.

Q. Sorry, I miss that last sentence. It may not matter because --?

A. Because there is no electric power and if the rudder is not switched on then there would be no indication of the rudder angle.

40

Q. I see, that it is not a -- it's an electrical indicator and not a mechanical one?

A. Yes.

Q. So it was effectively supposed to be, at least, at 0?

A. Yes.

Q. What about -- you found that not only was the rudder 11° to port, but you also found that the flaps were adjusted to a slight port turn position?

50

A. Yes.

Q. Again I don't know if you can help, but that is, is it not, a perfectly satisfactory mode of effecting a port turn, a

	combination of rudder and of flap?	In the
	A. I am sorry, I don't know.	High Court
	Q. Have you not examined the material	<u>of Hong Kong</u>
	from the manufacturers and from the	Prosecution's
	makers of this equipment to find out	<u>Evidence</u>
	what they recommend about the use of	
	flaps and the use of rudders?	
	A. No, I have not. I suppose that would	No.4
10	belong to the master mariner's	P.W.13
	responsibility.	Raymond Tang
	Q. Again I gather, again I may have	(Recalled)
	misunderstood what you said, but you	Cross-
	made some observations that the	Examination
	condition of the flaps and the	(continued.)
	condition of the rudder on board the	
	Goldfinch was consistent with a port	
	turn having been just initiated and	
	full flaps not yet having been achieved?	
	A. I would think so.	
20	Q. And of course it is impossible from the	
	wreck of the ship to establish what	
	the rudder and helm position had been	
	before?	
	A. Are you talking about the Flamingo?	
	Q. Goldfinch.	
	A. No, I have taken measurement on the	
	rudder and there is no damage on the	
	rudder and the hull other than the bow.	
	Q. Again I don't know if you can help us	
30	with this. You told us that there can't	
	be any mistake about the position of the	
	flaps and rudder of the Flamingo because	
	the hydraulic system was damaged in the	
	collision?	
	A. Yes.	
	Q. And therefore they were locked?	
	A. Yes.	
	Q. What about the Goldfinch, could those flaps	
40	or that rudder position have been acquired	
	after the collision?	
	A. They could have been.	
	Q. Are you able to form any view one way or	
	another as to whether this was the position	
	of the steering facilities before or after	
	the collision?	
	A. If I am the master of the ship, after the	
	collision I would not change the rudder or	
	the flap because the vessels had been	
50	penetrating into each other. What would I	
	have done is to inform the police, inform	
	the Government, inform the company about	
	the disaster and try to save the passengers.	
	Q. Would you listen to the question. What I	
	was asking you is whether as a surveyor you	
	could possibly tell whether the rudder or	
	the flaps were in this position at the time	
	of collision or whether they had got into	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- that position after the collision?
- A. It could have got into that position after the collision.
- Q. As a surveyor and engineer you cannot tell which it is, right?
- A. No.
- Q. What about the engine of the Goldfinch, what was the position there?
- A. The main engine has no damage.
- Q. What about the control in the wheelhouse? 10
- A. It was in neutral position.
- Q. But again I suppose you are unable to help us as to whether it was in that position at collision -- sorry, is "neutral" in the sense stop or what?
- A. No, I don't think so.
- Q. Now what is stop then?
- A. Stop, that means you have to switch off the engine.
- Q. I see, neutral means it's just ticking over? 20
- A. Yes, the clutch is off.
- Q. From the point of view of ceasing to propel the boat through the water it matters not as to whether the control is in neutral or the engine has been stopped?
- A. Right.
- Q. Now when you came to form your view about what the angle of blow had been what view did you form as to the drafts of the two ships; what assumption did you make about the drafts of the two ships? 30
- A. My assumption was the Flying Flamingo was flying because the Flamingo was using the flap to steer, and also the main engine port was at full speed, and as I have said before, the Flamingo port main engine - the coupling between the engine and the gear box was sheared off, so the engine was -- 40
- Q. So you assume she was flying?
- A. Yes.
- Q. What did you assume she was drawing?
- A. I beg your pardon?
- Q. What did you assume her draft was?
- A. If it's flying the draft would be 1.5 metres.
- Q. And did you assume that if both vessels were flying both vessels would have precisely a draft of 1.5 metres? 50
- A. Not very much difference.
- Q. What was the margin of error in the assumption?
- A. Because the Flamingo was fully loaded with passengers.
- Q. Yes, there were quite a lot of differences between the two ships, were there not?

	First of all, as you have pointed out, the Flamingo had more passengers, nearly four times as many passengers as the Goldfinch?	In the High Court of Hong Kong
	A. Yes.	Prosecution's Evidence
	Q. 125 people?	
	A. Yes.	
	Q. As against 32?	No.4
10	A. Yes.	P.W.13
	Q. And are you able to help us as to what difference that makes to the drafts of the two ships?	Raymond Tang (Recalled) Cross-Examination
	A. I am sorry.	
	Q. Well, what would be the difference that those passengers would make?	(continued)
	A. When it is flying, not very much difference because when it is flying, in order to have the vessel high in the water you apply some flap angle to keep the vessel high up. When the vessel is lying low, or without any passengers, sometimes the speed is too high, then you have to apply negative flap angle to prevent the vessel flying above the water.	
20	Q. Was there a difference between the unladen displacement of these two ships before they took on any passengers at all?	
	A. Yes.	
30	Q. What was the difference?	
	A. The Flying Goldfinch has a tonnage of 64.65 tons and Flamingo will have 74.4.	
	Q. Is that inclusive or exclusive of the passengers?	
	A. Exclusive, I think.	
	Q. So the difference in displacement with the Flamingo heavier, if I may put it that way, than the Goldfinch --	
	A. Yes.	
40	Q. -- is exaggerated somewhat by the fact that the Flamingo was carrying more passengers than the Goldfinch?	
	A. Yes.	
	Q. And I suppose again it's a small point, that the Flamingo was probably carrying slightly more fuel than the Goldfinch?	
	A. It was on outward trip, yes.	
	Q. And these factors, these differences, would have, would they not, a material, if small, difference on their relative drafts?	
50	A. Very little, if there is any.	
	Q. What figure would you put on it?	
	A. I don't know.	
	Q. And of course, as we have already discussed, the draft at impact is going to depend upon the speed at which the two vessels are travelling?	
	A. Yes.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- Q. And if one or both of them have made a material alteration of course their speeds will have fallen and their drafts increased?
- A. If their speed has fallen their draft is increased.
- Q. And if they have made a significant alteration of course their speed will have fallen?
- A. It is unlikely on Flamingo because it was using one flap. 10
- Q. So the Flamingo would be likely to retain her sailing draft, full speed draft of about 1½ metres, but the Goldfinch, using rudder, would be highly probable to lose speed in the course of the turn?
- A. Yes, it depends on the moment - how soon before the collision.
- Q. It depends on the extent of the turn effected before collision?
- A. Yes. 20

1.00 p.m. Court adjourns

2.30 p.m. Court resumes

Accused present. Appearance as before.
Jury present.

P.W.13 - Raymong TANG O.f.a.

XXN. BY MR. STEEL (continues)

- Q. I think I follow why you said that the angle of impact could not have been 90° and the angle of impact could not have been leaning forward, i.e. approaching from the stern of the Flamingo? 30
- A. Yes.
- Q. What piece of the Goldfinch touched what piece of the Flamingo at the very first moment?
- A. Now that is the Flamingo and that is the Goldfinch. I would suggest here.
- Q. Now without just demonstrating, would you just tell me what your view is as to which piece of the Goldfinch touched which piece of the Flamingo at the very initial impact? 40
- A. I would think the bow of the Goldfinch touched the wheelhouse of the Flamingo.
- Q. Now why do you say that those two items were the first to touch?
- A. Now if you agree with me, the Flying Goldfinch is coming in that direction.
- Q. No, I am not assuming anything. I am not agreeing with anything, if I may say so, except I am agreeing that it was not an 50

	angle of 90° and it was not an angle of more than 90°. That far I am agreeing with you. Would you just tell me why you say the first contact was between the bow of the Goldfinch and the wheelhouse of the Flamingo?	In the High Court of Hong Kong
		<u>Prosecution's Evidence</u>
	A. Because here before -- I think this is not the right scale between the Flamingo and the Goldfinch. It is somewhat different from my own scale.	No.4 P.W.13
10	Q. You are saying that the models are to the wrong scales?	Raymond Tang (Recalled)
	A. Yes. Can I just --	Cross- Examination.
	Q. Before you move your own model, what's wrong with the models that you have in front of you?	(continued)
	A. Because on my own sketch it is drawn to the actual profile of the vessel. Before there is any contact the bow here would penetrate into the passenger space behind the wheelhouse. That's why before there is even any contact between the vessels the bow of the Goldfinch would have been in the passenger space behind the wheelhouse. The yellow part is the wheelhouse. This is the passenger space and you can see the seat there.	
20		
	Q. But that depends on the angle. If I may say so, it begs the very question that you are trying to --	
30		
	A. Now you are trying to say it is at right angle, then the forward bow would be damaged.	
	Q. Yes, I agree with you, 90° is not possible. What we are talking about is the spectrum between something like 45° and 90°. If I may say so, you are begging the question. Now can I just come back to the models that you have in front of you. What is it that you say is out of scale?	
40		
	A. I have not measured here because, I think the Flamingo is a larger vessel and it should have a greater length. The Flying Goldfinch is 87.6 feet; Flamingo is 89, and I was told this is made from the plan of the Flamingo, so this is longer -- well, I don't know.	
	Q. It's the other way round, isn't it?	
50		
	A. The other way round. So I don't know because it depends on the length of the bow to the foil.	
	Q. So far in a sense proving the point, the true measurements would in fact make the proposition you are trying to advance even more difficult?	
	A. No, it depends on the length between the bow and the foil.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- Q. That is a different measurement?
A. Yes, a different measurement because the overall length is from the bow to the stern.
Q. Now we better put those models away if they are no good.
A. Now you can see here even before the contact between those two foils, the bow would have gone into the passenger space behind the wheelhouse. 10
Q. If I may say so, the point I was putting earlier is right. You are begging the question. You put the vessel on a particular angle and demonstrate that there must be initial contact at A when, of course, if you put it on a different angle you would have a contact at B?
A. Now if we are talking about the right angle, as you suggested, you still have the penetration behind the wheelhouse earlier than before the impact. 20
Q. Let me approach it in a different way because I'm afraid I am not following. Would you explain why it is impossible for the angle to have been 50°?
A. NOW if it is 50° it is a smaller angle.
Q. Is that 50° or your guess of what 50° is?
A. Are you saying --
Q. You have a much better eye than I, if I may say so. You have put a piece of paper onto a drawing and say that is 50°, is it 50°? 30
A. Well, I think it is.
Q. You are doing by eye you guess what the angle is by eye?
A. That is the angle. Which part of my evidence that is the angle by eye?
Q. No, you are about to demonstrate to me why 50° is impossible. You put a piece of paper on top of another piece of paper and I assume you are trying to demonstrate the 50° angle? 40
A. What I am trying to say is because when I prepared my report I used the compasses to measure the angle. If it is 50° then you have a narrower angle, then the penetration or the damage to the Flamingo would be further aft because the damage is limited up to here, because as you can see from the photographs, only the two windows are damaged, the third window is not damaged. If you have a narrower angle then the Flying Goldfinch would have the tendency of moving further aft. 50
If it is a broad angle when it is penetrating into the Flamingo the internal

part of the Flamingo would retract the Goldfinch to move further aft. At a narrow angle then -- because there is less contact between the bow and the space behind the wheelhouse, so it has a greater chance for Goldfinch to hit the space further aft, to hit the Flamingo further aft.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

10

Q. I'm afraid, I have been very slow today.

A. For example, if I put it at an extremely narrow angle, for example 10° --

Q. No, I am not interested in 10° please, Mr. Tang. Would you just stick to why you say it is impossible for it to be 50°. I'm afraid I am just not understanding why you say that is a physical impossibility?

20

A. I didn't say it is a physical impossibility. I say it is probably -- it is more likely to be between 60 and 80.

Q. Why not between 50 and 80?

A. That is my own opinion because if you have a narrow angle there is a chance for Goldfinch to hit Flamingo further aft, and there is no evidence of Flamingo being hit further aft than the two windows here.

30

Q. I think you were telling us earlier and again forgive me if I have misunderstood --

A. And also before the foils pass each other the Goldfinch starboard foil is snapped off already. So there is no more retraction. The vessel will swing and also continue its direction. So it would hit Flamingo further aft. It will come into this part, but it is hit up to the two windows behind this part.

40

Q. You are saying that one of the reasons why the Goldfinch swung through something like 50 or so degrees during the collision was because her starboard foil was in contact with the starboard foil of the Flamingo, is that right?

A. Not only that, but because Flamingo is also moving in a forward direction, so if you have a penetration --

50

COURT: Mr. Tang, the question was "is one of the reasons..."

A. Yes, that's one of the reasons.

Q. Now you are saying, therefore, are you, that the contact between the foils must

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- have been either after or before the contact with the wheelhouse, which is it?
- A. I would say the contact, the initial contact of collision should be the space behind the wheelhouse before the foils contact each other.
- Q. Then I cannot understand how the contact between the foils can thereafter have any influence upon the progression of the Goldfinch into the Flamingo? 10
- A. Because the forward passage space is not reinforced. It is only aluminium. It is very light metal. It is not reinforced and it has not got any heavy frame to enforce the wheelhouse space. So the foil is much stronger than aluminium, and as a matter of fact the foil is taking up the weight of the boat. So if the foil can be snapped off the swing force incurred by the foil is much greater than what is being absorbed by the aluminium plate in the wheelhouse. 20
- Q. You see, if the two vessels met foil to foil first, that would tend to have a significant impact on the heading of the Goldfinch, wouldn't it?
- A. Yes.
- Q. And it would prevent, for instance, the tendency for the stem of Goldfinch to strike further aft towards the aft cabin; it would swing the heading towards the engine room, wouldn't it? 30
- A. Are you saying if the foils cut each other first before the wheelhouse it would have a greater swing?
- Q. Yes.
- A. That means a narrower angle than what I have suggested?
- Q. Yes, and the effect of the Flamingo travelling at, say, 30 knots right across the head of the Goldfinch and catching its starboard foil would be to swing the Goldfinch very rapidly indeed? 40
- A. No, I don't think so because the Flying Goldfinch has about almost 80 tons of mass. If it is travelling at a high speed it has its own momentum, it will swing, but at the same time it also continues its motion in that direction. So if it is a narrow angle the damage would be further aft. The third window or the fourth window would be damaged. 50
- Q. Would you put that transparency with the foils in contact in the place where you say they did touch and with the stem pointing towards the -- well, first of all, pointing towards the place where you say the initial

contact with the wheelhouse occurred?
 A. Yes, that is the locus, the locus of the Goldfinch will come in that direction. So it will hit the wheelhouse first before the foil contact.
 Q. Why is - in that progress with the Goldfinch penetrating the wheelhouse and the engine room would there be any load at all on the starboard foil of the Flamingo?
 10 A. Now, because as I have said before, the structure behind the wheelhouse is very weak, so it can easily cut into it, and because the bow is at a sharper angle, so it can easily penetrate into it. And also the engine is not at the ship's side, it is inside, so the foil will have contact before the stern of the Goldfinch hit the engine; and also because you can see here, the Goldfinch, it has a slope here, so this will have cut into the wheelhouse here before the bottom part here will hit the engine. You can see the photographs, this part was damaged due to collision with the engine and also the gear-box.
 20 Q. That's right. During the course of penetration the effect --
 A. That is photo.16. That is cut by the back here and this one here, the damage here is locked on the engine and the gear-box of the Goldfinch - photograph 16.
 30 Q. Are you seriously suggesting that the heading of the Goldfinch would be unaffected during the initial penetration?
 A. On the wheelhouse, yes.
 Q. And would only be affected by the contact between the two foils?
 40 A. The foil and the engine, but the major influence is the foil.
 Q. So it does come down to this: you are saying that an angle of 50° is impossible?
 A. I am not saying -- well, it is more likely between 60 and 80.
 Q. Then I am not understanding what it is which renders an angle of 50° so suspect; if you say it's possible, what renders it so suspect?
 50 A. As I have repeated before, if it is a narrow angle the vessel, because of its mass and its high velocity, the vessel or the bow will - it will swing, but it will continue its motion; it will cut the Goldfinch further aft than what has been done.
 Q. That is on the assumption?
 A. Another reason for me to say that is because you can see the cut here, the cut is 27° from

In the
 High Court
 of Hong Kong

Prosecution's
 Evidence

No.4
 P.W.13
 Raymond Tang
 (Recalled)
 Cross-
 Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- the horizontal..Now the angle here is 35°. Now if you cut the foil at a narrow angle or in a parallel direction you tend to cut it in a horizontal line. If you cut it at right angle you tend to cut it at the same angle as the foil itself. For example, if this is the foil, it is hit at right angle, it will hit - because of the angle of the foil you will hit the bottom of the Flamingo's foil at about the same angle. If it is a parallel course it will cut it at a straight line. But because this is 27° and this is 35° it is more close to each other. Because it is more close to each other I would rather favour a broader angle between 60 and 80. But 50 may be possible, but in my opinion rather unlikely.
- Q. Well, let's develop that a bit further. Would you tell me which bit of the starboard foil of the Flamingo struck the part of the -- sorry, which bit of the starboard foil of the Goldfinch struck the bit of the Flamingo's? 10
- A. The foil tip is here. This part was the bottom of Flamingo at this part. This is the locus of the cut.
- Q. Now, so on the same plan would you just put your finger on where, if that was the Goldfinch, the damage has been occasioned. 30
- A. Yes.
- Q. There.
- A. Yes.
- Q. So the tip has touched the tip.
- A. No. The tip touched the bottom of Flamingo's foil.
- Q. Where on Flamingo's foil? Assume that's the same as Flamingo's foil, would you put a cross against it? 40
- A. It cut across the Flamingo...
- Q. Please, Mr. Tang, because it is otherwise quite impossible to follow. You've pointed to where the tip of the Goldfinch's foil was damaged. On that same plan, would you point to where you would find the damage on the Goldfinch, assuming the design is the same. Do you follow me?
- A. Yes, but the design is not the same.
- Q. I see. I apologize about that. This much is right, is it not, that the tip of the Goldfinch's foil struck the Flamingo's foil at a lower level. 50
- A. Lower level? Would you repeat your question.
- Q. Let me start it again. If both vessels

	were on a precisely even keel and drawing precisely the same amount, namely, 1.5 metres, the damage between the two foils would not coincide, would they?	In the High Court of Hong Kong
	A. The actual damage would not coincide.	<u>Prosecution's Evidence</u>
	Q. Right.	
	A. Yes.	No.4
	Q. They would not.	P.W.13
10	A. They would not.	Raymond Tang
	Q. Why don't they coincide?	(Recalled)
	A. Now, this is the Goldfinch foil, and assuming this is a 1.5 metre draft, this is the 1.5 metre draft here. We are looking at the foil from the front to the back and this is Flamingo's foil. The foil construction is a little bit different as you can see here. If you project the line from here, if they are on even keel or on the same foil-borne draft - because they have the same foil-borne draft according to the particulars of their general profile here - so this would have cut a point higher than the actual damage, a little bit higher.	Cross-Examination
20		(continued)
	Q. Right. The Goldfinch, in order to damage the Flamingo's foil in this way, must have been lower in the water than the Flamingo.	
30	A. No, I don't think so. Not necessarily so.	
	Q. What is your explanation?	
	A. My explanation is because this one is turning port, so if you are turning port...	
	Q. When you say 'this one'	
	A. The Flamingo. It has the foil fully down, starboard foil fully down, so it's a port turning. If it's a port turning, so you have a port list, do you?	
40	Q. I see.	
	A. That's why it is high up in the water.	
	Q. So there are only two ways of matching up this damage - either the Goldfinch is lower in the water than the Flamingo or the Flamingo is listing to port, sorry, angled to port.	
	A. I don't agree the Goldfinch will be lower than the Flamingo	
50	Q. All right. I am afraid I confused you with that question. You say that you can match the damage up on the basis that the Flamingo was making a port turn.	
	A. Right.	
	Q. Which way do you say that the Flamingo would list when making a port turn?	
	A. When it is making a port turn, it will list to port.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- Q. And therefore you say that would explain this damage.
- A. Yes.
- Q. There is an alternative explanation, is there not, namely, that the Flamingo is going straight on but the Goldfinch, because she has made a turn to starboard, has slowed down and has dropped a little in the water. 10
- A. No. I still don't really think so.
- Q. You don't think that happened, but what is the physical difficulty with that explanation?
- A. Because the damage of the Goldfinch at the bow is higher than that of Flamingo.
- Q. I am sorry, I don't follow.
- A. Because the deck -- the damage on the Goldfinch bow which is .9 metre below the deck, Goldfinch deck, fore-peak deck, that means Goldfinch is higher. As far as the bow is concerned, it is higher than Flamingo's deck. If Goldfinch's bow is lower than Flamingo's deck, the Goldfinch bow would have gone into the engine room. 20
- Q. What is the vertical disparity between the two items of damage on the foils?
- A. Very little. It is 1 to 20. Very little. 10 centimetres.
- Q. Now, that is, if I may say so, just the sort of fall or increase in draft that you would expect if, for instance, the Goldfinch had effected a turn to starboard and under full rudder it lost some speed. 30
- A. It could also be due to rolling.
- Q. Right. You, as I understand it, say that you prefer the view that the explanation in order to match up the damage, is that the Flamingo was turning to port and lowering her portside somewhat as she negotiated her turn. 40
- A. That is the evidence I found.
- Q. And you subscribe to the view that the angle of blow was somewhere in the region of 60 to 80, say, about 70 degrees.
- A. Yes.
- Q. And you say, as I understand it, if we may use the models which you have, as this ship went in, as she penetrated, her heading changed like that to about 110 degrees. Of course, it follows, doesn't it, from what you say that it is impossible from the physical damage to form the view as to what the headings of the two ships were at the time of collision. 50
- A. I have already said both vessels are port turning.

Q.	Yes, but what you can't say is what either of the headings were at collision. It must follow, mustn't it?	In the High Court of Hong Kong
A.	It would be about 70 degrees, as I suggest.	Prosecution's Evidence
Q.	No, no. The angle of blow is one thing.	No.4
A.	Yes.	P.W.13
10 Q.	The course of heading of the vessel is something quite different.	Raymond Tang (Recalled)
A.	In that case I don't know, because I can only assess from the damage.	Cross- Examination
Q.	And just to make the point clearer, can I just -- so far as your own examination of the damage is concerned, if the vessels have for any reason started in a position like that and finished in a position like that, you don't know whether they were like that or like that.	(continued)
20 A.	I don't know.	

MR. STEEL: All right. Thank you very much.

NO XXN. BY MR. AIKEN

XXN BY MR. CORRIGAN:

30 Q.	Mr. Tang, there's only one matter on your evidence which interests me and that is the question of whether any firm indication can be made from what you found on examining the Flamingo to whether or not it had been making any port turn before the collision.
A.	I think so.
Q.	I will come to what you said in a moment but that is the only matter that interests me. You said more than once and you have been asked about it that Flamingo was in a port turning position as you describe it from the evidence that you found when you examined the damage.
40 A.	Yes.
Q.	I think you agreed that the effect of the collision so far as Flamingo was concerned was that her engine was knocked aside and the engine which gave the hydraulic power was put out of action, so that so far as the Flamingo was concerned, the flaps which may turn the vessel were frozen at that moment.
A.	Yes.
50 Q.	So we know for various reasons that you have explained, Flamingo having sunk and so on, that what you looked at was, so far as the flaps were concerned, their position at the moment of impact.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- A. Right.
- Q. But you are quite unable to tell members of the jury for how long before the impact or for what reason, whether it was navigation or any other reason, the flaps had been turned in that particular position.
- A. No.
- Q. That's right.
- A. That's right.
- Q. Now, what you found was as far as the indications of a port turn on Flamingo were concerned, you found one item, you found that the starboard flap was fully down. 10
- A. Right.
- Q. Now, there are a number of ways of turning a hydrofoil.
- A. Yes.
- Q. In this instance, Flamingo, to port.
- A. Yes. 20
- Q. One method is simply to put the starboard flap down.
- A. Yes.
- Q. Secondly, to make a port turn, there might be the putting down of that starboard flap together with a raising up of the port flap.
- A. Yes, that's right.
- Q. But you didn't find that. You found the port flap to be neutral.
- A. Yes. 30
- Q. More or less. A third indication of a navigational port turn might be not two items but three items.
- A. Right.
- Q. The same item, the starboard flap fully down.
- A. Right.
- Q. The second item, the port flap put up to some degree.
- A. Yes.
- Q. And thirdly, the helm or the rudder or the wheel put to port. 40
- A. Right.
- Q. Now, that third item, that additional item, also you didn't find because you found the wheel or the helm is in an entirely neutral position.
- A. Right.
- Q. If, to digress, for a moment, if Flamingo was not being steered navigationally by the use of flaps and you found after this accident the wheel to be in the neutral position, that in itself was consistent or might have been consistent with Flamingo having pursued a perfectly straight course up to the moment of collision. 50
- A. I can't say that.

Q. It might be consistent.
A. It might be.
Q. So what it comes to regarding a port turn having been made as a deliberate navigational turn by the master, or the man on the helm of Flamingo before the collision, there was really only one sign out of a possible three signs that there had been a navigational port turn. That is what it comes to, isn't it?
10 A. Not exactly, because if I remember exactly, I got the plan over there, Flamingo -- when you are lowering the starboard flap down, you can't operate the port flap until you finish the other. Perhaps the master hasn't got the time to do the...
20 Q. Well, all sorts of things might have happened, but there is only one sign out of a possible three signs that she had been doing a navigational deliberate port turn before the collision, isn't there?
A. But when the vessel is flying, normally you steer the vessel with the flap.
Q. Let me put it this way, Mr. Tang, we understand that. Let me put it this way. If Flamingo had been doing a deliberate pronounced navigational port turn to any significant degree way before the collision took place, you might have expected to find not the one sign but three navigational signs after the collision of her having made the port turn.
30 A. Yes.
Q. Because the captain or the deck officer on the helm, had he have the opportunity if he was making deliberate, pronounced port turns, might have used the wheel, put one flap down and the other flap up.
40 A. Right.
Q. And in normal navigational conditions, you might have expected a master or deck officer making that sort of pronounced port turns that I have described to have employed all three methods of making that turn.
A. I can't answer that because I am not a navigator.
50 Q. Well, perhaps we can ask Captain Pyrke about that later, but at any rate, you only found that one sign, that starboard flap down and it was down, fully down, wasn't it?
A. Yes, it was fully down.
Q. So would that cause - or is this a navigational matter you can't answer - putting the starboard flap by itself fully down, fully

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- extending the flap, would that cause a rather violent turn, noticeable to anybody on board?
- A. I don't know because by the use of the flap it should be rather smooth.
- Q. Now, apart from anything else, this again may be a navigational matter, but you have given your opinion about it, I think you said once or more than once that really with a flying hydrofoil, take Flamingo, you went as far as to say it wasn't possible to steer or turn the vessel when she was flying on the flaps by the use of the rudder alone. 10
- A. No. I didn't say that.
- Q. Then I must have misunderstood you. You did say to members of the jury that...
- A. Now, when the vessel was flying, if you steer the vessel with the rudder excessively, for example, 30 degrees, you will overload the engine and the.... 20
- Q. I appreciate that, she might come off the foils, all sorts of things might happen. You did say to members of the jury - you see, I am just wanting to clarify what you said - you did say Flamingo flying on the foils can't have been steered by the rudder alone. At one stage you said that but that is not strictly true. 30
- A. I beg your pardon?
- Q. That is not strictly true. Flamingo flying along could have been steered, could she not, by a helmsman using the rudder alone - could have been.
- A. I don't remember I have said that because the rudder was in neutral for Flamingo, the rudder was not moved.
- Q. I know it was in neutral. She might have been on a perfectly straight course. 40
- A. Yes.
- Q. What I am putting to you is this, it won't be right for members of the jury to get any impression that it wasn't possible - isn't possible to steer a hydrofoil flying on its foils by the use of rudder alone. It is possible, isn't it?
- A. Yes, it is possible.
- Q. It might be dangerous in certain weather conditions because you might get into trouble, she might come off the foils. 50
- A. Yes.
- Q. But in perfectly calm water on a flat calm sea, a hydrofoil pursuing a perfectly straight course could be kept more or less

on course by the master manipulating the rudder alone, the wheel.

10 A. Yes, it would be.

Q. That's right, isn't it? Yes. I am obliged. Let's just look at the one item that you did find, the only item to indicate a port turn before the collision, that was the starboard flap fully extended. Now, you have some photographs, the coloured photographs, Exhibit 2. I'd like you to show members of the jury the control mechanism which operates the putting down of the starboard flap. Would you see the photograph, the coloured bundle. It is photograph No.4 in the bundle. Now, you see photograph number 4 shows the helmsman's seat with the wheel or the rudder just in front of him. Immediately to the right where I am pointing there is a handle.

20 A. Yes.

Q. There is a handle on the right or starboard side. That is the mechanism which operates the raising or the lowering of the starboard flap, is it not?

A. Yes.

30 Q. Now, in order to lower the starboard flap to its full extent, all that the operator, the hand needs to do is this, is it not, to catch hold of the lever or the knob at the top of that lever and pull it a few inches downwards or towards him, correct?

A. I don't know.

Q. You mean you haven't tried that out?

A. No, I haven't tried which way is to lower the flap and which way is raising the flap.

40 Q. You haven't tried which way. Whichever way it is - perhaps we will find out later - you don't know whether he has to pull it forward or whether he has to push it away. Whichever way it is, it is not like a gear mechanism, for example, on a motor car, is it? There is no clutch.

A. No.

Q. There is no brake.

A. No.

Q. There is no gate.

A. No.

50 Q. It is a simple movement.

A. Yes.

Q. Do you agree with me that anybody who suddenly, for example, stood up and clutched at that mechanism could effect instantaneously by so doing in the simplest way the lowering or the raising of the flap on the vessel? It is right, isn't it?

In the High Court of Hong Kong

Prosecution's Evidence

No.4
P.W.13
Raymond Tang
(Recalled)

Cross-Examination
(continued)

In the
High Court
of Hong Kong

Prosecutions
Evidence

No.4
P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

- A. It would take sometime, not immediately.
Q. Take sometime. You mean mechanically?
A. When you push the lever in order to raise the flap or lower the flap, you have to keep that position for sometime for the hydraulic oil to go through because it has a volume regulator to regulate the flow of oil.
Q. Yes, quite sometime, a matter of seconds.
A. I don't know. Maybe a matter of one minute, I don't know. 10
Q. But all the operator, the man at the controls has to do, you don't know which way, but it is either that or that.
A. Yes.
Q. That is all he has to do and then the hydraulics or the mechanism takes over and the raising or in th s case the lowering of the flap is achieved.
A. Yes. 20
Q. Now, do you agree with me that that control, that starboard flap control handle or lever is exactly in the position where if a man is sitting on that chair in the helmsman's chair and for one reason or another he suddenly goes to his feet, that is immediately to hand - that lever, it is more or less chest high, a man might grab it in the easiest possible way if he came forward off his seat. 30
A. Yes.
Q. And all that could have happened in a moment, could have happened in a moment immediately prior to this collision having taken place.
A. Yes.
Q. You are not able to say, that is what it comes to, that this vessel Flamingo was making any deliberate navigational turn for sometime before the collision took place. 40
A. No.
Q. That's right, isn't it?
A. Right.

MR. CORRIGAN: I am obliged. Thank you.

MR. LUCAS: I have no re-examination except if I may mention the fact that this witness has referred to five sketches, only one of which at the moment is an exhibit. Could Exhibits 6, 7, 8 and 9 also be marked? 50

COURT: Yes.

BY COURT

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13
Raymond Tang
(Recalled)

Cross-
Examination

(continued)

10

Q. Mr. Tang, you say you can't say definitely in which way that lever operates. It would be unusual, would it not, if you did not operate in the natural sense, that is if you push the lever forward, if you intend to raise the flap and you put it back, it would tend to lower the flap.

A. No, when it is at the middle position it is self-centering. So when you push it one way it either moves up or moves down.

Q. All I am saying is that you would expect, would you not, to find that if you push it forward it would tend to raise the flap.

A. I can't say something I am not certain.

20

Q. You did carry out a test using a hydraulic pump.

A. Yes.

Q. You didn't know at that stage whether...

MR. CORRIGAN: No, my Lord, not on the Flamingo.

COURT: No, but on the other one.

Q. Does the other one operate in the same way or not?

30

A. It should operate in the same way, but I was down at the dry dock.

COURT: Members of the jury, would you like to ask any questions? Thank you very much indeed.

MR. LUCAS: May it please you, my Lord. I would like to read into the record the statement of Mr. Paul Richard Owen which appears at page 139 which has been agreed.

40

"My name is Paul Richard Owen, aged 32 and married. I hold a Certificate of Competency as Master Mariner issued by the United Kingdom Department of Trade. I served at sea as a Deck Officer between 1967 and 1981. I have more than two years experience as a Deck Officer on Jetfoils and Hydrofoils, recently I served as Master with the Far East Hydrofoil Company for nine months. I have been employed by the Hong Kong Government as a Marine Officer since October 1981.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

On 27th July 1982, I was instructed to visit the Flying Goldfinch to inspect the radar hood and seat pedestal of the left hand seat in the wheelhouse (port side). Polaroid photographs were also taken which I signed and dated on their backs.

The radar hood was considerably distorted at its base, distortion at the top was minimal due to strengthening inside by a magnifying glass. The hood is in the shape of a truncated cone and is secured to the radar by three locating pins around the periphery of the circular radar picture. These locating pins fit in, and lock, three holes around the base of the hood. Two of these pins had pulled out of their holes in the hood, the remaining pin, at the bottom of the radar screen, remained secured to the hood. The distortion may have been caused by either a person being thrown forward, with some considerable force, and hitting the radar hood at the top, which is at about chest height, or by someone holding the sides of the radar hood with their hands, as if bracing themselves against sudden movement, such movement being restricted by transmitting any forces encountered through the persons arms to the radar hood, thus causing distortion to the radar hood.

The pedestals of the Master's seat and the Chief Officer's seat were compared, both were distorted at the top, however, the Master's was more distorted than the Chief Officer's.

On 19.8.82, I handed over both the distorted radar hood and the two distorted pedestals of the Master's seat above the Chief Engineer's seat which were seized from the Hong Kong Macau Hydrofoil Company's shipyard to Detective Senior Inspector LING of Marine Police for retention as exhibits.

The above statement consisting of two pages has been read over by me and is true and correct to the best of my knowledge. "

And the photographs that are concerned with Mr. Owen's evidence in relation to the radar are in fact Exhibit P.2, the coloured photographs and they are the photographs showing, number 6 through to 14, showing various shots of the radar in front of the deck officer's or chief

officer's table and in various stages of removal, and then photographs of the seats, of the pedestals and the seats of the two officers on that ship, and the last two photographs are photographs showing the distortion caused by the collision and the top of the last one, that is photograph 14, showing the distortion there.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.13
Raymond Tang
(Recalled)
Cross-
Examination

(continued)

10 My Lord, I call Senior Inspector LING, page 197 of the depositions and also the additional statement served recently of Inspector LING.

P.W.15
EVIDENCE OF JOHN LING
HUNG-HAY

P.W.15
John Ling
Hung-hay
Examination

P.W.15 - John LING Hung-hay (Senior
Inspector) Sworn in English

XN BY MR. LUCAS:

- 20 Q. Your full name, inspector?
A. John LING Hung-hay.
Q. And you are a member of the Royal Hong Kong Police Force, specifically attached to the Criminal Investigation Department, Marine Police Headquarters, is that right?
A. That's correct.
Q. And I think you are the officer in charge of the Regional Crime and Intelligence Unit.
30 A. That's right.
Q. And you are also the officer in charge of this particular case.
A. Yes.
Q. I think you received from various persons related to this case and now seek to produce a number of exhibits. It was you who got from Mr. Pyrke sitting in front of me the general plan of Flamingo.
40 A. That's right.
Q. That's the one we've been using, Exhibit P.14. Would you produce that?
A. Yes.
Q. And the general plan of the Flying Goldfinch, P.15.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.15
John Ling
Hung-hay
Examination

(continued)

- A. That's right.
- Q. The official log of the Flying Flamingo, Exhibit 17.
- A. That's right.
- Q. The deck log of the Flying Flamingo, Exhibit 18, the rough deck log of the Flying Flamingo Exhibit 19. You also got the radio log which has been produced already of the Flamingo and the radio log of the Flying Goldfinch. 10
- A. That's right.
- Q. The engine log -- the official log of the Goldfinch Exhibit P.21.
- A. Correct.
- Q. The deck log of the Flying Goldfinch, 22.
- A. That's right.
- Q. The rough deck log of the Goldfinch, 23.
- A. Correct.
- Q. And you also obtained, I think, from Captain Pyrke a certified true copy of the transcript of registration of the Flying Flamingo and a certified true copy of the transcript of the registration of Flying Goldfinch, P.25 and P.26, and would you produce those? 20
- A. Yes.
- Q. Do they demonstrate that both the ships belong to a Hong Kong company and carry out a Hong Kong flag and are registered in Hong Kong as British ships? 30
- A. That's right.
- Q. Did you also receive from Mr. Raymond Tang, the witness who has just finished giving evidence, a number of coloured negatives from him which are in fact Exhibits P.2, 1 up to 5?
- A. That's right.
- Q. The sketch plans that have already been produced.
- A. Correct. 40
- Q. And do you also produce and received from Mr. Owen the nine Polaroid photographs that we have just produced?
- A. That's right.
- Q. Exhibit P.2. Do you also produce the distorted radar hood and the two seat pedestals, Exhibits P.3, 4 and 5?
- A. It's over here.
- Q. Show those to the jury please. And that is the radar hood and the pedestals from the -- the radar hood from the Goldfinch, is that right? 50
- A. That's right.
- Q. And the distorted stools also from the Goldfinch.
- A. Yes.

Q.	I understand that on the 8th of September 1982 you received from Mr. NG Kwai-wing, an Assistant Information Officer of Government Information Services a set of negatives for printing?	In the High Court of Hong Kong
		<u>Prosecution's Evidence</u>
	A. That's right.	
10	Q. And on the 10th of September, did you hand over 31 negatives obtained from Mr. NG to Mr. CHING Kwok-tai, a Special Police Photographer Class II of the Identification Bureau, Police Headquarters for printing, and did you also at the same time hand over five of the coloured negatives obtained from Mr. Tang and nine Polaroid photographs obtained from Mr. Owen to Mr. NG Chi-hung for copying and printing?	No.4 P.W.15 John Ling Hung-hay Examination (continued)
20	A. Correct.	
	Q. And on the 13th of September 1982, did you hand over five sketch plans on tracing paper obtained from Mr. Raymond Tang to Mr. SIT Cheung-kan, a Photoprinter Class II of the Photo-printing Unit, Architectural Office, Building Development Department for copying and later receive the printed plans back from him on 14th of September?	
30	A. That's correct.	
	Q. And on the 17th of September, 1982 did you collect from Mr. NG Chi-hung and Mr. CHING Kwok-tai of the Identification Bureau at the Police Headquarters the printed photographs?	
	A. That's right.	
40	Q. And on that day, did you hand over to Mr. cheung Chun-chung, a Technical Officer, Reprographic of the Survey Division, Lands Department an Admiralty Chart No. 541 and the two hydrofoil's General Plans obtained from Mr. A.C.Pyrke?	
	A. That's right.	
	Q. Later on the 21st of September, did you receive from Mr. LAU Kwok-yiu Photoprinter Class II of the Survey Division, Lands Department, the copied prints on the four layout plans and the Admiralty Chart?	
50	A. That's right.	
	Q. During the course of your enquiries into the case, have you also received from the Far East Hydrofoil Company a certified true copy of the deck log of Sao Jorge and Flores?	
	A. That's right.	
	Q. And did you also receive from the Hong Kong Macau Hydrofoil Company logs of other hydrofoils?	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Examination

(continued)

- A. That's right.
- Q. And have you kept those exhibits until now and do you wish to produce to this court?
- A. Yes.
- Q. You are the man who has collected all the exhibits from various people, kept them in your custody and control, see that they have been developed etc. and now produce in this court. 10
- A. Exactly.
- Q. Now, apart from doing that and the general investigations, you were also involved, were you not, in the taking of a number of statements?
- A. That's right.
- Q. Either you yourself or you were present when they were taken.
- A. That's right.
- Q. In relation to Captain KONG, the 1st accused, I think on the 3rd of August 1982 you interviewed Captain KONG and present at the same time was Chief Inspector KWONG Sin-chung of the Criminal Investigation Department, Marine Police. 20
- A. That's right.
- Q. I think Captain KONG was called to the Marine Police Headquarters voluntarily at your request to assist in the enquiries. 30
- A. Yes, he contacted us.
- Q. Later that same day, did you take a statement in Chinese consisting of 12 pages from Mr. KONG and would you look at the statement which is Exhibit No. --
- A. It is over there.
- Q. Would you look at that document please? Is that the statement you took?
- A. Yes.
- Q. Did you subsequently cause that statement to be translated and the translation certified? 40
- A. Yes.
- Q. And is that the translation?
- A. Yes, this is the certified translation.
- Q. What are the exhibit numbers?

CLERK: 40.

- Q. Do you produce those?
- A. Yes.

MR. LUCAS: Would you be good enough to let the jury have the English version. 50

- Q. Is that in fact the statement given by Captain KONG?

A. Yes.
Q. Voluntarily to you.
A. Yes.
Q. Would you be good enough to read it please.
A. You want me to read the whole?
Q. Yes, please.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Examination

(continued)

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"I am the above stated, married and have no children. I lived with my wife LEE Siu-king at the above address. I was born and educated in Hong Kong. In 1972 I graduated from the Hong Kong Technical College in navigation. I continued studying a British correspondence course and at the same time received an intensive course from the Polytechnic College. I graduated in July 1972 and joined the Universal Shipping Ltd. I

20

received navigation training as deck cadet for over two years. Later I was promoted to 3rd mate. In 1975 I obtained a 2nd mate licence and went to sea as a 3rd mate for about six months. Then I was promoted to junior 2nd mate. Having worked for about seven months I returned to Hong Kong and studied at the Polytechnic College. In the summer of 1977 I obtained a 1st mate licence and went to sea again as a 2nd mate for about 1½ years. Then I was promoted to 1st mate. Having worked for about a year I again returned to Hong Kong to study and obtained a captain licence. It was in May 1981. then I went to sea and worked as 1st mate for seven months. And at the end of December, last year, I left the Universal Shipping Ltd.

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50,

On 8.1.1982 I joined the Hong Kong Macau Hydrofoil Co.Ltd. Having received 8 days training, I have been appointed as the captain of Flying Goldfinch. My main job is to sail the hydrofoil to and from Hong Kong and Macau. Generally speaking my work schedule is 4-day-on and 2-day-off. On the average I make 7 single trips per day. Crew working in the same shift with me are generally fixed. They are first engineer LAM Hok-chung, 1st mate NG Yui-kin, radio operator LO Kam-shing, assistant engineer LAI Fuk and four seamen.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Examination

(continued)

On the morning of 11.7.1982, I, as usual, performed my duty. That day was the third day that I was on duty. At 0735 hours on that day the boat left Hong Kong for Macau. Again at 0902 a.m. on that day, the boat sailed from Macau to Hong Kong. At that time there were 32 passengers and a total of 8 crew including myself on board.

Before weighing anchor, I, according to regulations, received reports from first engineer, 1st mate and radio operator that they had carried out checks and all were found correct. However the 1st mate informed me that the portside flap indicator was still defective. This defect had existed at least over two days. And I believed the former captain, TAM Chuk-man had already notified the company. And I knew even though the company was notified of this defect, they would still tell me to sail the boat. Thus I did not make a report again. 10 20

When the boat set sail, I as usual gave instructions to crew in the wheelhouse about procedures for the boat to leave the pier and port. I would continue to give instructions along the way. At that time, for the rest of the voyage, I steered the boat from the waters of the Port of Macau to Hong Kong. 30

After the boat had passed the 1st and 2nd beacons and before she passed No.22 beacon, I sailed the boat towards Fan Lau Tsui. As far as I can recall I made clear of a hydrofoil and a jetfoil before heading rowards Fan Lau Tsui.

When my boat sailed till 0922 hours, she was abeam with Ching Chau. The latter was on our starboard side and my boat was in its north. I then found Ching Chau was quite far away from my boat, in my estimation between 1.3 and 1.4 miles. At that time within my vision, there were a fast going boat and a tug boat heading towards Macau on my starboard side. I estimated that both vessels had passed Fan Lau Tsui, about 4 to 5 miles away. AT the same time another jetfoil passed over us from our right. 40 50

At this time I found that my boat had deviated its normal course to the north. Thus I altered course to the starboard side, heading towards Siu A' Chau. Then I found the hydrofoil from the opposite direction and ours were travelling in a straight line. At that time the distance was about 4 miles. I maintained the same speed and route until we were 2 miles away. I then altered the course to the starboard side slowly towards Niu Tou. I put the position of the boat from the opposite direction at ten degrees to 15 degrees portside of our boat and my boat kept on sailing. However I noticed that there was no significant change in the relative position between my boat and the boat from the opposite direction. At that time we were about half a mile away. So I altered the course 7 degrees to the starboard side and then maintained my speed and turning of the helm until the relative position of the opposite ship was about 0.2 - 0.3 mile to about 30 degrees to the portside of my boat. I then checked the rudder indicator, revolution indicator and the flap indicator on the switch board in front of me. When I saw the opposite vessel again, she was about 200-300 feet away, about 3 to 4 points on my portside. Under this circumstances she was trying to pass me from my bow. I at once ordered to shut the engines and saw both hands of the first engineer were on the control handles. I tried to give out warning to the other boat, but both of my hands were controlling the rudder and flap. And my seat kept on swinging to the starboard side. Several seconds later my boat collided with the opposite boat violently. And I fainted. When I regained my consciousness, someone already helped me up in the wheelhouse. I then instructed the radio operator to give out the distress signal, the 1st mate to check the safety of the passengers and crew and the damage caused to the boat and the first engineer to check the engine room. The 1st mate reported that he had already informed of the collision, and they were told to put on life jacket and to keep calm. At that time all passengers had gone to the wheelhouse and upper deck. Generally speaking no one was apparently suffering from serious injuries.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.15
John Ling
Hung-hay
Examination

(continued)

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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Examination

(continued)

At this time seaman reported that the front cabin was taking in water. I instructed the first engineer to pump the water out. The radio operator by that time had already sent out the distress signal. I also saw the opposite party send out distress smoke. When I was certain that my boat was not in the danger of sinking, I then walked out of the wheelhouse and told the crew of the other ship to bring passengers to my boat. I then returned to the wheelhouse and listened to the report by the radio operator. I then told the 1st mate to take over the boat. I then walked to the opposite ship and checked their damage and to see if anyone was in the water. I walked into the passengers' cabin and saw injured persons. I then went down to the cabin at the stern and made a check but found no one there. At that time I found the rear cabin was taking in water. Then I returned to the upper cabin to rescue people. But I was not strong enough. I shouted for help and struck the side of the boat. Then passengers came to assist me in the rescuing people. Mr. YUEN, the first engineer of Flying Flamingo helped me in removing injured persons from the exit and through the window. Afterwards I returned to my boat to hear reports by the radio operator and 1st mate about the rescue. I told the 1st mate that I was taking over the ship again and asked him and the crew to provide first aid to the injured persons. Announcement from the other ship said that all passengers and injured crewmen were evacuated. And I also saw many vessels awaiting nearby for instructions to take part in the rescue. I exchanged news with them. At that time tug boat Luen Hing No.2 was berthed beside the boat. I told them to take those passengers who were seriously injured to the jetfoil in order to receive emergency treatment in Hong Kong and those who suffered nor or no injuries to board the stern of hydrofoil Fei Hung to be taken back to Hong Kong. I told crew of the opposite vessel Flying Flamingo to come over to my boat because Flying Flamingo might sink. But they came over to my boat very late. At that time Chinese naval boat also berthed beside the boat and asked if we needed assistance. I told them the situation and they sailed away. At that

time my back and head were painful. I wanted to obtain the No. of passengers and crew taken away by each vessel, but failed. At that time the control from Macau asked us about the situation and whether we needed tug boat or not. I replied that the company in Hong Kong had already sent tug boats to assist us and that if there were tug boats in Macau they could come to help us. Shortly helicopter arrived and lowered an officer to the boat. The officer asked about the situation and I told him. Because the nose of the radio operator was bleeding, I requested them to lift him to Hong Kong for treatment. Because pain on my back I was not suitable to be lifted back to Hong Kong by helicopter. And crew of the boat helped me to call a hydrofoil to ferry me back to Hong Kong and to Q.M.H. I told Captain John Coull to take over my boat.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Examination

(continued)

When I was ferried back to Hong Kong, an ambulance at the pier took me to Queen Mary Hospital for Medical treatment. I stayed there for 3 to 4 hours and was discharged. My elder brother, KONG Cheuk-ming escorted me from the hospital to the booking office at the Hong Kong Macau Wharf. There I met bosses of the company, Robert LEUNG, Tony LEE and Bobby Castro. I talked to them about the collision and rescue. I stayed there for about ten minutes and went to my elder brother's home in Lai Chi Kok to rest. Up to 7 to 8 p.m. that night I received several telephone calls from my colleagues, asking me to meet them at the coffee shop of the Hong Kong Hotel at 10 o'clock that night. I cannot recall if I had asked them over the phone the reason of this meeting. But around the appointed time that night, my wife, elder brother and I together went to the Hong Kong Hotel to see them. About 10 o'clock my colleagues arrived. At that time there were the first engineer, 1st mate and radio operator who were in the same shift with me and the first engineer and 1st mate of the opposite vessel, Flying Flamingo. I cannot remember if a person was specially appointed to preside the meeting nor can I remember the subject that we had discussed. But I can vaguely remember that we talked about the collision and our health. We stayed there for quite a

In the
High Court
of Hong Kong

Prosecution's
Evidence

No. 4
P.W.15
John Ling
Hung-hay
Examination

(continued)

long time with a view to waiting for John Coull. But he did not come. Shortly after midnight we closed the meeting and left. I seem to recall my elder brother paid the bill. That night my elder brother drove my wife and I back to our residence in Sheung Shiu, so he also stayed at my home for the night."

(witness continues reading p.6 of P.40)

10

"The following day, early in the morning
..... (signed) C.K.KONG."

- Q. Do you produce that statement?
A. Yes.

P40 produced

MR. LUCAS: My Lord, there is a Chinese version. Does your Lordship wish it to be read in Chinese?

COURT: No.

- Q. Mr. LING, you also were present, I think, when Captain Coull made a statement? 20
A. That's right.
Q. That was on the 4th of August. You interviewed him yourself in the presence of a solicitor and also present was D/Ch/Insp.KONG Sin-sun of the Marine Police Headquarters.
A. Correct.
Q. And I think you took that statement in English and it consisted of 11 pages, and would you look at the statement? Is that the statement? 30
A. Yes.
Q. And did you subsequently cause that to be translated into Chinese?
A. Correct.
Q. Did you have the translation certified?
A. Yes, I did.
Q. And do you seek to introduce that statement and translation to evidence? 40
A. Yes, I would like to produce that as an exhibit.

P41 produced and distributed to the jury

- Q. Would you be kind enough to read that statement, please, and first of all, may the jury have a copy?

(Witness reads P41) (helmsecurity on page 5 corrected as helmsman)

In the High Court of Hong Kong

Q. And you produce that?

A. I am.

Prosecution's Evidence

Q. And I think Mr. LING, you also took a statement on the 4th of August. from Mr. HO Yim-pun, the 3rd accused?

A. Yes.

No.4
P.W.15
John Ling
Hung-hay
Examination

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Q. And was that in the presence of a solicitor and also present was D/Ch/Insp.KONG of Marine Police Headquarters?

A. Correct.

(continued)

Q. And did you take a statement consisting of 26 pages from Mr. HO, and is that the statement?

A. Yes.

Q. And did you subsequently have that statement translated and the translation certified?

20

A. Yes.

Q. And do you now produce both those statements?

A. I prepare to do so.

P42 produced

Copies of P42 distributed to the jury.

Q. Would you be good enough to read that, please?

(Witness reads P42)

30

"I am the above stated.....
.....(sd.) D/SUP.J.LING
17.51 hours 4.8.82 "

COURT: I think you possibly wouldn't be able to finish that. It may be a good time for us to adjourn as well.

4.30 p.m. Court adjourns

14th March, 1983

15th March, 1983 @ 10.05 a.m. Court resumes

40

Appearances as before. Jury present. Accused present.

P.W.15 - John LING Hung-hay o.f.o

XN. BY MR. LUCAS: continues:

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Examination

(continued)

Q. Mr. LING, you were yesterday reading for us the statement made by Mr. HO and you had in fact reached if I remember page 6 of --

A. That's correct.

Q. -- that statement and had reached the second paragraph on that page. Would you continue, please?

(Witness reads from "At 1045 a.m. on page 6 up to page 21, paragraph with the notation 1.) 10

A. "... half a mile". Your Lordship, I need to refer to the Chinese statement. It is on the English certified translation page 3, paragraph 10, line 2. The Arabic numbers I refer to is the third last number from the second line. It should read - I will read out the first sentence:

"10. Shortly afterwards, when I again noticed the said hydrofoil which was at about 20° on our starboard side about 3-4 knots away." 20

In here the witness has requested to change "3-4 knots" and substitute with "slightly more than half a knot". Should be "slightly more than half a mile", rather.

Delete "3-4 knots" and substitute "slightly more than half a mile."

And the second alteration:

"2. After line 4 on page 19 add 'these working procedures would be repeated until it passed out of my scope of visibility.'" 30

That refers to the original Chinese statement. It is the English translation page 15 at the bottom, the last answer to the question:

"A. I would pay attention to the traffic condition or any rubbish on the sea, or I would look at the rear view mirror to see if any other vessel is overtaking us from behind and at the same time I would also look at it." 40

And after that the witness has requested to add:

"These working procedures would be repeated until it passed out of my scope of visibility."

In the
High Court
of Hong Kong

And the third alteration:

Prosecution's
Evidence

"3. The Arabic numerals in the second last line in line 5 of page 22 should be changed as 'slightly more than half a mile.' "

No.4
P.W.15
John Ling
Hung-hay
Examination

10 This refers to the English translation page 18, at the top, in the first question:

(continued)

"Q. Prior to the collision on that day, the last time you noticed the other hydrofoil its position was at 20° on your starboard side about 3/4 knots apart ..."

Delete "3/4 knots" and substitute "slightly more than half a mile."

20 "The above statement consisting of 26 pages is given by me. After I read it over again, the contents are correct and true."

Those amendments were made after the witness had given his statement.

Q. Now as I understand, you were present as well when a statement was taken from the 2nd accused, Mr. NG?

A. That's correct.

30 Q. And that was when, sorry? When was that taken?

A. That was on the 1st of August, 1982.

Q. And who took that statement?

A. One of my detective constables, CHEUNG Man-kam, DC 9765.

Q. And you were present when it was taken?

A. In my presence he took the statement.

Q. And it was written in Chinese?

A. That's correct.

40 Q. Did you subsequently have that statement translated and a translation certified?

A. That's correct.

Q. And is that the statement and translation you have before you?

A. That's correct.

Q. Do you produce those?

A. I am prepared to do so.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Examination

(continued)

P43 produced

Q. And do they represent an accurate statement of what was said to you by the 2nd accused voluntarily?

A. That's correct.

P43 distributed to the jury.

A. Shall I read it?

Q. Yes, please.

(Witness reads P43)

MR. LUCAS: My Lord, there was a statement, witness' statement, read by myself, of Insp. KONG last Friday in relation to the taking of the statement. I didn't at that stage put the statement in and I certainly didn't call Mr.KONG.

10

I wondered could that statement be now given - admitted, be given to the jury and perhaps, on behalf of Mr.KONG, Insp.LING could read it?

A. This is a statement taken in Chinese with certified English translation.

20

Q. Do you produce those documents?

A. Yes.

CLERK: P.44

A. The statement reads as follows :

"On 16th August, 1982, at 2.15 a.m.
.....
there would not be any collision.

(signed) NG Yui-kin

(signed) Illegible

S.S.Kong

15.54

16.8.82 "

30

Q. Just two matters: Mr. Lo, the Radio Officer who has given evidence, you will recall, and he insisted that he made the statement to the police on the 16th although his statement was dated the 14th, and he was cross-examined about that. I understand that you have checked it this morning, is that right?

40

A. That's right.

Q. What date was it actually made on?

A. The actual date of the statement taken should be the 16th and I must admit there

is a typing error in the date itself here in the statement.

In the High Court of Hong Kong

MR. LUCAS: No further questions.

Prosecution's Evidence

XXN. BY MR. STEEL:

No.4

Q. How were you able to check that?

P.W.15

A. By looking at this original Chinese statement.

John Ling Hung-hay

Q. That was after he had been arrested, is that right?

Examination

10 A. You are referring to the statement taking?

(continued)

Q. Yes.

A. That's correct, on the morning when he was arrested.

Cross- Examination

Q. And he had been arrested for conspiracy?

A. That is correct.

Q. And you'd made that plain to him, had you, what you were saying he had conspired to do?

20 A. At the time of the arrest I was not the officer effecting the arrest. It was only after he was brought back to the station, yes, I explained to him.

Q. Who effected the arrest?

A. One of my detectives.

Q. What's his name?

A. I do not have the record at the moment.

Q. Was it you who took the statement?

A. I was present.

30 Q. And before he made the statement was it made plain to him the reason he had been arrested?

A. Yes.

Q. And the reason was that he was suspected of having conspired to pervert the cause of justice, is that right?

A. That's correct.

Q. Let me ask the question that my Lord asked the radio officer: why wasn't he cautioned?

40 A. He was brought back for the purpose to assist us in the inquiries of the collision.

Q. That's not an answer to my question, is it?

A. He was cautioned by my detective, but not by me at the time of the arrest.

Q. There is no record in his statement of having been cautioned and if he was there would have been, isn't that right?

A. Agree.

50 Q. Could you just tell me what the relationship is between the Marine Department and the Marine Police, if there is any?

A. It is entirely two separate departments.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- Q. Are they both subordinate to the Director of the Marine Department?
- A. Not at all. The Marine Police directly belongs to the Police Department which comes under the command of the Commissioner of Police.
- Q. I just want to ask you a little bit about the statement that you took from Capt. Kong. You interviewed him on the 3rd August, last year? 10
- A. Yes.
- Q. By that time you had already interviewed, yourself, I think, Mr. Ng, is that right?
- A. Correct.
- Q. And you had also, for that matter, yourself interviewed Mr. Lam, the Chief Engineer of the Goldfinch?
- A. That's correct.
- Q. You had interviewed both of them on the 1st August, two days earlier? 20
- A. That's correct.
- Q. You were also familiar with the fact that all the officers of both hydrofoils had been interviewed by Capt. Pyrke or his officers during the course of the Marine Department's inquiries?
- A. I was given to understand Capt. Pyrke had interviewed them all.
- Q. You were aware, weren't you, of the contents of the statements they had given? 30
- A. I was briefly aware of that because the case was referred to us after the Marine Department's preliminary inquiries.
- Q. And you were supplied, were you, with copies of the statements that these others had given to the Marine Department?
- A. No.
- Q. Then how did you learn of their contents?
- A. I was briefed by Capt. Pyrke on the outset of the case. 40
- Q. And he told you what he has learned from his interviews of the various officers?
- A. He only briefed me on the suspicious circumstances of the case.
- Q. Capt. Pyrke passed onto you his suspicions?
- A. Yes.
- Q. Are you able to tell us the date on which the Marine Department had ordered a marine inquiry. 50
- A. I am not sure, I think I have to ask Capt. Pyrke. May I do so, I must add to that, it's on legal advice that we were ordered to take over the whole case from the Marine Department.
- Q. Well tell me from whom, not the content, who gave you legal advice to take it over

from the Marine Department?

A. My senior officer.

Q. Is he a legal man?

A. He is not. He is a Senior Superintendent.

Q. From where did this legal advice come?

A. I got the instruction from my Senior Supt. who informed me to meet Capt. Pyrke on the 31st July.

10 Q. That's not an answer to my question. You told us that it was on legal advice that the matter was taken away and over from the Marine Department. From where did that legal advice come?

A. The Legal Department.

Q. Of?

A. United Centre, Wanchai.

Q. The Attorney General's Department?

A. I would say so.

20 Q. And when were you instructed to go to see Capt. Pyrke - the 31st July?

A. Yes, the 31st July. It's a Saturday morning, if I remember right.

Q. And you saw Capt. Pyrke and I gather he told you something about the case and something about what you call his suspicion, is that right?

A. Yes.

30 Q. Did he show you the statements that he had obtained although not giving you copies?

A. No, he only briefed me on the whole outset.

Q. Three days later you asked Capt. Kong to come to police station, is that right?

A. No, I did not ask him. We have been trying desperately to contact him to invite him to come to the Marine Police Headquarters to assist us in the inquiries but with no success and eventually he contacted us because we left a message at his home.

40 Q. Tell me about these desperate efforts to get hold of Capt. Kong, would you?

A. We tried to visit his home in the New Territories and we tried to ring him up several times and we were informed numerous times that he was not in, and we left messages from time to time, and eventually he contacted us.

50 Q. Well, it's not very surprising he was not in because he was in hospital, wasn't he?

A. I do agree to that.

Q. Your desperate efforts to find him didn't even ascertain that he was in hospital, is that right?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- A. Well, in fact we did visit him at the hospital and unfortunately he left before we arrived.
- Q. Are you saying that a policeman went to the hospital and he was not there?
- A. Correct, he had just left as told by the sister there.
- Q. When do you say that Capt.Kong left hospital?
- A. It's on a public holiday Monday. I can't remember the exact date. 10
- Q. Who was the person who went to see him to find he had just gone?
- A. I myself.
- Q. He left hospital and you went, you therefore must have gone to the hospital on the 2nd August, is that right?
- A. Well, if that's the day he left we just missed him. In fact we went there around 10 o'clock, but we just missed him by 15 minutes, as told by the sister there. 20
- Q. Which hospital is that that you went to?
- A. Canossa Hospital up at the Peak.
- Q. And you learned, did you not, that he had been in there for a period of time?
- A. Yes, in fact I must correct, I have sent one of my detectives to go and visit him for an interview, but he declined to be seen. 30
- Q. Yes, you suddenly remember that, another policeman had been to see him desperately and Capt. Kong said he left too unwell to give a statement at that time?
- A. That's what he claimed.
- Q. That's what he what?
- A. -- claimed.
- Q. I see, it was all, as you thought, a trial?
- A. You may put it that way.
- Q. You are putting it that way. He had been in hospital since the 13th July? 40
- A. I have no idea about that.
- Q. And that whilst there one of your policemen had come to see him and, as you say, he declined to make a statement?
- A. That's correct.
- Q. So what's all this business about desperately trying to find him and being unable to contact him? You actually had one of your own staff who had actually been to see him in hospital? 50
- A. If you wish to put it in another way. We had been desperately trying to interview him.
- Q. That is another way, Inspector Ling. Perhaps you would be kind enough to

express hourself clearer. The impression you have left us a little bit of time ago was that you could not find him. Now you wish to tell us although you could find him you could not interview him and they are two quite different things, aren't they?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.15

John Ling

Hung-hay

Cross-

Examination

(continued)

10

A. That's correct.

Q. Anyway, once Capt. Kong is out of hospital he contacted you and he came to see you, is that right?

A. Yes.

Q. Nothing very remarkable or suspicious about that?

A. I must say it was not he himself who contacted us first and it should be through his solicitor.

20

Q. But he didn't have any solicitor on the 3rd August, did he?

A. I cannot remember that.

Q. Tell me what it is that you do remember about solicitors on the 3rd August?

A. On 3rd August I was not the person who received the telephone call. It was Chief Inspector Kong who received the call in the office.

Q. It was Chief Inspector Kong who received the call?

30

A. Yes.

Q. And somehow you gather from him something about solicitors?

A. Yes, I might be wrong.

Q. I think you may be. It's right, isn't it, that there are some rules in Hongkong about how policemen should interview witnesses for a criminal hearing?

A. Yes.

40

Q. And they are both for, in a sense, the protection of potential witnesses, but equally for assistance to the police to know the way in which things should be done?

A. Would you mind elaborate your question a bit?

Q. One of the rules is this, is it not, that where the police have a reason to suspect that somebody has committed a crime the person who is about to be interviewed should be cautioned?

50

A. That's not correct.

Q. That's not a rule here?

A. That's not, not necessarily.

Q. Perhaps you would tell us in what circumstances that practice should apply?

A. Are you referring to this case or to other cases?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.15

John Ling

Hung-hay

Cross-

Examination

(continued)

- Q. Well, let's say, take it generally for the moment. You say not necessarily. Well give me an example where it would apply, an example where it would not apply?
- A. Simply we normally would invite a potential witness to assist us in our inquiries and at his own voluntary action - course of action.
- Q. But I gather that there had been fed into your mind at this stage some kind of suspicion by Capt. Pyrke? 10
- A. Yes.
- Q. And when Capt. Kong came to give a statement on the 3rd August he came without a solicitor, didn't he?
- A. Yes, he came alone.
- Q. In contrast, for instance, to Capt. Coull and Mr. Ho who came later who came with a solicitor? 20
- A. Yes.
- Q. And it never occurred to you for a moment, is that right, that it was in any way appropriate that Capt. Kong should be cautioned before he gave a statement?
- A. No.
- Q. And that is because, isn't it, in fact that on the material that you had at that stage you had no reasonable grounds to think that he had committed any offence? 30
- A. Exactly.
- Q. And as a result of the interview of Capt. Kong you learned nothing new?
- A. Nothing new about his own version of the story.
- Q. But you knew his own version of the story, did you not, from what the Marine Department had learned?
- A. No. 40
- Q. I am surprised by that because, for instance, you noted when you were interviewing Mr. Ng on the 1st August he told you amongst other things, this is part of his statement: "The statement that I gave to the Marine Department is the same as the present one except for one exception." Do you see that? Page 4 in the English. Now tell me how that observation comes in, was that in response to a question from you? 50
- A. I don't think it is a question from me. It is an explanation as to what he had told me in the previous paragraph.
- Q. Did you raise the topic of statements to the Marine Department with any other witness?

	A. With Marine Department?	In the
	Q. Did you raise the topic of statements to the Marine Department with any other witness?	<u>High Court of Hong Kong</u>
	A. I haven't seen any statement from Marine Department.	<u>Prosecution's Evidence</u>
	Q. Did you raise the topic of statements to the Marine Department with any other witness?	No.4
10	A. I am sorry, I don't quite follow your question.	P.W.15
	Q. Did you cross-check whether Capt. Kong was saying to you in describing the story what he had told the Marine Department?	John Ling Hung-hay Cross- Examination
	A. I must say I have not seen the Marine Department's statement from which Capt. Kong has given. I could only ascertain what he told me to be the truth. I had no chance or totally impossible to cross-check the statement from what he gave me as to that he gave to the Marine Department because I hadn't had the chance to look at the statement he gave to the Marine Department.	(continued)
20	Q. I don't quite follow your observation about being able to assess whether it is the truth. You have to assess that the statement was true, is that right?	
30	A. I suppose he was telling me the truth.	
	Q. But you would not just take it at face value, you would want to compare it with what Capt. Pyrke had told you?	
	A. I don't think I had need to compare it because I had the statements from other crews prior to taking statements from Capt.Kong.	
40	Q. I ask you again the question. What is it that you learned from that interview which you didn't know before?	
	A. It is hardly to say I have to compare it word by word, phrase by phrase.	
	Q. Capt.Kong was arrested on the morning of the 16th. You have told us that on the morning of the 3rd, or in the afternoon of 3rd August there was no reasonable grounds in your view for thinking that he had committed an offence. What was it that you learned between the 3rd and	
50	the 16th which changed your mind?	
	A. That was after legal advice, we were instructed.	
	Q. Your mind didn't change, is that right?	
	A. In what respect are you referring to?	
	Q. One thing we can safely assume, is this not right, that it was your own initiative	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- to effect an arrest and charge Capt. Kong and maybe others with manslaughter, that wasn't your decision?
- A. No.
- Q. I put it further, you were, in a sense, exactly in the same position as you had been on the 3rd August, namely, that you had no reasonable ground in thinking that they had committed an offence and your attitude of mind on the 16th August was exactly the same? 10
- A. Not after we have consulted Legal Department.
- Q. They managed to change your mind?
- A. I must say so.
- Q. Why not ask Capt.Kong whether you could use the statement that he had given to the Marine Department?
- A. I'm afraid any statements given to Marine Department, as I was informed by Capt. Pyrke, are on oath and cannot be released. 20
- Q. Sorry?
- A. All the statements the crew had given to the Marine Department are on oath during the preliminary inquiry.
- Q. All the more reason, perhaps, to draw comparison, is that right, between what you elicited and what the Marine Department elicited?
- A. I don't think so. 30
- Q. Maybe that these statements to the Marine Department could not be released without permission of the person who gave the statement, but why not ask Capt.Kong for such permission?
- A. Well, I would rather take the statement on my own initiation.
- Q. I am surprised for that, if I may say so, Inspector Ling, because would I be right to assume that it is not often that you have to interview people about navigational matters? 40
- A. I don't think so because I am working in the Marine Police we have dealt with a lot of marine cases which would involve the Marine Police investigation. If it is a police investigation I'd rather take the statement in the police view of point instead of following a statement from the Marine Department which is separately another department. 50
- Q. So in taking a statement in this case you would not need the assistance of anybody from the Marine Department?
- A. Not necessarily.
- Q. Not necessarily of course, with Capt.Kong

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- there was no one present except yourself and Inspector Kong, is that right?
- A. Yes.
- Q. Did the same position prevail with the other defendants? When you interviewed Mr. Ho, for example, who else was present?
- A. There is one more Marine Police Inspector there who is the Deputy Commandant of the Marine Police Training School and he is an ex mariner. 10
- Q. And when you were interviewing Mr. Ho you thought it would be helpful to have a person there with nautical knowledge and experience?
- A. That's right.
- Q. Why did not the same attitude of mind prevail when you were interviewing Capt. Kong?
- A. Because we have learned the navigational technique and knowledge from that inspector 20 while interviewing Mr. Ho and we know what we should look for, so that's why we don't want to bother him again when interviewing Capt.Kong.
- Q. Think about that, when did you interview Mr. Ho?
- A. 4th August.
- Q. The day after you had interviewed Capt.Kong? So the point you have just made is a hopelessly bad one. You didn't learn about 30 nautical matters until after you had interviewed Capt.Kong, not before?
- A. The problem is he was not available on the 3rd.
- Q. Certainly that may be the problem, but the reason you have just given for using an experienced nautical man on one occasion so that thereafter you would be in a position to interview just does not work with Capt.Kong because you had already 40 interviewed him, hadn't you?
- A. Yes.

COURT: Mr. Steel, would that be convenient?

MR. STEEL: My Lord, yes.

11.40 a.m. Court adjourns

12.00 noon Court resumes

Accused present. Appearances as before.
Jury present.

P.W.15 - John LING Hung-hay
XXN. BY MR. STEEL (continues)

O.f.o.

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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- Q. Inspector Ling, looking at the statement that you took from Capt.Kong, in common, I think with all the statements that you took from the defendants there is first a narrative and then a question and answer session, is that right?
- A. That's right.
- Q. And is this right, Capt.Kong came to the police station on the 3rd August at about 12 o'clock, about mid-day? 10
- A. I cannot remember exactly. It's some time in the morning.
- Q. And then you discussed, I think with him what has happened and then at 1.45 you started to take the statement?
- A. That's right.
- Q. In a sense, you ran through the story once and then you started to take the statement? 20
- A. Yes.
- Q. What is the significance of what I might call the change from a narrative to a question and answer session?
- A. This is mainly for if we wish to clarify any particular point or to pin-point any information we wish to get.
- Q. And Capt.Kong made it absolutely plain to you, didn't he, that the record in the log book of the Goldfinch was incomplete and inaccurate? 30
- A. I cannot exactly recall.
- Q. But let's just look at some of the questions that you asked because I am a little puzzled as to why you asked them. Let's take the first question: "As an experienced captain like you, if you want to alter the course of a hydrofoil travelling at full speed to 7° on the starboard side, what is the turning angle per second that you think?" 40
- Now why did you want to know that?
- A. Just to know about his attitude in this question.
- Q. If you want to alter course 7° to starboard you could either do it quickly or slowly. Why did you want to know any specific --?
- A. Because he is the master of the hydrofoil he should well have known the answer.
- Q. If I may say so, perhaps it's my fault, 50
I find the question difficult to understand.
- A. Well, he did answer it.
- Q. It may be so, but why did you want to know?
- A. It just happened the question was asked.
- Q. Let's take the next question: "Under these circumstances, what is the speed of your boat per second?"

	A.	This is just a common knowledge to know whether he knew the performance of his own hydrofoil.	In the High Court of Hong Kong
	Q.	Oh, I see, just want to see whether he was competent and sufficiently efficient to know how his boat would behave?	<u>Prosecution's Evidence</u>
	A.	You may put it that way.	No.4
10	Q.	And then you turned to question about stopping the engine and then the deck log; indeed, the whole of the rest of the question and answer session is about that?	P.W.15 John Ling Hung-hay Cross- Examination
	A.	Yes, mostly.	
	Q.	So the only two questions that related to his description of what had happened that we have here are: what was the speed in feet per second and what is the rate of turn if you alter course 7° to starboard, is that all you wanted to know?	(continued)
20	A.	Yes, in relation to our inquiry.	
	Q.	What are the rules which mariners must obey when they are sailing at sea?	
	A.	I must say I am not a competent mariner.	
	Q.	You are a policeman from the Marine Police investigating a collision. Do you tell me that you don't know the name of the rules which mariners are supposed to obey?	
30	A.	Name?	
	Q.	Yes.	
	A.	Roughly I can tell you, but not any expertise knowledge.	
	Q.	I am not asking for expertise. I am asking you whether you know even its name?	
	A.	The rules of --?	
	Q.	The rules that mariners are supposed to obey when navigating at sea?	
40	A.	They should keep a safe passage in passing.	
	COURT:	No, not what is set out in the rules, but do you know what the rules are called?	
	A.	No.	
	Q.	I am surprised that you feel that it's possible for you to investigating marine casualties of this kind and not even know the name of the prevailing rules?	
	A.	I must say if you talk in terms of marine casualties, that's entirely to the Marine Department. I am interested only on the general side involving police interest.	
50	Q.	Let's turn to something else. You finished taking the narrative statement, the narrative part of the statement at about	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- 5 o'clock, is that right?
- A. There is not time noted down here.
- Q. No, did you keep notes while you were going along or not?
- A. It was in the late afternoon, yes.
- Q. Was it about 5 o'clock?
- A. I cannot say exactly the time.
- Q. And then you started the question and answer session. When did Capt.Kong finish that question and answer session and leave the police station? 10
- A. Before dinner time.
- Q. About 7.30, wasn't it?
- A. I cannot exactly remember the time.
- Q. What I am suggesting to you is that the question and answer session lasted about 2½ hours?
- A. I cannot recall.
- Q. Am I roughly right?
- A. It lasted about an hour or so, yes. 20
- Q. No, I am suggesting about two or more hours.
- A. I cannot recall.
- Q. There are, we know, two questions that you asked and two answers which have been extracted from this statement?
- A. You mean on page 8?
- Q. Just remember that there are two questions and two answers that have been removed, and we can see perhaps, members of the jury, where they have been removed from, where the gap is. Just bearing that in mind, are these the only questions and answers that took place over a period of 1 and 2, or 2½ hours? 30
- A. No surprise to me because the attitude of Capt.Kong giving the answer - he dodged the answer from time to time and until he is satisfied on his answer we then wrote it down. 40
- Q. Sorry?
- A. No surprise to me because whenever a question was asked of Capt.Kong he dodged the answer several times until he was satisfied that his answer could be justified or able, then we wrote it down.
- Q. Why not record his dodging and weaving?
- A. He did not want it.
- Q. Well you wrote it down and then he crossed it out or refused to have it recorded, are you saying that? 50
- A. Well, this is what happened. I cannot comment on that.
- Q. I would like you to comment on that?
- A. I was unable to comment on that.

COURT: Inspector, you were writing the answers?

A. Yes, I am.

COURT: When he made an answer you did not immediately write it down, did you?

A. We listened to his answer to the question and normally he would pause for quite a while before he would give a definite answer. So we'd wait till he's certain what his answer was, then I wrote it down.

10

Q. And for instance, what you were saying to him, if I may take an example, is that his protestation that he was and had been unwell and hurt were all bogus and untrue?

A. That's up to him to say it.

Q. That's what you were suggesting to him, isn't it?

A. Suggesting what?

20

Q. That his assertion of being unwell and of having been injured and still in pain was all untrue?

A. I cannot recall if I said so.

Q. He was wearing a neck collar at the time, is that right?

A. Yes.

Q. And you told him that was all pretence?

A. I cannot recall if I said that.

30

Q. And this question and answer session went on a considerable period of time and it was made absolutely plain to you, wasn't it, that what Capt. Kong had recorded in the log book was incomplete and inaccurate?

A. As far as his statement taking session is concerned, all I can remember is the record.

Q. That's all you can remember?

A. Yes.

40

Q. Can I just ask you this in English: do you distinguish between things that are inaccurate from things that are untrue?

A. I would say it all depends on what aspect and what topic you are referring to.

Q. If I told you that that window over there was 10 feet from me, would you say that was untrue or inaccurate?

A. I would say inaccurate.

Q. And why would you not say it was untrue?

50

A. Because I have been in this court-room, I can see.

Q. I don't follow that answer. Why is my observation inaccurate but not untrue?

A. I think true relates to facts: accurate refers to measurement. This is my way of thinking.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- Q. Let's take a classic example and your penultimate question: "Do you think the above 12-page statement given by you is correct?" What do you mean by correct?
- A. Are you referring to any question?
- Q. Yes, the penultimate question.
- A. Your question again?
- Q. What do you mean by the word "correct"?
- A. Correct to its sense, to its contents. 10
- Q. Do you mean by that, "Is the statement that you have given accurate?" or does it mean, "Is the statement that you have given true?" or does it mean something else?
- A. I would mean both.
- Q. And are you seriously suggesting that any witness of a maritime casualty can give precise and accurate records of what he has seen? 20
- A. Are you referring to the laymen or they have knowledge of navigation?
- Q. Seamen, laymen, extra-masters or children.
- A. I would say there is a great lot of difference if they have navigational knowledge. They might give a more accurate....
- Q. He would be more accurate, yes. But you would never - and you have many years of experience, I understand, in investigating maritime casualties - you wouldn't conceivably expect even an experienced man to give precise and accurate recollection of, say, distances of bearings leading up to a casualty. 30
- A. I am sorry to say I have been away from the Marine Police Region for over ten years and I cannot comment on this question.
- Q. When did you come back to the Marine Police? 40
- A. Shortly before the collision.
- Q. So this was your first investigation of a marine casualty for ten years.
- A. After ten years, yes.
- Q. On the 16th of August there was an arresting session. You arrested, did you not, or caused to be arrested all four defendants.
- A. Yes.
- Q. You also caused to be arrested Mr. LO, is that right? Who else did you arrest that day? 50
- A. In fact, we arrested both crew of Flying Flamingo and Goldfinch, the master, the chief officer, the chief engineer and the radio officer on the direction of legal advice.

	Q. So Mr. LO, the radio officer of the..	In the
	A. He was also brought in.	High Court
	Q. What was the charge against him, the	<u>of Hong Kong</u>
	potential charge against him?	
	A. I cannot recall because I was not	Prosecution's
	the officer effecting the arrest.	<u>Evidence</u>
	Q. And what was the charge against the	
	two chief engineers?	No.4
	A. I cannot recall.	John Ling
10	Q. Manslaughter, wasn't it?	Hung-hay
	A. I cannot recall. It only appears in	Cross-
	the warrant of arrest, yes, as	Examination
	manslaughter.	
	Q. It appears in the warrant of arrest.	(continued)
	I assume that that is what it is	
	intended to mean.	
	A. Yes.	
	Q. And you were present at the committal	
	proceedings, were you not, when the	
20	proceedings or charge against the two	
	chief engineers were dropped.	
	A. Yes.	
	Q. You are not seriously suggesting you	
	have now forgotten that they were	
	charged with manslaughter.	
	A. Pardon?	
	Q. You are not now saying that you had	
	forgotten that they were charged with	
	manslaughter, are you?	
30	A. No.	
	Q. Just one last question about Mr. LO.	
	He's told us - he's the radio officer	
	of the Flamingo - he's told us and it	
	now appears accurately that he was	
	arrested on the 16th and then he gave a	
	statement, and he also told us that he had	
	given a statement to you on the 1st of	
	August, is that right?	
	A. Yes.	
40	Q. So that was another piece of information	
	that you had, whatever that statement	
	may have said, when you came to interview	
	Captain KONG.	
	A. Yes.	
	Q. Why take a new statement?	
	A. Normally if someone is brought into the	
	station to clarify some point.	
	Q. I am sorry, I don't understand you. Why	
	take a new statement from Mr. LO?	
50	A. It is not new.	
	Q. Let's take an example. You had examined	
	or taken a statement from Mr. NG on the	
	1st of August and then you had taken a	
	further statement from him on the 16th of	
	August, uncautioned.	
	A. That's right.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- Q. Why didn't you follow the same procedure with Mr. LO?
A. Because on legal advice we had no intention to charge the radio officer.
Q. He was arrested without any intention of charging him with anything.
A. No, not until we made further investigation and enquiries after their arrest.
Q. I am afraid that doesn't answer my question as to why you did not -- why you took a new statement from him. 10
A. Why took or why did not take?
Q. No. Why did you take a statement on the 16th August when you had taken one on the 1st?
A. Because on the first statement he only gave roughly the detail of the collision.
Q. Then why not take a supplementary statement?
A. You mean on the 1st? 20
Q. No, on the 16th.
A. It is an additional statement.
Q. It makes no reference to having made an earlier statement.
A. No.
Q. And that was news to me when Mr. LO told us about it.
A. Yes, that was taken by us.
MR. STEEL: Thank you, Inspector LING. 30

XXN. BY MR. AIKEN:

- Q. I am not clear about one thing at the moment. I think you said that you were present on the 1st of August when Mr. NG made his uncautioned statement.
A. That's right.
Q. And that is why you read it out. How do you know you were present?
A. How do I know?
Q. Yes. 40
A. Because I was there.
Q. It is not in your witness statement, is it? In your notice of additional statement you don't mention that you were present when this statement was taken.
A. I must elaborate on this.
Q. Answer the question first. You don't mention it.
A. I did not mention it.
Q. And the person who took this uncautioned statement, that's Mr. CHEUNG, he doesn't mention your presence either, does he? 50
A. No.
Q. Perhaps you'd better elaborate.
A. Because I was in and out of the room at that time.

	Q.	You were out of the room when this statement was taken?	In the High Court of Hong Kong
	A.	I was in and out.	
	Q.	You were out for most of the time. You might have come in once or twice.	Prosecution's Evidence
	A.	Yes.	
10	Q.	Because it is normal, isn't it, in police procedures for each officer who is present when a statement is being taken to sign his name on the statement.	No.4 P.W.15 John Ling Hung-hay Cross-Examination
	A.	It is quite true.	
	Q.	The fact your name doesn't appear on the statement suggests that you were out more than in, in other words, you weren't party to the taking of that statement.	(continued)
	A.	I do admit that.	
20	Q.	Can you have a look at the Chinese please.	
	A.	Yes.	
	Q.	Have you got the right statement? It's Mr. NG's. We may need the interpreter for this. The uncautioned statement, the one made on the 1st of August. In the English translation if you look at the third paragraph of the 7th line, it reads "to Hong Kong, I asked the Radio Operator for the draft of the log book of the boat and I wrote in the log book."	
30	A.	Yes.	
	Q.	Look at the Chinese, the translation simply records the word 'asked'. That is a translation of an ambiguous word. In Chinese it has two meanings.	
	MR. LUCAS:	My Lord, I am sorry to interrupt my learned friend, but there is a procedure whereby in challenging a certified translation of any document is to be done.	
40		I have been involved in this sort of argument too many times with people unqualified to deal with. If the translation is certified and has been presented to the court, then that person who certified it can be called as to the translation itself rather than a lay-witness, my Lord.	
	MR. AIKEN:	My Lord, to save time, there is a certified interpreter in court. I would ask him to give this evidence.	
50	MR. LUCAS:	A translator, not an interpreter.	
	MR. AIKEN:	I would ask the interpreter to give evidence, to look at the Chinese word and to look at the English and tell	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

me if the word is ambiguous.

COURT: Yes. Do we have an interpreter not necessarily a certified translator?

MR. AIKEN: What does that mean? Does that mean that the interpretation we are getting is not the best and is he not qualified to answer this question as Mr. Lucas is saying?

MR. LUCAS: I am sorry. I am not being difficult, but the reality is there is a procedure set down by this court which is set out -- for the life of me I can't recall, but there is a particular method of challenging translations. It is done to avoid the sort of situations we have here, of two people unqualified to do so, discussing something that has been certified by a translator of the court. The exact procedure, forgive me, my Lord, I do not have at my finger tips. If you give me the opportunity I will find out what it is and then notify you and my learned friend, but certainly it doesn't call for the interpreter in this court.

10

20

MR. AIKEN: So do I understand my learned friend to be saying that the interpreter is not qualified to give his evidence to help us?

MR. LUCAS: That's right, yes.

COURT: Could you ...

30

MR. AIKEN: My Lord, I am sure there's a procedure. I am trying to save time. If my learned friend wishes for me to go through calling a certified translator because he is not prepared to accept the interpreter, then I shall do that. So I take it he's objecting to the interpreter giving this -- helping us with this Chinese word.

MR. LUCAS: My Lord, I am sorry. I am simply saying that if there is something to be queried, let's do it properly. I don't know what the question is.

40

COURT: Which word is it?

MR. AIKEN: It is only the word "asked". In my experience, it happens every day of the

week. Interpreters in courts are asked to help with the translation of an ambiguous or doubtful word. I am only trying to save time, my Lord.

In the High Court of Hong Kong

Prosecution's Evidence

COURT: Mr. Interpreter, are you a certified translator as well?

No.4

INTERPRETER: I am, my Lord.

P.W.15
John Ling
Hung-hay
Cross-
Examination

10

COURT: If we interpose the interpreter, it would save time. I think the best way is we interpose the interpreter. He can give evidence on this point.

(continued)

MR. AIKEN: Perhaps the interpreter can come forward and give evidence.

COURT: Would you just stand down for a moment please.

P.W.16
EVIDENCE OF SO PAK-KAN
(INTERPRETER)

P.W.16
So Pak-kan
(interpreter)
Cross-
Examination

20

P.W.16 - SO Pak-kan (Interpreter)
XXN BY MR. AIKEN: Affirmed in English

Q. You have told us you are a certified interpreter and you are employed as a translator in the courts of Hong Kong.

A. I am.

Q. I simply want to ask you about - you probably heard my question and you must have done as you were translating it to the defendants - I would like you to have a look at the Chinese original of this statement and the English interpretation and tell me whether the English word "asked" is the only translation of the Chinese word.

30

COURT: That's the first question of page 4 of the translation?

MR. AIKEN: My Lord, no. It is on the first page. This is the statement taken on the 1st of August, the uncautioned one. It is on the first page of that and it is the third paragraph and it is the 7th line.

40

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.16
So Pak-kan
(Interpreter)
Cross-
Examination

(continued)

COURT: "I asked the radio operator".

MR. AIKEN: Yes. All I want to know is the "I asked", whether the Chinese original is limited only to "I asked" or whether it is ambiguous and has another meaning.

A. After reading the original, I would say that the English translation is a correct one. It is a correct one.

Q. What is the Chinese word for "asked"?

A. The Chinese word for "asked" is "mun".

10

Q. And what about the word "hung"?

A. Which character are you referring to?

Q. Does the word "hung" appear there?

A. Yes.

Q. And what does that mean?

A. Sometimes you can't translate a sentence word by word. It is correct that this is a character "hung". It can be translated in this context as "asked".

Q. And can it be translated as another word?

20

A. Yes, it can.

Q. And is that other word "obtained"?

A. "Obtained from".

MR. AIKEN: Thank you.

Examination

XN BY MR. LUCAS:

Q. Interpreter, just to see if I've got this right. Is that the correct translation?

If you read that in Chinese, does it clearly mean that "I asked the radio operator for the draft of the log book"?

A. Well, it clearly means that, but it bears another meaning.

30

Q. It clearly means that. You are not arguing with the translation

A. No.

Further Cross-
Examination

FURTHER XXN. BY MR. AIKEN:

Q. And the other meaning is "obtained".

A. "Obtained from".

MR. AIKEN: Thank you very much. My Lord, that's all I wished to ask.

BY COURT:

40

Q. Are you saying that in the context of this and in the way it has been set out in Chinese that a translation "I obtained from the radio operator the draft of the log book", that would be an incorrect translation?

A.	No.	In the
Q.	It is not incorrect.	High Court
A.	It is also correct.	<u>of Hong Kong</u>
Q.	I understand in your evidence that you say you would prefer the translation as listed or do you think they are -- either is correct?	No.4
A.	Both of them are correct.	P.W.16
Q.	Both. Yes, thank you.	So Pak-kan (Interpreter) Further Cross- Examination
		(continued)

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P.W.15
EVIDENCE OF JOHN LING
HUNG-HAY (Cross-Examination)
(continued)

P.W.15
John Ling
Hung-hay
Cross-
Examination

P.W.15 - John LING Hung-hay (Senior Inspector) o.f.o.
XXN. BY MR. AIKEN (continues)

(continued)

20

Q. Now, the other statement, and that is the cautioned statement, was taken from Mr. NG on the day of his arrest and you played no part in the taking of that statement.

A. No, I was not present.
Q. But you did play a part in his arrest.
A. Not making the arrest.
Q. No, but you know when it happened.

A. Yes.
Q. 6 in the morning.
A. Yes.

30

Q. On the 16th of August.
A. Yes.
Q. So the time this cautioned statement, the record of the time of this cautioned statement is incorrect.

A. I must correct that I don't know....
Q. But is it incorrect or not?
A. No, no. I must correct the last answer if you said 6 a.m. in the morning. I am not quite sure about that because I wasn't there to effect the arrest.

40

Q. You said that you don't know the exact time but you know roughly when it was.

A. Roughly in the morning time.
Q. It wasn't in the morning, was it?
A. Pardon?

Q. Are you saying you don't know whether it is

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.15

John Ling

Hung-hay

Cross-

Examination

(continued)

one in the morning or six in the morning?

A. I don't know the exact time of his arrest.

Q. It was about 6, wasn't it?

A. No, I don't think so.

Q. You don't remember.

A. I don't remember.

Q. But you were in charge of these arrests.

A. Yes.

Q. A big day for you - the 16th of July.

A. Yes.

Q. Surely you remember what time roughly the arrest took place.

A. The time of arrest was given as an instruction at 7 o'clock.

Q. Yes. So it might have been 6.30 in the morning, it might have been 7 in the morning.

A. I cannot be sure because I was not there.

Q. One thing is for sure - it wasn't 2.15 a.m.

A. No. I think it must be -- hang on, I've got the Chinese. Should be p.m. In the Chinese original, Chinese should be p.m.

Q. I think these are very minor but they are mistakes on the record which must be corrected.

A. Yes, I didn't notice. Sorry, it should be 2.15 p.m. in Room M1.

Q. Can you help me with this, I know you weren't there, but if you read the preamble to the cautioned statement, perhaps the first paragraph, we go down to below half way it says, "I now remind you, NG Yui-kin, that you are still under caution. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down by me and may be given in evidence in future. Are you willing to answer the questions asked by me in order to clarify?"

A. Yes.

Q. So these questions are really in clarification of something else.

A. I am not there. I don't know the person's intention, you know, of recording this cautioned statement unless again you wish to call Chief Inspector KONG to answer this part.

MR. AIKEN: Yes, thank you.

XXN. BY MR. CORRIGAN:

Q. Inspector, when you interviewed the 1st accused Captain KONG, you told my learned friend Mr. Steel that you did indeed learn

something new from Captain KONG on that occasion, that was the 3rd of August, 1982 when this statement was made by Captain KONG. Is that right?

In the
High Court
of Hong Kong

A. That's right.

Prosecution's
Evidence

Q. You told members of the jury that on that occasion, on the 3rd of August, you learned for the first time, is this right, Captain KONG's version of the story of this collision, is that right?

No.4

P.W.15

John Ling

Hung-hay

Cross-

Examination

10

A. Version, his own version.

Q. Yes, his story of what happened before the collision.

A. Yes.

(continued)

Q. You had not heard that version from any other witness or potential witness that you had yourself interviewed, is that correct?

20

A. No. Since I have taken several statements from his other crews, roughly I could imagine what the story will be.

Q. What? Sorry, did you understand my question?

A. Yes.

Q. What do you mean when you speak and told members of the jury that this was the first time you heard about Captain KONG's version of the collision?

30

A. That's right. Yes.

Q. Yes. What I am referring to, it may be at cross purposes, is the story in the narrative part of Captain KONG's statement about how he was sailing from Macau to Hong Kong on this occasion, that he made certain moves to starboard to change its course and how he says the other boat Flamingo - I am just putting it very broadly - was making port turns and so eventually was trying to cross his bow from the portside, that broad story you had not heard, had you, from any other person you had interviewed.

40

A. No.

Q. Is there any doubt about it? Do you want to look at the account now? This is an important matter. Would you look at Captain KONG's statement, the third page of the statement or it is really from the bottom of page 2 dealing from the time that this ship Goldfinch left Macau. Do you see from the very bottom of page 2 of his statement starting off "After the boat passing the first and second beacons" and then he says what his course was? From then on the collision - it is a fairly short account - up to the top of page 4.

50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- A. Yes.
- Q. Now, that account in outline, I'll ask you again, had you heard that account from any other person that you had interviewed before you interviewed Captain KONG on the 3rd of August?
- A. You mean the exact recollection on the part he mentioned in his statement?
- Q. I will come to the question of exact recollection later. Had you heard a story or an account like that from anybody who had been on the Goldfinch who you had interviewed up to this particular day when you interviewed Captin KONG? 10
- A. Not exactly, because I had taken statement from deck officer, I had a rough picture.
- Q. And who else? The radio officer you interviewed? 20
- A. Yes.
- Q. No one had claimed, had they, that anything like this had happened on the morning of the 11th of July until Captin KONG made the statement.
- A. Yes.
- Q. Is there any doubt about this? He may have told the Marine Department but you are telling members of the jury that you had never heard or never seen or hadn't been told in any detail about the story that Captain KONG had told the Marine Department, is that right? 30
- A. I haven't seen the statement he had given to the Marine Department but I was briefed on what he had told.
- Q. Does it really come to this, looking back, thinking about it now that you may have heard or indeed did hear the outlines of this account? 40
- A. I may have heard.
- Q. Yes. Because this was, you understood, the account that Captain KONG himself had given to the Marine Department.
- A. That may be so.
- Q. That may be so. But certainly from no other witness, as far as you were concerned, had you heard a story or version of the events anything like this, is that not right? 50
- A. Yes.
- Q. That's right. Now, you see, my learned friend Mr. Steel asked you with some force as to whether you would expect any person giving an account of a marine collision such as this sometime later to be precisely accurate about the details of

	such a collision and you said you would expect an experienced mariner would be more accurate than a civilian.	In the High Court of Hong Kong
	A. Yes.	
	Q. Yes. But you would expect a marine officer or perhaps anybody else, would you not, if not to be entirely and precisely accurate in his recollection about courses and distances and bearings, that sort of thing, at least to be clear as to the broad outlines of what had happened leading up to a particular collision, right?	Prosecution's Evidence
10		No.4 P.W.15 John Ling Hung-hay Cross- Examination
	A. Yes.	
	Q. You would have expected somebody in Captain KONG's position in the ordinary way to be able to give you a broad account of the movements of the vessels concerned up to the collision having occurred, is that not right?	(continued)
20		
	A. In the first instance, yes, but at a later stage, no.	
	Q. What do you mean by that?	
	A. Because he was claiming he was confused in his mind at a later stage.	
	Q. I will come to that in a moment, but whether it was true or not, Captain KONG gave you this account that we read in this statement, right?	
30		
	A. Yes.	
	Q. Now, regardless of whether it was true or false - it may have been totally true, it may have been totally false - regardless of that, you would have expected a master mariner, a captain of a hydrofoil being interviewed, what, two weeks on after a major collision such as this, unless he was incapacitating in some way, you would expect him to be able to give you an account, true or false, of the major events, the major movements leading up to a collision such as this one.	
40		
	A. That is what I was hoping for.	
	Q. And he appeared to be able to give you, did he not - again whether it was true or false - an account in some detail of what he was claiming were the relative movements of the two hydrofoils before the collision.	
50		
	A. Yes. Always and always after long thoughts and pause before he gave me the account.	
	Q. After long pauses and so on. You told members of the jury that he was, Captain KONG, a difficult person to question in	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- that as you explained, he was inclined to - how did you put it?
- A. Dodge.
- Q. To dodge answers and so on, that's your explanation. Never mind dodging answers to questions. This narrative account of the events as Captain KONG says leading up to this collision, right, the version of the story that you first heard from him on this day or from anyone you said, did it appear to you that he had come prepared to tell you that story? However much he may have dodged or being hesitant or unwilling or whatever to answer questions, did he not appear to you - Captain KONG, to have come prepared to tell you the broad story as you recorded it, the narrative? 10
- A. Yes, I would think so. 20
- Q. Yes. What you are saying is this, is it not, he was quite prepared or quite happy to give you that account but wasn't so happy to answer questions about it, is that what it amounts to?
- A. Yes.
- Q. Did you have to question him when he was giving you that narrative account or did he simply tell you a version of the events that he wanted apparently to tell you? Do you recall? 30
- A. I can only recall that from time to time there bounds to be questions on the account.
- COURT: I am sorry?
- A. There abounds to be questions thrown at him regarding the account.
- COURT: We are talking now -- at the moment forget the questions and answers. We are talking about the narrative part of this statement. Now, during the course of that narrative, in fact even if they were not recorded as such, did you ask him any questions? 40
- A. I cannot recall.
- Q. But in the main you say this, do you, Captain KONG told you a story that he had come prepared to tell you.
- A. Yes.
- Q. No doubt about that. 50
- A. Yes.
- Q. Now, you see, you said at some stage to members of the jury - I expect it was a slip of the tongue - you said, I took a note of what you said, "I could only

ascertain Captain KONG's statement was true". Now, I don't know what you meant by that, but you were not forming any judgment yourself, were you, on the 3rd of August or indeed when you interviewed any other defendants whether or not their stories were true. Do you understand?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

10

A. Yes. Let's take it this way. When I took statements from Captain KONG, in view of the statements that I have taken prior to that occasion from his other crew, I wished to ascertain whether he would be telling the same account similar to that of his crew.

Q. Yes. Of course he wasn't, was he?

A. Some yes, some no.

20

Q. At any rate, Captain KONG was really rather lucky when you interviewed him in this sense - I think you only put to him or you only recorded as you explained it in answer to my learned friend, some four questions and answers, two of which apparently have been excluded, but there are only before members of the jury two questions and answers, only that were put to Captain KONG about the contents of this version of the story that he had given to you. Is that right?

30

A. Yes.

Q. He wasn't therefore on this occasion on the 3rd of August cross-examined or interrogated by you to any extent really to probe the truth or otherwise of the statement that he was giving you, is that the position? That's right, isn't it, as far as Captain KONG is concerned?

40

A. Yes.

Q. I think you explained that in one way to members of the jury when you said that on this occasion when you interviewed Captain KONG on the 3rd of August, you did not have with you a navigation expert.

A. Yes, I intended so but unfortunately as I have told Mr. Steel about this inspector who is an ex-mariner, he happened to know Captain KONG and Captain KONG happened to ring him up after the collision, so we were not able to get him in and he was not available.

50

Q. I see. So really you didn't have yourself the benefit of any expert assistance.

A. Quite true.

Q. When you were taking the statement from Captain KONG?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- A. Quite true.
- Q. I am not criticizing you in any way, but he got off a little lightly in comparison perhaps with Mr. HO, the 3rd defendant.
- A. Not exactly. In fact, as you could see from his statement, it was not finished yet and we expect him to get well and continue the statement. 10
- Q. Who? Captain KONG?
- A. Yes. In fact the statement was not finished at all as you may observe from the last few questions. We were hoping to continue the statement and then we realized we have great difficulties in technical aspects. That is why on the next day when we took a statement from Mr. HO, we got the inspector from the Training School. 20
- Q. Yes, on that aspect of the matter, did you ask Captain KONG to go back to see you again for further questioning or to give a further statement?
- A. Yes. We told him as soon as he got well again, would he be kind to carry on with the statement, but then he refused.
- Q. That was said to him at the conclusion, was it, of the interview with him on the 3rd of August? 30
- A. Yes, but not recorded.
- Q. But you didn't record it.
- A. Yes.
- Q. And you say Captain KONG refused. In what way? How did he refuse? Can you tell us?

COURT: "Refused", did he say?

MR. CORRIGAN: Yes, he did, with great respect. Perhaps the shorthand writer can read it back. 40

COURT REPORTER READS: "Yes. We told him as soon as he got well again, would he be kind to carry on with the statement, but he refused."

MR. CORRIGAN: "Then he refused". I am much obliged. Quite clearly the witness had said before I used the word "refusal" that Captain KONG had refused their request to go back again to make a further statement. 50

A. But he did not refuse at that very day.

Q. No, no. I was coming on, in order to be fair, coming on to ask you to clarify the matter. You say you expected that he would be interviewed again and that in one form or another that had been put to Captain KONG on the 3rd of August.

A. Yes.

10 Q. What did you say to Captain KONG roughly about that at the end of this interview on the 3rd of August?

A. After the last question?

Q. Yes, that's at the end of the interview. What did you say to him, what did you ask him?

A. It is off the record. We asked him whether -- no, we did not ask. We told him as soon as he feels well again we would like to carry on with the interview to finish the statement.

20 Q. And that is how the matter was ended, was it?

A. Yes.

Q. Did he say 'aye' or 'nay' to that as far as you recall?

A. I think he nodded his head.

Q. But anyhow he was rather left up in the air, was he?

A. Yes.

30 Q. But after the 3rd of August, subsequently did either you or Captain KONG make any approach, the one to the other, about a further interview?

A. I cannot recall the period before his arrest. I cannot recall. On the day of his arrest we were unable to effect the arrest at his reported home address and eventually we received a phone call from his lawyer informing us that Captain KONG was at his office, at his lawyer's office and asked about whether we were intending to arrest him and then we explained the situation to Captain KONG's lawyer over the phone, and then at a later stage he was accompanied by his lawyer and reported to the -- surrendered himself rather to the Marine Police Headquarters.

40 Q. Was there any question raised by either side about a further interview, 'yes' or 'no'?

A. Yes. We did raise question in another interview when he surrendered himself in the company of his lawyer.

50 Q. Was that on the 16th of August or was that on some other day?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination
(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- A. I can't exactly remember whether it is the day of the 16th or the day of the 17th.
- Q. Was there any further interview?
- A. No.
- Q. Why not?
- A. He was on his lawyer's advice. He declined to make any further statement.
- Q. That came from the lawyer, as far as you understood. 10
- A. Yes.
- Q. At any rate, to come back to what I was really seeking to ask you about, when you interviewed Mr. HO, the third defendant, on the day after you had interviewed Captain KONG - you saw KONG on the 3rd of August, you saw Mr. HO on the 4th.
- A. That's right.
- Q. On that occasion you had armed yourself, so to speak, together with a navigating expert. 20
- A. Yes.
- Q. I think you said he was a gentleman from the --
- A. Marine Police Training School.
- Q. A man, I think, who teaches navigation.
- A. That's right.
- Q. And sets examinations and all that sort of thing. 30
- A. Yes.
- Q. So when it came to Mr. HO, Mr. HO gave you, as Captain KONG had given you although a very different story, he gave you a narrative account of the events leading up to the collision so far as he was concerned on Flamingo. I think that narrative - members of the jury have the document - that narrative covers several pages. 40
- A. That's right.
- Q. It's about 6, 7, my goodness, it's half-way down page 8, in fact it went on to a second day. But apart from not being cross-examined or interrogated on his account, he was closely cross-examined - Mr. HO, by you, I suppose, acting on the advice of the man you had with you. Is that right?
- A. No, not exactly acting on the advice. 50
He only advised me on the matters on Mr. HO's training period.
- Q. Yes. At any rate, he was questioned or to some extent perhaps cross-examined for some 13 pages.
- A. Yes.
- Q. Mr. HO seems to have been rather extensively interviewed. Of course he was

willing to go back and did go back to see you on three successive days - on the 4th and the 5th and then again on the 6th of August.

In the High Court of Hong Kong

10 A. That's right, because the progress was so slow because his solicitor was there and the interpreter was there, and it almost was a three-way or four-way round questions and answers. And I would say for every phrase or sentence recorded, it takes up to 5 to 10 minutes to do this.

Prosecution's Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

MR. CORRIGAN: My Lord, would this be a convenient time?

(continued)

COURT: Yes.

1.03 p.m. Court adjourns

2.35 p.m. Court resumes

20 Appearances as before. Jury present.
Accused present.

P.W.15 - John LING Hung-hay o.f.o.

XXN. BY MR. CORRIGAN: continues

Q. May it please you, my Lord. Yes, inspector, in fact you had interviewed Mr. John Coull, Captain Coull, on the morning of the 4th of August, had you not?

A. Yes.

30 Q. Before you interviewed the 3rd defendant as he now is, Mr. HO.

A. Yes.

Q. And again it is true, with Captain John Coull - members of the jury have the statement that you took from him - he gave a narrative account of what he remembered of this particular accident and then you put a few questions to him and the whole thing runs over only six pages in the English version. So again, with Captain John Coull, it was a case of a very short interview?

40

A. Yes, that's right.

Q. Because when you questioned Captain Coull first thing or from 10 o'clock on that particular morning, the 4th of August, you did not yet have with you the navigation expert, is that right? It was only when Mr. HO came later on - I think

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- in the afternoon --
- A. Yes.
- Q. -- that you began to embark with Mr. HO on --
- A. -- some technical --
- Q. -- let's call it questioning or cross-examination on navigational general matters.
- A. Yes.
- Q. So in the case, however, of Captain Coull, is it right that having taken the statement from him on the morning of the 4th of August, you did not find it necessary to invite him, Captain Coull, to go back to any further statement-taking or further questioning. 10
- A. That's right. As far as Captain Coull is concerned, we have ascertained that at the time of the collision, he was not the actual person on the helm. 20
- Q. Yes, but the answer to my question is: you did not request or require him to go back for further questioning.
- A. No.
- Q. Now just to look very shortly at the long account, the long statement taken over three days, or parts of three days, from the 3rd defendant Mr. HO, beginning on the afternoon of the 4th of August, he gave you a very long narrative account of all of these matters first of all, and then you proceeded to start - it's 3/4 of the way down page 8 - a long series of questioning that went on over two or three sessions, is that right? 30
- A. Yes.
- Q. And in his case - I don't know quite why you did it - but you asked him a great number of questions about his personal history and experience -- 40
- A. That's right.
- Q. -- as a --
- A. -- a mariner.
- Q. -- as a mariner over several years, and then you went on to ask him navigational questions in the most general terms, from the bottom of page 12 onwards. This was on the afternoon of the next day, the 5th of August. Again, on this occasion, general navigational matters, is that the position? 50
- A. Yes.
- Q. And then - this is a matter I would ask you about, a matter of perhaps some importance - a matter of which the jury may have some impression - this is why

<p>10</p> <p>20</p> <p>30</p> <p>40</p> <p>50</p>	<p>I want to ask you about it. From page 14 onwards, you see, page 14 of Mr. HO's statement, the first question on that page - you come to the day of the collision - now that question you put to him, "Under the circumstances on the day of collision, if the hydrofoil was steered from Macau to Hong Kong, if the route of navigation was southerly, how you think how you would steer?" I suppose it is "how would you steer?" And then he tells you about the normal route and so on and so forth.</p> <p>A. Yes.</p> <p>Q. Now there you are asking him to give you an account, if he had been steering in the circumstances of, not his own boat, but of Goldfinch, on the day of the accident, going from Macau to Hong Kong.</p> <p>Is that the picture? That is what you had in mind?</p> <p>A. That's right.</p> <p>Q. And then you see, you followed with a number of questions - I am not going to go through them all - in which you are putting to Mr. HO, are you not, part of the account, or the gist of the account that had been given to you the day before by Captain KONG. You are putting it to Mr. HO.</p> <p>A. I do not agree to that.</p> <p>Q. Well, one of the things Captain KONG was telling you - look at the next question on page 14: "If the water current is strong and forces your hydrofoil to incline to the north, would the hydrofoil turn towards the buoy at Siu Ah Chau before it is in the abeam position at Lap Sap Mei?"</p> <p>A. Yes, that in fact that is Niu-tou. Lap Sap Mei, in other words, it is Niu-tou.</p> <p>Q. I think yes, the island is called Niu-tou.</p> <p>A. Lap Sap Mei is Niu-tou.</p> <p>Q. But mariners tend to call it, rather rudely, I think, Lap Sap Mei because --</p> <p>A. -- because when the tide turns all the lap sap tends to flow that way.</p> <p>Q. Yes, perhaps it did on this day as well, but I don't think we are concerned with that, but you are putting to this witness - this is why I want members of the jury to understand - you are putting to Mr. HO part of the account that had been given to you by Captain KONG. That is one of the things that he would say, wasn't it,</p>	<p>In the High Court of Hong Kong</p> <p><u>Prosecution's Evidence</u></p> <p>No.4</p> <p>P.W.15</p> <p>John Ling Hung-hay</p> <p>Cross-Examination</p> <p>(continued)</p>
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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- how his vessel had been going too far north and it comes south and it made certain starboard movement.
- A. But I don't think in Captain KONG's statement, there is anything mentioned about current, water current, or anything about that.
- Q. Well I may be mistaken, but surely, the only point in asking that question was that in broad general terms, that was part of the account that Captain KONG had given you the day before. 10
- A. I would take that as an example, hypothesis, for Mr. HO to answer, since he is in his normal daily route running, he got, you know, to and from Macau, also he will come by this kind of situation.
- Q. I appreciate that, but - it may not be exactly the account that Captain KONG had been giving you, but he had been telling how - I have here a statement - how his boat had deviated from its normal course to the north. Maybe he was telling you it was because of water current being strong, or perhaps that is something that you thought was a possibility, but all I want from you, in broad terms, he was - you asked that question, did you not, because this was something in your mind, you had been hearing about from Captain KONG the day before, that is why you are asking Mr.HO. 20 30
- A. Well, you may say that I put the question in a similar term to Captain KONG's statement.
- Q. Yes, if Captain KONG had not the day before given you this account - true or false it matters not - about what had happened to his boat in this way on the 11th of July, you wouldn't have asked the question of Mr. HO, would you? 40
- A. I think I still would because that is the fact known to us that Captain KONG's boat has been travelling a bit north of Lap Sap Mei.
- Q. Yes, because that is what he was telling you.
- A. Yes.
- Q. Yes, that is all I want. You are not putting these matters to Mr. HO - this is what I want the jury to understand - these questions, this series of questions, you weren't putting them to Mr. HO because you accepted the truth of what Captain KONG had been telling you the day before. 50
- A. No.

10 Q. Yes, that is what I wanted to understand because you go on to question Mr. HO in some detail about the various possibilities, probabilities, had this happened.

A. Had this happened, yes.

10 Q. You see, of a vessel being rather north and having to come south.

A. What would he do, that is what my intention was.

10 Q. Exactly, and you asked those questions partly because Captain KONG had been giving you his version - perfectly understandable, I am not criticising you - but you are not asking these questions - and members of the jury do not see these questions and answers in black-and-white today because you at that time were accepting the truth, or otherwise, of what Mr. KONG had been saying to you, that's right, isn't it?

20 A. I still do not agree to the phrase of "accepting the truth".

Q. Well all right.

A. I just take his case to see how Mr. HO would do, given such same circumstances or similar circumstances.

30 Q. At any rate, let's just look at the account as it goes on. These are your questions, after all. You see, you go on in a series of questions - we don't want to go through them all - dealing with the position now of Flamingo outwards bound from Hong Kong to Macau, a situation in which - look at your question, the bottom of page 14: "a hydrofoil coming from north to south to cut across your hydrofoil, does it mean that it will cut across from your starboard to your port side?"; of course, the answer is yes. Then you go on to question Mr. HO about his paying special attention or the degree of attention he would pay to various situations and he is drawing to you, is he not, without going through it all, question by question, he was making to you a distinction between what he called or what you were calling a special situation calling for special action, and in ordinary or normal circumstances two ships apparently approaching, going to pass each other safely when he would not pay what he called special attention to that vessel, is that right?

40

50 A. May I take the liberty to ask: you want to know my intention of why I put those

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- questions to Mr. HO?
- Q. I am summarising the effect of your questions and his answers on page 15. You embarked - this is your question --
- A. That's right.
- Q. Yes, and a distinction was being drawn by Mr. HO who you were interviewing - he was saying: if an approaching vessel wasn't crossing or head-on and the bearing was at opening and so on, and it appeared that the vessel was going to pass, he would not give that vessel more than ordinary attention. 10
- A. Yes.
- Q. If, however, a vessel was coming head-on or in a crossing situation, he would give it rather closer scrutiny. This was his explanation, was it not?
- A. Well I cannot read his mind.
- Q. We can read it here - I don't want to go through the whole thing - would you turn to page 16, it is the last question on the bottom of page 15, first of all. After he was saying to you that a vessel not being crossing or head-on to him, he wouldn't give it what he described as more attention than if it was an ordinary vessel. 20
- A. Yes.
- Q. You see, your last question on the bottom of page 15, "If you pay no more attention to the vessel on your starboard side again, will it be very dangerous if it changes course to cut across in front of your bow suddenly?" Your question, and his answer: "Yes, but I do not expect the other vessel to cut across in front of our bow in this manner. If it does, that means the personnel on board it must have become mentally unbalanced." 30 40

What he was saying to you there was this, was it not --

COURT: Well Mr. Corrigan, can we - can this witness say - are you asking him to give his interpretation of that answer?

MR. CORRIGAN: My Lord, this witness was in the position - your Lordship well sees - of cross-examining. I am coming, with respect, to a question that wasn't answered. It must be relevant. This is before the members of the jury. It is the -- 50

COURT: Yes, but are you asking this witness to give his --

In the
High Court
of Hong Kong

MR. CORRIGAN: It is the second question on page 16.

Prosecution's
Evidence

COURT: Are you not asking this witness to say, "What do you understand by the answer to that question?"

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

10

MR. CORRIGAN: Well presumably, he understood the answer because he was able to - the question I am coming to - to put a leading question to the witness. As your Lordship sees, the second question on page 16, "So you should still pay special attention." This witness was conducting, with respect - I am not complaining about it - but looking at the reality of it, he was conducting an interrogation.

(continued)

20

COURT: Are you asking the witness to say, "What did you understand by that answer?"

MR. CORRIGAN: I would have thought, my Lord, that the answers were fairly clear. If the questions are clear, the answers are clear; they appear to be.

30

COURT: Yes, well that is precisely the point I am making. Are you entitled to say to the witness: well now, do you read something more into that answer than is in fact there?

MR. CORRIGAN: That is, with respect, what I am coming to - to ask why he asked that question.

COURT: That is perfectly all right.

MR. CORRIGAN: I'm much obliged.

40

Q. Yes, you see, he has given you an explanation: well if a vessel is a vessel that I judge is passing me it can only be a madman who cuts cross my bows in that situation. And then you went on to ask the question - you see, the second question on page 16: "So you should still pay special attention to the vessel on your starboard side until it has passed your vessel abeam, then why didn't you do that?" That is your question.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Cross-
Examination

(continued)

- A. Yes.
- Q. But that question - which wasn't answered because the solicitor advised or told his client not to answer - but that question did not follow, did it, from what had been said immediately before. Do you get my meaning?
- A. I'm sorry.
- Q. You see, it is your question. Why did you ask that question: "So" - that 10
presumably relates to what has gone on before - "So...." - this is your question, I understand - "So you should still pay special attention to the vessel on your starboard side until it has passed your vessel abeam, then why didn't you do that?" Why did you ask that question?
- A. Why did I ask that question?
- Q. Yes. 20
- A. Do I have to explain why I asked the question?
- Q. It is before members of the jury and it wasn't answered.
- A. No, I don't think so because during daily police enquiries I don't think I need to explain myself the cause of asking a question on a witness.
- Q. No, you see, but your - that question follows on from what Mr. HO had been asked and what he had been answering in the previous sequence and it is your question - you go on to say, "So you should still pay special attention." 30
- A. I know you are trying to say it would appear to be a leading question, that is why --
- COURT: No, no, that is not what counsel is saying. He is simply saying to you: in the light of the previous questions and and answers, why did you ask that question, the one which was not answered. 40
In other words, do you consider that question followed on from the previous one?
- Q. Do you think it fairly followed on from what had gone on before? That is all I am asking you, you see.
- A. If you are asking why? Because I would consider Mr. HO as an experienced mariner. 50
He should know well under that situation.
- Q. Yes, but if you read the sequence of the questions and answers, you see, this was a situation in which Mr. HO, the man you are questioning, had been saying to you was not a special attention situation

	because this could only happen -	In the
	the collision in these circumstances	High Court
	- if somebody, to use his words,	<u>of Hong Kong</u>
	"cut across my bows like a somebody	Prosecution's
	who has become mentally unbalanced."	<u>Evidence</u>
	In other words, an event so unexpected	No.4
	that it wasn't something that could	P.W.15
10	be specially guarded against. That is	John Ling
	what he was telling you, rightly or	Hung-hay
	wrongly, and you followed by putting	Cross-
	to him, "So you should still pay	Examination
	special attention to the vessel until	
	it has passed you abeam."	
	A. And it appears here clearly, so the	(continued)
	question was dropped on Mr. Jolly's	
	advice.	
	Q. It wasn't an appropriate question,	
	was it?	
	A. That was --	
20	Q. With respect, it wasn't a fair question.	
	A. That was during the course of the	
	enquiry and I don't think it is improper	
	to ask during a normal enquiry.	
	Q. I am not saying it is improper.	
	A. And Mr. HO has every choice and chance	
	with his solicitor's advice present,	
	and that is why the question wasn't	
	answered after all.	
	Q. Yes.	
30	A. And I don't see why I cannot pose that	
	question to ask him.	
	Q. Because it is a question of comment, that	
	is all. But it is your question which	
	in sequence here is a question purports	
	to relate to what has gone on before and	
	you are telling the witness that that was	
	a special-attention situation, namely,	
	that you should watch the vessel all the	
40	way past, the circumstances being that the	
	witness has been telling you he wouldn't	
	have expected somebody to behave in the	
	fashion of cutting across his bow.	
	A. Yes, but all the previous questions leading	
	to that question are on a hypothetical case.	
	Q. Now there were a number of matters, a number	
	of questions similarly which were not	
	answered by Mr. HO on this occasion. Now	
	on each and every occasion it was Mr. HO's	
50	solicitor being present who told him, in	
	effect, not to answer.	
	A. Yes.	
	Q. That of course, is a situation which you	
	are quite used to, right?	
	A. Well because it is my investigation to find	
	the truth and I think it to be appropriate	
	to ask every question that would help me to	
	know.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.15

John Ling
Hung-hay
Cross-
Examination

(continued)

Q. Yes, I know, but it is a situation you are quite used to whereas a solicitor advises a client not in fact to answer a question, or perhaps discuss with you the form of the question which is being asked.

A. Well I could never anticipate what questions --

COURT: Now Inspector, the question is very simple, really: have you ever known another situation where a person being interviewed has been told not to answer a question on the advice of a solicitor?

10

A. Oh yes.

Q. You see, you and I are used to the situation but members of the jury may not be. This is why I am asking you this question, and I think there were a number of other questions, particularly 20 on navigational matters, where there were some discussions between yourself and Mr. Jolly and it was decided not to pursue --

A. Yes.

Q. -- a certain line of questioning.

A. Indeed.

Q. Now I think you were aware on this occasion that Mr. Jolly, the solicitor accompanying Mr. HO, himself, the 30 solicitor, was a man of some navigational experience.

A. Yes, I understand that.

Q. I think you know that.

Re-examination

REXN. BY MR. LUCAS:

Q. Inspector LING, my learned friend Mr. Steel put it to you in relation to his client Captain KONG that Captain KONG in his statement made it plain that what was in the log was incomplete and 40 inaccurate during the course of giving that statement. Do you remember him asking those questions?

A. Yes.

Q. Would you be good enough, please, to look at page 8, 3/4 of the way down the page of Captain KONG's statement? Could you read this question "On July 12...." and onwards until I tell you to stop?

50

A. (reads)

"Q. On July 12, in the shipping company you put down in the deck log of that boat record about the collision of

Flying Goldfinch, do you think the record that you had written is correct?

In the
High Court
of Hong Kong

A. Because at that time my mind was very confused, I am not sure whether it is correct or not.

Prosecution's
Evidence

Q. (KONG Cheuk-kwan was shown the deck log of Flying Goldfinch written on July 11). About the record that you wrote, the paragraph that is on the same line with 0736 hours (starting from 0926 to port helm), do you think it is correct?

No.4
P.W.15
John Ling
Hung-hay
Re-examination

A. No.

Q. Why do you think that it is incorrect?

A. Because at that time my mind was confused.

(continued)

Q. The time you refer to, do you refer to the time of the collision or the time you wrote the record?

A. From the time of the collision to the time after I had written down the record.

Q. Now statement is taken from you, is your mind still confused?

A. Now my mind is still confused. "

Q. Just stop there, thank you. Now you were also asked some questions by my learned friend Mr. Steel about the medical condition of and the admission into hospital of Captain KONG and he put to you, "I understand that Captain KONG, when you saw him, had a collar on."

A. That's right.

Q. Captain KONG actually went into hospital on what date?

A. As I was told by Mr. Steel it's on the 13th of July.

Q. Do you know if he had a collar on the 11th or not?

A. No, I have no idea.

Q. I think he has told you in his statement that it was on the 12th that he went into the shipping office.

A. That's right.

Q. Do you know if he had a collar on that day or not?

A. Not to my knowledge.

MR. STEEL: I don't know if my learned friend is saying that this man was in the shipping office with Captain KONG.

COURT: Were you?

A. No, he went to his own shipping company.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.15
John Ling
Hung-hay
Re-examination

(continued)

COURT: You didn't see it?

A. No.

Q. Now it was put to you that no person, no person at all, could possibly give a description of what happened in a collision at sea. Do you remember that being put to you?

MR. STEEL: My learned friend really must have been, if I may say so, inaccurate. I didn't say anything of the sort. What I said was - I suggested to the witness that no mariner in the world could ever be precise and accurate about bearings and distances which has has recollected of events leading up to the casualty. I have never suggested for one moment that people cannot remember anything about a collision.

10

MR. LUCAS: I'm very grateful to my learned friend.

20

Q. Would you look at page 5 of Captain KONG's statement? This is the part of the statement, as I understand, which you told my learned friend Mr. Corrigan was in fact a narrative.

A. That's right.

Q. Could you read that paragraph, please?

A. The second paragraph:

" At this time I found that my boat had deviated its normal course to the north. Thus I altered course to the starboard side, heading towards Siu A Chau. Then I found the hydrofoil from the opposite direction and ours were travelling in a straight line. At that time the distance was about 4 miles. I maintained same speed and route until we were 2 miles away. I then altered the course to the starboard side slowly towards Niu Tou. I put the position of the boat from the opposite direction at 10° - 15° portside of our boat and my boat kept on sailing. However I noticed that there was no significant change in the relative position between my boat and the boat from the opposite direction. At that time we were about half a mile away. So I altered the course 7° to the starboard side and then maintained my speed and turning of the helm until the relative position of the opposite

30

40

50

10 ship was about 0.2 - 0.3 miles to about 30° to the portside of my boat. I then checked the rudder indicator, revolution indicator and the flap indicator on the switch board in front of me. When I saw the opposite vessel again, she was about 200 - 300 feet away, about 3 to 4 points on my portside. Under this circumstance she was trying to pass me from my bow. I at once "

In the High Court of Hong Kong

Prosecution's Evidence

No.4
P.W.15
John Ling
Hung-hay
Re-examination

Q. Just a minute. That statement I think you told Mr. Corrigan was given by Captain KONG, but it wasn't a question asked.
A. No.

(continued)

NO QUESTIONS BY THE JURY.

20 MR. LUCAS: I call L@ Kei. He is one of the four sailors of which no notice was given.

P.W.17
EVIDENCE OF LO KEI

P.W.17
Lo Kei
Examination

P.W.17 - LO Kei Affirmed in Punti

XN. BY MR. LUCAS

30 Q. Where do you live?
A. I live at No.48, Square Street, 4th floor, Western.
Q. What is your occupation?
A. I am a seaman.
Q. And how long have you been a seaman?
A. Over 10 years.
Q. Now are you in fact working for the Hong Kong Macau Hydrofoil Company?
A. Yes.
Q. And you joined them, I think, in 1966?
A. Yes.
Q. Now I want you to take your mind, if you would, please, Mr. LO, to the day of the collision.
40 A. In what way?
Q. I want you to tell us what happened. First of all, what time did you go to work on that day?
A. I did.
Q. What time?
A. I was supposed to be at work at 7 in the morning. I returned to work some time after 6 p.m.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.17
Lo Kei
Examination
(continued)

- Q. And were you on duty on that day on the Flying Goldfinch?
- A. Yes, Goldfinch.
- Q. And was that parked at the Macau Ferry Pier?
- A. The first trip was from Hong Kong to Macau.
- Q. And then you got to Macau and back again, did you not?
- A. Yes. 10
- Q. And it was on this trip coming back to Hong Kong in the Goldfinch that there was an accident, collision.
- A. Yes.
- Q. I would like you to tell us, please, if you would, what happened that you recall, what happened so far as you were concerned.
- A. The boat sailed from Macau and then it arrived at the scene of the collision. 20
- Q. Now when it first left, what were you doing?
- A. I was sitting on a chair on the boat.
- Q. Where was that chair?
- A. Outside the entrance.
- Q. Outside the entrance?
- A. The chair was placed outside an entrance where people go in and out.
- Q. Outside on the top deck?
- A. Upper deck. 30
- Q. Outside, and which direction were you facing?
- A. Facing the stern.
- Q. Now when did you take your position there? Did you do that as soon as you left Macau or something else first and then go and sit there?
- A. I sat there after I finished all of my work.
- Q. Now, when you were sitting out there, did 40 you notice anyone else was out there with you at about the same time while you were sitting there?
- A. There was a passenger.
- Q. Was he sitting or standing?
- A. Standing.
- Q. Right. Now you sat there. Were you looking back towards the stern, over the back of the stern?
- A. I was. 50
- Q. And did you notice something?
- A. I did not pay attention. I saw nothing.
- Q. What happened?
- A. I did not pay attention to anything. I saw nothing.
- Q. And then what happened eventually?

A. I sat there and I saw --
MR. CORRIGAN: (to interpreter) Please translate.

In the
High Court
of Hong Kong

INTERPRETER: Sorry. If I am not sure I have to confirm from the witness because I didn't understand what he means.

Prosecution's
Evidence

No.4
P.W.17
Lo Kei
Examination

10 A. I saw that the wake at the stern of the boat looked like a sickle.
Q. You saw it looked like a sickle and I think, Mr. Interpreter, he did that.

(continued)

INTERPRETER: Yes, he did.

Q. Now before it looked like a sickle, before it went like that as you demonstrated, was it straight prior to that or what?

A. Yes.

20 Q. Now when it went like a sickle, did it go like a sickle on the direction of the right-hand side or did it go on a sickle on the left-hand side?

A. Towards starboard side.

Q. Now when you noticed the wave or the wake in the sickle shape, what did you do?

A. I turned round to have a look towards the port side.

Q. Why did you turn round?

30 A. I saw the - it was a sharp turn, so suddenly, so I was surprised, I turned round to have a look.

Q. And when you turned around to have a look, what did you look through?

A. I looked through a glass.

Q. Through to where? Did you look through the glass through to the right-hand side of the boat; to the left-hand side of the boat, straight ahead?

40 A. Port side.

Q. And what did you see?

A. I saw a small portion of the stern of the other boat.

Q. What sort of other boat was it?

A. In the beginning I did not know what sort of boat it was. Since I was not sure so I had to walk out in order to have a more clear look. I realized that there was a collision.

50 Q. You demonstrated - you showed us - could you show us again the turn that you noticed in the wake, the sickle?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.17

LO Kei

Examination

(continued)

Witness demonstrates.

COURT: Mr. LO, imagine where you were standing, you were looking backwards towards the door at the end of the court there on your hydrofoil, can you show us in which way this sickle, the bend was going, from where you are now?

Witness demonstrates.

COURT: You are coming towards yourself. Would you please imagine the wake away from you.

A. The wake was bending in the way of a sickle as demonstrated. 10

COURT: Sorry, I am still not absolutely clear. Imagine you are on your vessel now, where you are standing, and the wake is going away from you towards the end of the court. Now was the wake going to the right towards the board there or was it going to the left towards the members of the jury? 20

INTERPRETER: He demonstrated again like this. He said "bending towards the starboard side".

COURT: I don't want you to demonstrate. Was it going leftward towards the board or was it going towards the members of the jury?

A. I am now looking at the stern, for example. I was looking at the wake. Originally the wake was in a straight line. Suddenly there was a bent like sickle as demonstrated. 30

COURT: One more try. Do you understand what I am asking you? If you imagine you are now on the boat and you are looking at the stern --

MR. LUCAS: My Lord, I'm sorry to interrupt. Perhaps I could ask - as I understand the answer, it is that the wake was like this in a straight line behind him - correct me if I am wrong, Mr. Interpreter - and then it turned like this; in other words, as I understand it, his boat turned in that direction. I think that is what he explained. 40

COURT: No, I am not clear. Do you understand the question I am putting to you? If you imagine you are now on the boat where

you were and the wake of the vessel was going straight away from you, towards the door there, the wooden door at the end of the court.

In the
High Court
of Hong Kong

A. Yes.

Prosecution's
Evidence

COURT: When that wake started to turn, when you say, in the shape of a sickle, was it going to the right side or to the left side from where you were standing?

No.4
P.W.17
Lo Kei
Examination

10

A. Towards the jury side.

(continued)

Q. And the boat was turning in which direction - the front of the boat was turning? Was it turning to the right or to the left?

A. Towards the starboard side.

Q. You saw the sickle first, is that right, as I understand your evidence?

A. Yes.

20

Q. And so you looked, is it right, and then got up.

A. I was sitting as I turned round to have a look and I noticed the sharp turn of the boat.

Q. And you noticed part of the stern of another boat, you told us.

A. I noticed that it was a strange turn. I turned round and at the same time I was grabbing the arm of the chair and at that time the collision occurred.

30

Q. Sorry, I may have misunderstood you, Mr. LO. My understanding of your evidence before you stood up, is that not so, "so I had to walk out of the door to have a clear look."

A. It was at a later stage that I stood up. At first as I was turning round I was still sitting.

Q. And then there was a collision.

40

A. Yes, a collision, a bumping sound.

Q. And then you got up to have a look.

A. It was after the collision that I stood up to have a look and I saw the stern of the other boat. At that time I did not know what sort of boat it was.

Q. You noticed this turn because it's strange, is that what you say?

A. Not only because it was strange, but whenever there was a sharp turn - but it was a sharp turn, so I turned round to have a look.

50

Q. When you come into Hong Kong and moor your boat - when you normally come into Hong Kong on a hydrofoil and go into the moorings, when you come into the wharf, when you come

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.17
Lo Kei
Examination

(continued)

Cross-
Examination

- into the Hong Kong Wharf in your hydrofoil, the normal course of events --
- A. Yes, upon arrival at Hong Kong it would berth at the wharf.
- Q. Yes, that's right. Now in order to come into the berth, a hydrofoil has to turn to starboard to come in, does it not?
- A. Mostly it would turn to the starboard side.
- Q. The turn that you felt at sea before the collision, was it similar to that sort of turn, sharper than that sort of turn, or not as sharp as that sort of turn?
- A. It was more or less the same turn as we made when we were going to berth at the wharf.
- Q. At the time that you did this turn and up to the point of collision, your boat, the Goldfinch, was on its foils, was it not?
- A. Yes, it was flying. 10
- Q. Did you hear any warning sound, any sound at all before the collision?
- A. I did not hear. I was not aware of that.
- XXN. BY MR. STEEL
- Q. How long did the turn to starboard last?
- A. A very short while.
- Q. 1, 2, 3, 4, 5, 6, 7 seconds, or half a minute, or what?
- A. Not clear.
- Q. A matter of a few seconds? 30
- A. A few seconds.
- Q. So you were still not far away from the original track.
- A. Not sure.
- Q. I gather, before the turn, the vessel had been running in a straight line.
- A. Yes, straight line.
- Q. How long had it been running in a straight line?
- A. Are you referring to the time when it started off from Macau or from when? 40
- Q. You tell me, when the last turn had been made.
- A. It was 26 to 27 minutes after it started off from the Macau pier.
- Q. Yes, had there been a turn between leaving Macau and this starboard turn or not?
- A. No.
- Q. So the vessel, so far as you were concerned, was driven in a completely straight line from the exit in Macau to the moment it started to alter course to starboard. 50
- A. I am not very sure about its route. However, judging from the wake, I noticed that it was a straight line.

	Q.	It had made no alteration of course to starboard and no alteration of course to port from the moment it left Macau to the moment a few seconds before the collision, is that right?	In the High Court of <u>Hong Kong</u>
	A.	There was neither turning to port nor to starboard side prior to that starboard turn, prior to the collision.	<u>Prosecution's Evidence</u>
10	Q.	The hydrofoil Goldfinch was seen about 1½ miles north of Ching Chou at one stage. Would you accept that that is true?	No.4 P.W.17 Lo Kei Cross- Examination
	A.	Not clear.	
	Q.	But on your evidence, if that is right, the collision must have happened on a line drawn from the exit from Macau through a position 1½ miles north of Ching Chou and then extended.	(continued)
20	A.	Yes.	
	Q.	Can you think of any explanation of why it is that in fact the collision happened half a mile further south?	
	A.	I don't know. It is the way of steering the ship.	
	Q.	The reason is that you did not notice the two small alterations of course to starboard that happened earlier.	
	A.	I did not pay attention.	
30	Q.	You wouldn't particularly notice the small adjustments of course. You would only notice hard turns, isn't that right?	
	A.	Yes.	
	<u>XXN. BY MR. AIKEN:</u>		
	Q.	Mr. LO, I am right, am I, that you noticed this turn to starboard because of what you saw.	
	A.	Yes.	
40	Q.	This is right: you had finished your duties after leaving Macau and you were having a rest at the back of the upper cabin?	
	A.	Yes.	
	Q.	You were sitting on the bench in the open air, not looking at anything in particular.	
	A.	That's correct.	
	Q.	And the first you realized of this turn to starboard was when you saw the wake?	
	A.	Yes.	
	Q.	Nothing else led you to believe that the vessel was turning to starboard?	
50	A.	There was nothing else.	
	Q.	You didn't feel anything?	
	A.	No, I felt nothing.	
	Q.	And quite naturally, out of curiosity, when you saw the wake, you looked towards the bows to see what was going on.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W. 17
Lo Kei
Cross-
Examination

(continued)

- A. Correct.
- Q. You saw the other vessel, grabbed the arm of your chair and the collision occurred?
- A. As I was grabbing the arm of the chair and as I was looking around the bumping sound, I already heard the bumping sound.
- Q. And you were grabbing the arm of the chair to protect yourself?
- A. Because I did not know what was going on and as I was grabbing the arm of the chair I heard the bumping sound. 10
- Q. You said to my learned friend Mr. Steel that could have been a few seconds. I suggest it could be even shorter than a few seconds?
- A. I did not look at the watch. I am not too sure.
- Q. And is this right, as soon as you catches the odd shape of the wake, as soon as you noticed that you turned round? 20
- A. Right, I turned round to have a look. I did stand up. As soon as I was turning round I heard the bumping sound.
- Q. As soon as you noticed the strange shape of the wake did you turn round?
- A. Yes.

MR. AIKEN: Yes, Thank you.

NO XXN. BY MR. CORRIGAN

NO REXN BY MR. LUCAS

30

COURT: Yes, thank you.

MR. LUCAS: I call Mr. LEUNG Pui.

P.W.18
Leung Pui
Examination

P.W.18
EVIDENCE OF LEUNG PUI

P.W.18 - LEUNG Pui

Affirmed in Puntì

XN. BY MR. LUCAS:

- Q. Your full name, sir?
- A. LEUNG Pui.
- Q. Where do you live?
- A. I live at No.48 to 66 Ko Sing Street, Flat B, 12th floor. 40
- Q. And you are in fact a seaman working for the Hongkong Macau Hydrofoil Company, is that right?
- A. Yes.

Q. How long have you been working for that company?
A. Almost 19 years.
Q. Now on the 11th July of this year I think you were on board the Flying Goldfinch, right?
A. Yes.
Q. And that on that day you went to Macau first and you were coming back when there was a collision?
A. Yes.
Q. I would like you to tell us about leaving Macau until the time of the collision?
A. The boat started off from Macau at 8.30. When the time came the deck officer instructed me to untie the rope.
Q. Yes.
A. When the boat was almost at the entrance of the harbour I lowered the Macau flag.
Q. Yes, go on.
A. Having lowered the flag the boat travelled past No.1 beacon and No.2 beacon towards Fan Lau Point.
Q. Yes, go on.
A. I returned to the cabin and I sat on a wooden box.
Q. Yes, go on.
A. The boat was travelling in a normal manner.
Q. Yes, go on.
A. The time was about 8.57 in the morning. I was sitting facing the stern.
Q. Yes?
A. I noticed the bend of the wake towards the starboard side.
Q. Yes?
A. Upon seeing that I stood up.
Q. Yes?
A. I turned left and I looked towards the front from the bow window at an oblique angle.
Q. Yes, what did you see?
A. I saw a little part of another hydrofoil.
Q. Yes ?
A. It was very close when I noticed the small part of the other hydrofoil. So I turned to the right. I grabbed the railing of a staircase.
Q. Yes?
A. Then I heard the sound of collision, a loud bumping sound.
Q. Can you tell us how many hydrofoil lengths from you was the other hydrofoil?
A. About two hydrofoil lengths away - a hundred odd feet.
Q. What made you stand up?
A. Because I noticed that the bend was sharp and

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.18
Leung Pui
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.18
Leung Pui
Examination

(continued)

Cross-
Examination

out of curiosity I tried to look at
the front to see what sort of boat it
was.

MR. LUCAS: Thank you, no further questions.

XXN. BY MR. STEEL:

Q. What was the period of time between
noticing the alteration and the
collision?

A. I presume it was about 3 seconds --
no, I presume it was about 3 minutes --
no, 3 seconds. 10

Q. About 3 seconds?

A. Yes.

Q. Perhaps it doesn't matter, but I am
puzzled as to why you think this
happened at 0857?

A. It was around that time that the ship
would come to that point.

Q. The reason I am puzzled is that the ship
having actually left Macau at 0857; can
you tell me why you think it happened
at 0857 that this sharp turn took place? 20

A. It was a rough estimate.

Q. What struck you, I gather, about this
particular alteration was that it was
a sharp one?

A. Yes.

Q. There may have been some small alterations
of course before this sharp alteration,
is that right? 30

A. I noticed that all the way the ship was
- travelling in a normal condition.

Q. Yes, but there may well have been some
small alterations of course from time
to time during the 25 minutes that this
vessel had been underway from Macau?

A. But I did not notice.

Q. And there would not be any particular
reason for you to notice any small
alterations, it's the big ones that are
noticeable, is that right? 40

A. If it was a sharp turn I would have
noticed, but sometimes I may look at the
back and if there was a turn I would be
able to notice.

Q. Yes, sometimes you might and sometimes
you might not?

A. At times I would look back.

MR. STEEL: Thank you.

XXN. BY MR. AIKEN:

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.18
Leung Pui
Cross-
Examination

(continued)

- Q. And the reason you assume the vessel was turning on this occasion is because you saw the wake?
- A. In fact I did not notice very much about the wake. I noticed the turn, so I stood up and I looked towards the front.
- 10 Q. But you noticed the turn because you saw the wave track, the wake had moved sharply?
- A. Right, I noticed that it was making a turn. I noticed the trail, so I stood up to have a look.
- Q. But it was the wake which made you notice the turn?
- A. I thought at that time it was making a turn in order to avoid a boat.
- 20 Q. From the wake?
- A. I felt the turn, I stood up, I turn around to have a look.
- Q. But you see, that's what I wasn't sure about. Why do you say you felt the turn?
- A. Because at that time the boat was going to one side, a little going to one side.
- Q. But I thought you were sitting looking out towards the stern?
- 30 A. Yes.
- Q. You were relaxing?
- A. Yes, I was sitting.
- Q. You weren't looking at anything in particular?
- A. I saw the sharp turn, so I looked at the back.
- Q. That's right, you saw the wake, was making a sharp turn, so you looked towards the bow?
- A. Yes.
- 40 Q. And when you made the statement about this matter you said to whoever came to see you in Macau, I think it was a policeman, you said, "I did not notice the Flying Goldfinch had swung either side until I saw the wave track at the time of the collision"?
- A. Yes.
- Q. You remember saying that?
- 50 A. Well, right. All the way the boat was travelling in a normal manner. It didn't swing.
- Q. And you didn't notice that it had swung either side until you saw the wave track?
- A. Yes, it swung to the starboard side.
- Q. It was seeing the wave track that made you notice that it had swung to the starboard?

IN the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.18
Leung Pui
Cross-
Examination

(continued)

- A. Yes.
- Q. And before you saw the wake track you had not noticed, hadn't felt any turn?
- A. No, I did not notice.
- Q. Didn't feel?
- A. I did not feel.
- Q. When you noticed the wake you immediately turned round to see what was going on?
- A. Yes.
- Q. You saw the other vessel?
- A. I saw the stern, a small part of the stern.
- Q. And it was very close?
- A. Yes.
- Q. And so the first thing you did was to grab the railing to protect yourself?
- A. Yes.
- Q. As far as you were concerned, a collision was imminent?
- A. Yes.
- Q. And all you had time to do was grab the railing?
- A. Yes, as I turned to the right I grabbed the railing.

10

20

NO XXN. BY MR. CORRIGAN

Re-examination

REXN. BY MR. LUCAS:

- Q. You told my learned friend Mr. Steel that you knew the time, as I understand it, you said, "at that point"; in other words, do I understand your evidence to be that you know approximately where you should be on each trip?
- A. Yes.
- Q. And on that particular day were you at around the place that you normally are when you travel between Macau and Hongkong?
- A. Yes.
- Q. You see, you said that on that particular day it was around that time the ship would come to that point?
- A. Yes.
- Q. And you also said you didn't notice any small alterations; "if it was a sharp turn I would have noticed"?
- A. Yes.
- Q. And "if I looked back I might notice small alterations as well"?
- A. Yes, if I could see I would have noticed.
- Q. Were you sitting there looking at the wake in fact?
- A. When we were sitting taking a rest we might look at the wake at times, but not always.

30

40

50

Q. When you were looking at the wake did you notice any small alteration?
A. We might be able to see small alterations, but it is not a matter which concerns us. We didn't say it out.
Q. No, but did you notice any? You told my learned friend you didn't?
A. Normally we didn't bother about small alteration.
10 Q. On this occasion did you notice any small alteration?
A. I didn't notice.

MR. LUCAS: Thank you. I have no further question.

MR. STEEL: May I ask another question arising out of re-examination, because my learned friend seems to be, as I understand, using this witness to get some assistance about where the
20 collision happened.

MR. LUCAS: With respect to my learned friend, what I am doing is asking questions that arose out of cross-examination. There were questions put as to alteration in cross-examination. He cannot take that up now.

MR. STEEL: That may be so, my Lord. If my learned friend is very unhappy about my asking one question --

30 COURT: What is the question?

MR. STEEL: The question I would like to ask is: What is the point which he would expect to reach at 0857?
A. We would be near, we would be very close to Lap Sap Mei.

MR. STEEL: At 0857 you would be very close to Lap San --

MR. LUCAS: Niu Tou.

MR. STEEL: How close?
30 A. About two more minutes' journey.

MR. STEEL: Thank you.

BY COURT:

Q. You had started the day from Hong Kong, your first voyage of the day was from Hong Kong?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.18
Leung Pui
Re-examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.18
Leung Pui
Re-examination

(continued)

A. Yes.
Q. When did you leave Hongkong?
A. 7 o'clock.

COURT: Members of the jury, any questions.

FOREMAN: No.

4.10 p.m. Court adjourns

15th March, 1983

16th March, 1983

10.10 a.m. Court resumes

Accused present. Appearances as before. 10
Jury present.

MR. LUCAS: I call Captain Pyrke.

P.W.19
Allan
Charles
Pyrke
Examination

P.W.19
EVIDENCE OF ALLAN CHARLES
PYRKE

P.W.19 - Allan Charles Pyrke Sworn

XN. BY MR. LUCAS:

Q. What is your full name?
A. Allan Charles Pyrke.
Q. And your occupation, sir? 20
A. I am a civil servant, Senior Surveyor
of Ships.
Q. And what particular post do you hold?
A. I am in charge of the Registry Ships
Section in the Marine Department.
Q. And your qualifications?
A. I hold a Certificate of Competency as
Extra Master.
Q. What does that mean?
A. It is the highest qualification that 30
is awarded by the United Kingdom
Department of Trade.
Q. As Master of ships?
A. Yes.
Q. Where had you worked?
A. I worked at sea as a Deck Officer from
1950 to 1962. I was then an assistant
lecturer and lecturer in the South

Shields Marine and Technical College until the end of 1967 and then I joined the Hongkong Govt. as a Surveyor of Ships.

In the High Court of Hong Kong

Q. And you now reach the present rank of - is it Acting or Principal Surveyor of Ships?

Prosecution's Evidence

A. I am a substantive Senior Surveyor of Ships. At the time of that report I was Acting Principal.

No.4
P.W.19

Q. Now I wonder just two preliminary matters if I may. Could the witness be given please, Mr. Clerk, the exhibits P.25 and P.26 - Would you be good enough to look at those. What are they?

Allan
Charles Pyrke
Examination

(continued)

A. They are transcripts of the register for Flying Flamingo and Flying Goldfinch.

Q. And they show, do they not, that both these ships are registered in the -- registered British ships in Hongkong?

A. That is correct.

Q. And that they fly British flags - both?

A. That is correct.

Q. And they are certified copies, are they not? And do you produce those?

A. Yes.

MR. LUCAS: Mr. Clerk, would you be good enough please to give Mr. Pyrke the exhibits 22, 23, 18 and 19 and 18A. They are the logs, both the rough logs and the fair logs of Flamingo and Goldfinch. And, my Lord, 18A is this document which I think the jury have, which is a transcribed typed-out copy of an extract from the log book of the Flying Goldfinch. I think the jury have photostat copies of the logs, but because the log is written in ordinary hand it has been typed out and attached as exhibit 18A which is this document.

Q. Now for those of us uninitiated in these matters, can you tell us what the functions of logs are?

A. They are to record the navigational movements, weather and other important matters to do with the actual voyage of the vessel and they are kept as the vessel proceeds.

Q. The rough log we have already heard about as being something filled in by the radio officer as the deck log, and then it's transferred into the fair log?

A. Part of it is transferred into the fair log.

Q. With the fair log what happens to that?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- A. The log books on these hydrofoils are somewhat different to the normal ships' deck log books. They are kept on two pages. One is the top copy and there is a carbon copy underneath. That carbon copy is torn out of the log book daily and handed to the Marine Dept.
- Q. So that the top sheet is in fact fixed into the book? 10
- A. Correct.
- Q. There is a carbon and then there is a sheet - it is a perforated sheet, is that right?
- A. The sheet below has got a perforated edged to tear it off easily.
- Q. And that document eventually finds its way to the Marine Department?
- A. That's correct.
- Q. In the event of anything untoward happening, such as a collision etc., would one expect the log books and fair log books to be examined, particularly the fair log books? 20
- A. In a case like this where a preliminary inquiry was ordered on the Monday following the collision and I was the investigating officer, I would seize the log books and any other documents that I thought would help me with the inquiries. 30
- Q. That would be a first sort of start, wouldn't it?
- A. Yes.
- Q. Now would you be good enough, first of all, to look at the Goldfinch? Do you have that in front of you?
- A. Yes.
- Q. Now that, as I understand it, and this is the piece that is transcribed into the typewritten sheet 18A that I am interested in at the moment, that's purported to be signed, is it not, by the Captain and the First Officer? 40
- A. Correct.
- Q. Now I would like you to read, if you would, what was written -- do you know the date -- does it indicate what date that was written?
- A. No, it does not indicate. 50
- Q. Now would you read down to the word "fainted"?
- A. "0902 Depart Macao with 32 passengers and 8 crew. 0903 FAOP," which means "full away on passage". It is a terminology to mean that you are starting your passage now. "0907 Passing

No.1 Beacon A/C" which means alter course to "087(T)" which means "true". It's relating to the compass.

10 Q. We don't seem to have the "T" in our copy.

A. I can make out "T" right on the edge. "0922 Passing Ching Chou at 1.3 miles off. 0926 Vessel..." and then there is a word which looks like "sea" and there is the initial there "C.K." which I assume means that the Master had written something, crossed it out and initialled it. "0926 Vessel sheered to starboard at rate of 5° per second approx. D/O" which means Deck Officer "advised master of the incident and at the same time master tried to put the vessel on course again but no response. With port flat" which I presume means "flap", "pushing forward and starboard flag aft and rudder on port helm. Stop engine. Vessel collided with 'Flying Flamingo'. Master fell on the floor and fainted."

20 Q. That is the log book written out and signed by the Captain and the first officer which came into the hands of you and the Marine Department?

A. That's correct.

30 Q. Now once again for the uninitiated please, Mr. Pyrke, "sheered to starboard at rate of 5° per second" - would you be kind enough to tell me in layman's terms what that means?

A. A sheer is generally taken to mean an unintended deviation of course. It's, if you like, a skid on a car, I suppose, is the easiest layman's translation of it. At 5° per second means that the compass heading of that ship is changing 5° a second. So if you wanted to do a full circle that would be 360°. It would take 72 seconds to go round in a circle. That's what the rate of 5° per second means.

40 Q. Could you show us what a turn of 5° per second would look like? Could you draw it for us?

A. I am sorry, you cannot show a rate of turn by drawing it. It's something you have to experience it.

50 Q. Well, can you explain what does it mean?

A. If you were on a ship pointing there and you were turning at a constant rate of 5° a second, the ship would go round in a circle, and if you were pointing the bow it would take you 72 seconds till the ship came back pointing at that direction. Now obviously

In the High Court of Hong Kong

Prosecution's Evidence

No.4
P.W.19
Allan Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- if you have 5° a second on a very slow ship the size of the circle it makes is comparatively small. If you are going very, very fast that circle would of course be much bigger because you are going fast. So really 5° a second rate doesn't tell you much. It just tells you the change in compass heading.
- Q. What if you notice speed, does that help, if you notice a hydrofoil is travelling at its flying speed of about 32 knots? 10
- A. Yes, this helps. You can get an approximate turning circle out of it if you use certain assumptions, i.e. that the vessel does turn in a circle. Most ships don't turn in a perfect circle, but a hydrofoil is very, very close to a full circle. It's unlike a normal ship. 20
- Q. On a hydrofoil, to turn at 5° per second - again, try to reduce to layman's terms, is it a slow turn, sharp turn, can you describe it?
- A. I have done turning tests on the Flying Goldfinch. I have data from the makers and from other people who make P.T.50s, and I could not reach a turn of 5° a second. I have doubts whether the vessel could do 5° a second over any sort of big turn, the reason being that to get that sort of turn you must use a fairly larger rudder angle, certainly over 10°, you must use flaps. The additional drag is slowing the boat down and she will stop flying - it depends on the boat - she will stop flying, possibly comes off the foils at about 26 knots. Now it also depends upon the speed you go into that turn. For instance, the Rodriguez when they were testing these boats were using 15° helm and could get very nearly 5° a second turn. But they went into the turn at 35½ knots. This vessel went in it at 32½. In fact on this vessel we specifically put a lot of helm and flap on and the vessel was, for want of a better term, struggling. She puts her back side down. You can feel the boat labouring. She gets a very big angle on, 50 and if you keep on she will come off the foils. If you like, it's like an aircraft - you hit stall speed if you haven't got enough lift to keep her up. So 5° a second I certainly haven't been able to get it. 30 40

- Q. Once again reduce to layman's terms, make it ridiculous, is it a hard, a very hard turn - is that a description of it?
- A. Yes, if you could get a 5° a second it is very noticeable. The boat is really canting, and even if you try and keep her up with flaps it is very noticeable.
- 10 Q. Is it possible to talk in these terms about the normal turn into the Macau Wharf in Hongkong at 5° a second?
- A. I have never measured it, but I would imagine the turn rate is around the 3° mark depending on how much they wind on.
- Q. So whatever it is, what was written into this log, whether possible or not, was that it did a hard turn to starboard?
- 20 A. That is correct.
- Q. Now "D/O" - that is Deck Officer, "advised master of the incident and at the same time master tried to put the vessel on course again but no response." What do you understand from that?
- A. To me it does not make sense. The deck officer is in the left hand seat, all right, keeping a look-out. Why should he advise the master that the boat is sheering when the master is steering? He would have been perfectly aware of it himself.
- 30 Q. But "trying to put the vessel on course again but no response" - does that indicate anything, I mean what is being suggested as being the cause of that?
- A. It is suggesting that the vessel took an uncontrollable sheer and that the deck officer for some reason advises the master, though the master should be fully aware since he is steering it, and the master cannot bring it back on course again. In other words, the vessel is out of control.
- 40 Q. Going on to the next line: "With port flap pushing forward and starboard flap aft and rudder on port helm."
- A. These levers work in the sense that you would expect. If you push both levers forward the boat will go down. If you pull them back she will go up. In other words, pulling the lever back puts its positive flap on, pushing it forward puts its negative flap on. So if he is putting negative flap on the port side and positive on the starboard side he is trying to use the flaps for a port turn and his rudder as well, he says he has put the rudder to port. He is
- 50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

using all his controls to obtain a maximum port turn.

Q. And then: "Stop engine. Vessel collided with 'Flying Flamingo'. Master fell on the floor and fainted." Now that is the content of that first part of the log?

A. Correct.

Q. Did you notice anything different between that particular log book and the other log books, the rough log, for example, and the radio logs and the other logs that you collected?

10

A. I noticed something different between the fair copy and the carbon copy before we even leave this log book. These pages, if you have a look previously, are perfectly in register, by that when the person writes the times the boxes are rather small and the time appears in the middle of the box. However when I looked at the carbon copy - this is the one underneath and I'm afraid they are rather battered now - the first thing that alerted me was that the carbon copy, the times were not exactly in the middle of the box and yet the top copy, they were. Now remember that it is not that the book is badly printed because I have checked the other pages. It struck me that the pages had been written when they were loose, and perhaps before I pass it round --

20

30

MR. AIKEN : I must ask the basis for this line of questioning. It is not in any statement that I can see. It is clearly additional evidence. No notice has been given of it and what is Mr. Pyrke's expertise to give this evidence? This is entirely inexpert opinion and there is no notice of additional evidence, just coming completely out of the blue.

40

COURT: Why he had to be an expert to say the figures are in the middle of the box or not?

MR. AIKEN: He is giving opinions. He is not an expert on alignment of pieces of paper and carbon. And my principal objection is that this is coming completely out of the blue. We have two statements from Mr. Pyrke, one additional and one served on us before this trial. Today we are getting extra evidence.

50

COURT: Certainly if you haven't had notice of

this evidence obviously you can, if you wish, take instructions on it.

In the
High Court
of Hong Kong

10 MR. AIKEN: But also I do ask, it's opinion evidence, whether he is entitled to give that evidence? He can say what he found. He can't give his opinion and that's what he appears to be doing at the moment. He can say he noticed the box has no alignment and then stops, but he can't give answers as to when things were written. That's his opinion and he is usurping the function of the jury.

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

COURT: Yes. He can certainly give evidence as to what he found.

20 MR. LUCAS: My Lord, I'll take it no further than that and leave it for the jury as my learned friend says. In relation to the point about additional evidence it may well be so if my learned friend pointed out that there is no notice of additional evidence, he was somewhat taken by surprise by the particular fact and that they were entitled to take time to consider that - if my friend seeks to make any application along those lines I will certainly not oppose.

30 Q. Now what else did you notice; what conclusions did you come to, what else did you notice?

A. The top sheet of this log book, when it came into my possession, was loose. The edge of that log book, as you can see, is not a straight line. However, if you look at the binding you will see on the binding there are two pages into the binding, the stubs of two pages, both of them are straight.

40 Q. Is that perforated and the other?

A. They are perforated, and the top copy are both straight. The top copy here has a considerably up and down edge.

Q. Can we have that business about the pages again? The perforated sheet, as I understand it ...

A. It's a tear-out sheet which is passed on to the Marine Department every day as a matter of course. The top sheet remains in the log book.

50 Q. And the sheet that was presented as part of the log book was torn out with the rough edge on it, the one underneath has a straight line.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- A. All I can say is that it has a rough edge.
- Q. And the sheet inside has a straight edge.
- A. Has a straight edge.
- Q. You mean this thing inside? There are two things inside here.
- A. They are right in the stub.
- Q. They are absolutely straight, both the perforated and the other.
- A. That's correct. 10
- Q. In comparison between those two loose sheets and the other log books in general appearance, say, as compared with the rough logs and the radio logs.
- A. When these first came into my possession, the sheets were perfectly clean. They were not creased in any manner. The rough deck logs and the radio logs were scruffed, dirty and bloodstained.
- Q. The condition we see them in at the moment, Mr. Pyrke, is that -- 20
- A. They are a little bit battered at the moment.
- Q. They were not like that when they came to you.
- A. They were not like that when they were first presented to me.
- Q. Would you be good enough to look at the rough log of the Goldfinch and perhaps the radio log - the rough logs, the radio logs that my learned friend Mr. Aiken produced of both ships and show those to the jury please. 30
- A. This is the rough deck log of the Flying Goldfinch.
- Q. Would you show the back...
- A. This is the condition in which it was handed to me.

CLERK: P.23.

- A. This is the radio log of the Flying Goldfinch and was in the condition that was handed to me. 40
- Q. The Flamingo log?
- A. The Flamingo deck log was handed to me in this condition. This is the rough deck log.
- Q. Right. And the fair log of Flamingo?
- A. Yes, this is the fair log. I can't remember what condition it was in when it was handed to me - the Flamingo's log. 50
- Q. That came with both sheets in or?
- A. I seem to recall that it came with both sheets out, and again I seem to recall that I did check -- I am no expert to -- but they are certainly both....

Q. On that one there was a rough edge. In the
A. There was a rough edge. High Court
Q. Can you tell us anything else that of Hong Kong
you noticed in relation to those
logs when they are presented to you, Prosecution's
both in - either in content or in Evidence

A. Yes. There is an entry at the bottom No.4
of the page. P.W.19
10 Q. Which one? Allan
A. In the fair deck log of Flying Charles Pyrke
Flamingo that says 0901 to 0903, Examination

H/V, which I presume means hydrofoil
vessel, on hull-borne to clear the (continued)
plastic bags on the foils. Also at
the top of the first column, it gives
a take-off time, a 3 minutes 45 seconds.
Now, I should perhaps explain that a
take-off time is recorded, as far as
20 I am aware, by the chief engineer
usually with a stop-watch. When the
master gives the order to apply take-off
power, the engineer puts the throttles
up, in other words, increases the speed
and starts the stop-watch. And when she
lifts clear of the water the engine
RPMs will drop back and he takes the time
from applying power to getting out,
30 and that time is very useful as it gives
an indication to the engineers and the
maintenance staff as to how good the
engines are. Obviously if your engines
are coming up for an overhaul and you
have a very heavy load, maybe your foils
are dirty, she struggles to take off. If
she's got a light load and she's straight
out of dock, she'll jump straight out.
3 minutes 45 - I can only give you an
opinion, a non-expert opinion because I
40 am not an engineer....

MR. CORRIGAN: We can't hear it, with respect.

A. All right. Am I allowed to compare this
take-off time with others in the log
book that is in my possession?

COURT: Yes, you can certainly.

A. If you go the previous day, the 10th of
July, the first trip she took off in
3 minutes 25 with a passenger load of 125.
50 the next trip she took off in 47 seconds
with a passenger load of 28. The next trip
she took off in 3 minutes 36 seconds with
a passenger load of 125. The next trip
she took off in 2 minutes 12, with a
passenger load of 115. The next trip

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

2 minutes 20, passenger load 125. The last trip on the 10th of July, she took off in 1 minute 4 seconds with a passenger load of 84. Having noted these figures, I then had a look at the previous entries as to how long it has taken this vessel to go from Adamasta Rock to Fan Lau. The reason I took these times was that 0901 to 0903 is in between passing Adamasta Rock and Fan Lau. 10
On this particular day, she was abeam of Adamasta at 0856 and abeam of Fan Lau at 0915, that is a 19-minute run.

COURT: Sorry, can I have it again? Adamasta at?

A. 0856 and abeam of Fan Lau 0915.

COURT: That is?

A. 19 minutes. If you look at the previous day's entries for the 10th of July for the outward bound trips, the first trip she was abeam of Adamasta at 1005, she was abeam of Fan Lau at 1024 - 19 minutes. The next outward bound trip from Hong Kong.... 20

MR. CORRIGAN: Sorry. I don't know where this is getting at, what it is all about. This is a criminal trial, we have said before. We haven't even had - never mind notice of additional evidence - we haven't seen any of these documents, my Lord. We've seen the page concerned with the date of the collision. That's all. 30

MR. LUCAS: My Lord, the reason we are looking at the previous pages is because of an objection by the defence as to this because I asked this witness to comment about the log itself, the particular page, and there was an objection to that course of action being taken as a result of him not being an engineer. So he's now asked to comparing times with your Lordship's approval. We are into this area and looking at the rest of these pages because of that objection. If, after he has compared the pages which he is doing with your Lordship's approval and indicates what the point is, then by all means the same situation applies, my learned friends can have opportunities to examine and take instructions on these matters. We are talking about, my Lord, a document that has been present in this 40 50

10 courtroom through the trial. We are talking about a reference to a different section of that book because of a defence objection, and now it is being sort of suggested that we cannot, having got your approval, to proceed with this line of examination. The conclusions that can be drawn can be drawn in two ways - either by the examination of the whole book or the examination of the starting time. We've had evidence throughout this trial as to the times of which various points were passed. It has been relevant throughout by the defence case. At the committal, my Lord, all these documents were available.

In the High Court of Hong Kong

Prosecution's Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

20 COURT: You say you are not an expert engineer, but you would regard yourself would you not, according to the statements you've made, as an expert in the navigation of --

A. Yes.

COURT: The evidence you are now giving, does that come within the -- do you consider it comes within the area in which you are....

30 A. The timing between passing points, yes, on a navigational route.

MR. CORRIGAN: But it was never suggested to the radio officer or any other witness who was present on the boats that the times were wrong. They have all given their evidence. The radio officer's evidence was quite clear about the time of passing the Fan Lau Point. It was never challenged. How can it be now challenged by somebody who wasn't even there, with respect?

40 COURT: Do I take it that the gist of his evidence is that the recording of the abeam times is in fact wrong?

50 MR. LUCAS: The gist of his evidence, my Lord, while the jury is present, yes. The times given cannot be right given the situation we are talking about. And when one talks in terms of challenging, one produces witnesses who give evidence in relation to certain matters and produces them in relation to different topics. There are occasions when two witnesses are called whose evidence, and it's happened throughout

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke
Examination

(continued)

this case, conflict in various matters.

There is a very simple solution. If my learned friends take this objection, I would seek an adjournment, give them notice of what exactly I am going to produce in the context of this particular witness, give them the opportunity to take all the instructions they require and we'll continue after that. The concept of the Crown being bound by a particular situation is in order to give the opportunity to the defence to take instructions if necessary. If a witness turns up at the last moment we can call him.

10

COURT: The evidence was given by the Flamingo's radio officer of recording the times abeam certain points.

MR. LUCAS: And challenged, if you recall. It was challenged that he couldn't possibly have - both radio officers couldn't possibly have done as they have said they have done, namely, by coming out of the cabin to look or standing up each time they went abeam. The defence has, during the course of this case, sought to demonstrate that both radio officers, when they gave their evidence as to where the boat was at any particular time, could not have been accurately recording those times because of the peculiar situation which they were in - one of them was sitting in a room on one side and one was sitting in a room on the other.

20

30

Now, the times, during the course of this case, has been challenged by the defence. I have an expert here who can lend a view in that particular topic raised by the defence in the first instance during the course of cross-examination. My learned friends complain that they have had no notice, that the times were in dispute, they themselves having disputed the times. We have evidence in an area raised by the defence which is available to them at this time. If they would like to hear that evidence and then take instructions, if they would like formal notification of what Mr. Pyrke is going to say in the next ten minutes, then we can do that as well and they can take instructions and argue the point thereafter.

50

COURT: Yes. I think the evidence of Mr. WOO who was the wireless operator on the Flamingo and Mr. LO who was the radio officer on Flying Goldfinch, they both gave evidence and both certainly were challenged as to their ability to record accurately passing certain points.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Examination

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MR. CORRIGAN: Well, not by me. I am going to wonder in what capacity Mr. Pyrke has been sitting in this court since the beginning of this trial. Your Lordship, I think, knows what I am referring to. It's one thing to give expert opinion on evidence produced by the prosecution as part of its case. It's quite another thing to come along and give additional evidence of opinion arising presumably from a state of criticism of part of the prosecution case.

(continued)

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MR. LUCAS: I am sorry, My Lord. My learned friend, with respect, misunderstands, if I may say so, the position. The Crown's case is and has been since my opening it matters not where the collision took place. That has always been the case. We are not involved in plotting courses, positions. The Crown's opening was to the effect that two boats in an open sea collided with each other. During the course of leading that evidence, we have got ourselves involved to some extent in a marine enquiry - placing boats in various positions at various distances at various times.

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40

We have had the defence throughout this case, not the prosecution. We have not called witnesses to fix particular spots. We have indicated at the outset that as far as the Crown is concerned, the position given as the approximate point of impact will suffice by the defence. But the defence have raised in the course of cross-examining Crown witnesses a topic, a topic which would indicate that the Crown's evidence in a certain respect is inaccurate. What I am seeking to do is to support the defence that in fact the times and the positions are and can be in some of these books inaccurate.

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Now, the topic has been raised not by the Crown. If the Crown's case is that we

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

have to fix a particular point in order to satisfy the court that these men are in fact responsible for these deaths, then we would have opened and proceeded on that basis. But as I understand my opening that I gave, the opening was it matters not where it happened, it happened and what the circumstances were. The defence say, 'Mr. Radio Officers, you couldn't possibly be accurate when you say this, that and the other.' Mr. Pyrke, who happens to be an expert, is able to assist the defence in this particular area and say "Right, these are the matters you raised and I've noticed something in the log book which supports the defence view that they are not correct."

10

Now, we have this constant sort of reference to this as a criminal case. What we are seeking to do is to find the truth. My Lord, I think Mr. Pyrke is perfectly entitled to give the evidence from the pages itself. If he is not able to do that, he is certainly able to do a comparison with other pages to indicate that from the log book what my learned friends themselves seek to prove is right, that there are inaccuracies in this log book.

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COURT: Yes. I assume of course Mr. Pyrke was present at court throughout with consent as ...

MR. AIKEN: My Lord, I want to echo what my learned friend Mr. Corrigan said about that. It was certainly my understanding that Mr. Pyrke was coming along to be an expert on marine matters. That's how the case was opened, that is what emerges from his two statements, his additional statement served before this trial and the earlier statement made way back sometime in the late summer of last year. So I understood him to be simply a marine expert. The word doubts in my mind about his partiality or lack of it because we know that he held the preliminary marine enquiry which he was instructed to do so, we know he took evidence on oath from all the witnesses and we know he reached conclusions and he wrote a report; in other words, he has conducted a, if you like a determination

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of this matter and prepared a report.

In the
High Court
of Hong Kong

Now, in normal circumstances we would disqualify him from coming along and giving expert evidence because he is highly partial, he has made up his mind, and one of the witnesses in fact has told us about Mr. Pyrke passing on his suspicions and that formed the basis of the police enquiry.

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

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Now, I didn't object to that at that time because I understood Mr. Pyrke was here just to deal with his field of expertise, that is, marine matters and how the collision occurred. I was, to put it at its lowest, highly surprised this morning when he started to give general evidence of his own personal opinion about other matters which have come out during the course of the trial. He is not qualified to do that, and had I known there was any chance of him doing that, I would have objected and asked him to wait outside this court from the very first day. So I do echo what Mr. Corrigan says and it troubles me.

(continued)

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COURT: I am not with you on it. I think the evidence that he is giving now quite clearly is within the field of his expertise in navigation.

MR. AIKEN: The tearing of the pages, my Lord, that I am referring to. I am not repeating Mr. Corrigan's objection. I am dealing with the earlier point I made, the tearing of the pages and the carbon copy.

COURT: Oh, I see.

40

MR. AIKEN: That's what I objected to and I am still troubled by it.

COURT: I see.

MR. LUCAS: Thank you, my Lord.

Q. Yes, Mr. Pyrke please.

A. It shows that on the previous day the average time was 19 or 20 minutes. I don't know whether I am allowed to give an opinion, my Lord, as to what the

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

significance is of the 19-minute period on a particular day.

COURT: Yes. I think if you say you are an expert in navigation, I think that comes within your field of expertise.

A. It means that the entry 0901 to 0903 at the bottom of the log book is inaccurate and that the vessel went hull-borne after passing Fan Lau, or it means that the times are inaccurate and she went hull-borne before passing FanLau.

10

Q. Could you explain that? First of all, what times are you talking about?

A. This is the time from 0856 when she was abeam Adamasta to 0915 abeam of Fan Lau is 19 minutes, which is the average time she takes to do that trip when she is foil-borne all the time, going at her normal cruising speed. Therefore, the entry 0901 to 0903 is inaccurate as to the actual time. In other words, it must be after Fan Lau, otherwise she would have taken a lot longer than 19 minutes from Adamasta to Fan Lau. And with her take-off time of about 3 minutes, the stopping of the motion, the dropping on the hull, the going astern and take off again, the normal sort of job would have taken more than 2 minutes or would appear to take more than two minutes on previous entries. So the other alternative is that the times recorded in the log book are inaccurate.

20

Q. Either that or she went on her hull after that.

30

A. Or she went on her hull after Fan Lau.

MR. CORRIGAN: What issue is this evidence directed in a case of manslaughter? Is it suggestive of a guilty mind or something? With respect, we've just had evidence to suggest that people on board the Goldfinch were concerned presumably with something or other in writing out log books after this collision. Is it suggesting, this evidence, as far as the Flamingo's log is concerned, is of the same character? It follows immediately afterwards, it appears to me to be of a totally different consideration. The jury may well think that the matters are being linked together. I wish it could be explained in relation to the issue of manslaughter, unlawful killing, with which

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this case is presumably concerned.

In the
High Court
of Hong Kong

10 MR. LUCAS: My Lord, I am not entitled to make a speech every time I ask a question to indicate what the subject or topic is. There is a time when this evidence will be linked together. It happens to follow in sequence. We are dealing with log books. Apart from that, I need say no more at this stage.

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

20 COURT: I think, Mr. Corrigan, quite a bit of the evidence and indeed -- it seems to me somewhat irrelevant, but to some extent of course I must rely on the Crown to produce relevant evidence, and I must of course rely on the defence counsel to cross-examine on matters which they consider irrelevant. On the face of it, the times when passing various points may not, on the face of it, appear to be particularly relevant.

(continued)

30 MR. CORRIGAN: My Lord, with respect, I would have thought equally likewise with the greatest respect to what your Lordship said and I agree with what my learned friend Mr. Lucas was saying about that particular aspect of the matter somewhat earlier. It's not that that troubles me. I said what troubles me. I wish my friend would make it clear sooner or later why, in relation to Flamingo's books, this evidence is now being sought from this witness.

40 MR. LUCAS: For the benefit of my learned friend, it happens to be -- we are discussing log books, it seems to be convenient to deal with log books at the same time. I do not seek to link the two log books in the same context.

MR. CORRIGAN: I am much obliged.

Q. What else, Mr. Pyrke?

A. There was nothing further in the log books that is of importance.

Q. Once again, not linking it to the Goldfinch log book, there has been evidence given of a map marked by Mr. George Young who was on Sao Jorge. Would you be good enough to look at that please, P.27.

50 MR. LUCAS: Does your Lordship have the marked one?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke
Examination

(continued)

COURT: No, I don't.

Q. Where was, according to that map, Sao Jorge at 0926?

A. Could I have a pair of gliders please?

Q. As you mark the what?

A. The chart is marked abeam Ching Chou 0921 and abeam Niu Tau at 0927. 0926 is not marked. (A pause) Yes. At 0926 she is 8½ cables away from the western tip of Niu Tau on the course line drawn on the chart. 10

Q. And in relation to the approximate position of the collision?

A. My Lord, I am in a bit of difficulty because the position is not marked on this chart and yet I am fully aware of where the position is recorded. Can I assume that knowledge

COURT: Can we assume - can we take a point, say, abeam Niu Tau? 20

Q. Would you mark the spot where that ship was at 9.26? Now, could you also mark the spot please where the collision was recorded to have been according to the logs?

(Witness complies)

Q. Mr. Pyrke, you have marked the time 9.26 on the line indicating where the Sao Jorge would have been.

A. From the information, yes. 30

Q. And you marked slightly to the left above with a cross where the logs report the collision to have taken place.

A. Where the Flying Goldfinch log reports the collision to be.

MR. LUCAS: Could the jury be shown that.

Q. Just to make it absolutely clear to the jury, on the line drawn by the Sao Jorge as to its course, he's marked 9.27, you have marked where it would be at 9.26. 40

A. Correct.

Q. And slightly up to the left of that you put a red cross indicating where the Goldfinch has reported the collision to have been in its log.

A. That's correct.

Q. Now, Mr. Pyrke, for the benefit of us, shall we start first of all -- you used the initial D.S.C. What does that stand for? 50

A. Dynamically supported craft.

	Q. What are they?	In the
	A. Any vessel that uses dynamic forces to support the weight of the boat, that means hydrofoils, hovercrafts, even a power boat that is plaining is in effect a dynamically supported craft, or even a water skier, if you like, is a dynamically supported person.	<u>High Court of Hong Kong</u>
		<u>Prosecution's Evidence</u>
		No.4
10	Q. Mr. Pyrke, the dynamically supported craft, where do most of those in the world operate?	P.W.19
	A. InHong Kong.	Allan
	Q. Have you operated or being involved in dynamically supported craft outside of Hong Kong?	Charles Pyrke
	A. Yes.	Examination
	Q. Where? Would you tell us your experience please.	(continued)
20	A. I spent four days on the bridge of the big SRN going across from Ramsgate to Calais, they are run by Hoverlloyd. I have also spent time under trials on HM2's and HM5's operated by Vesper Hovermarine, the builders in the U.K.	
	Q. And where else?	
	A. I underwent a training course in the States on the Boeing Jetfoils sometime in the middle of 1970's. I can't	
30	remember exactly.	
	Q. And you've operated with masters of all nationalities.	
	A. I have seen American masters handling the boats, British masters.	
	Q. Now, could you please, I think for the benefit of us all, explain just how these things operate, how you control, steer them etc., take off, take on,	
40	just give us some idea first of all.	
	A. Yes. If we are talking purely about hydrofoils - and I must make it quite clear that I have not been in command of a hydrofoil, I have only watched people doing it and I have only handled it once when the boat was actually on the foils, but basically these are called surface piercing hydrofoils.	
	Q. Just stopping there for a moment. Have you ever acted as an examiner of these boats?	
50	A. I have acted as examiner for type-rating certificates on the Boeing Jetfoils, I have also passed people out for night operations on the Boeing jetfoils and operated as a type-rater for the HM2.	
	Q. And prior to doing that, had you undertaken	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Examination

(continued)

- training by the manufacturers?
- A. Yes, by Boeings for the jetfoil and by Væspær Hovermarine for the HM's.
- Q. So you actually examined the people who flied this or --
- A. Some of the boats, jetfoils and HM2's not the ordinary hydrofoils, there is no examination involved.
- Q. Just pausing there for a moment. There is no examination required for a hydrofoil, 10 but what qualifications do you need?
- A. To operate it to Macau, she's holding a passenger certificate and the master must hold a Certificate of Competency Class I, either the full D.O.T. equivalent certificate or a Local River Trade Certificate.
- Q. Could you explain those please.
- A. D.O.T. is Department of Trade. If you like, it's somebody who can command a 20 deep sea ship, a class I. That is the D.O.T. Certificate. You can be master of any British ship. The class I River Trade is a new certificate structure that has just been brought in and that only allows them to be in command of this type of ship in River Trade limits, basically between here and Macau and Canton, nowhere else in the world. Its specific to Hong Kong. 30
- Q. Would you please explain something about these hydrofoils.
- A. They are called surface piercing hydrofoils. The edges of the foil stick up above the water. Now, the reason for this is that if you imagine the boat is going into a sea wake, into a wave, as the vessel pitches down into the sea, the foil - more area goes under the water, you get more lift and she will come up. 40 The forward foils are - both sets of foils are giving you lift. The flaps, if you like, they are the fine adjustment for the lift. It is unlike the jetfoil, for instance, which has a fully submerged foil. Now, the way you take these boats off is - and all boats are different, you will remember. It depends on the conditions of the hull, the conditions of the engine. The normal way I have seen them do it is 50 to increase the revolutions. Quite often they will put a negative flap angle to start with. In other words, it's like an aircraft, you are trying to get your speed up before you lift her off. You put positive flap on and it depends on take-off. I don't think people really note how much

degrees flap. You are flying her by -- you feel it, you are judging the speed, you are judging how much she is coming up. When she comes up out of the water, once you get the hull out of the water, your resistance on the hull has decreased, this is the whole object of the hydrofoil, and you ease back the throttles and you adjust the flap angle. It depends on loading and the boat itself as to what sort of flap angle you put on. A light boat, I would imagine, maybe one, two degrees flap angle positive, that keeps her up. Heavier boat, you may need more flap angle. That depends very much on the boats themselves. We have heard a lot about flaps being used to steer but this isn't the only function of the flaps. The thing is to keep the boat flying at the right height above the sea and it is possible of course, it has been done in the past. By reducing the flap angle, you can get the back end of the boat touching the water. It is used to be done in Macau Channel particularly when they were not allowed to go foil-borne and they used to touch their stern in the water and say they were flying. Certainly this type of hydrofoil is very susceptible to the direction of the sea. If you get caught in the sea, then the master is going to have to work. He's got to -- because the very fact that the boat is moving changes the flap angle, that changes lift and you have the movement in the wave itself. If it is a calm day, he should be able to leave those flaps, nicely set and just steer on the rudder. And it depends on the personal reference of the master as to how he controls it, but basically from what I have seen, you only need to really work the flaps in bad weather, unless you are trying to make a very sharp turn, then you can use flaps.

Q. Tell us about turns.

A. Normally you don't use more than about ten degrees rudder. I mean you can use 15 if you want, but you are increasing your drag and the more you increase the drag, the more your speed is liable to drop until you are getting to the situation where, again like an aircraft, you are

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Examination

(continued)

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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Examination

(continued)

- near stalling. I did some tests on Goldfinch trying to see the effect of steering the vessel, or the rate of turn, shall we say, of rudder only, of rudder and flap and the flap only, changing both port and starboard turns to get an idea of what the Goldfinch would actually do on that particular day, and I would reiterate these boats are different and in a month's time you can get different results, the boats do change, engine speeds etc. And certainly I can give you the actual figures but basically under rudder alone, only using 10 degrees rudder, we are talking about getting up to 2 degrees rate of turn. Rudder only at 10 degrees -- sorry, two degrees per second. With flaps only, no rudder, that is putting maximum flaps on to get a turn out of that, she turned quite a little bit quicker, it was a little bit over 2 degrees per second. With a combination of rudder and flaps on a starboard turn, which was quicker than a port turn, I might add, I was getting just over 4 degrees a second. I also got them to wind on a lot of rudder, about 15 degrees to see what would happen and you can tell the boat was -- she really put her stern down, she was going to come down off the foils. 10
- Q. Is there any difference in controlling the Goldfinch and the Flamingo, any difference between them? 20
- A. To my knowledge, they are just the same.
- Q. How about stopping these?
- A. Emergency stops for all vessels have been done over the years, all masters are supposed to be aware of it. I have certainly done some. And again it depends upon the boat, the loading etc., but it would average about 250 feet. When I say an emergency stop, that normally -- people just cut the engines. There are other possibilities. You can put the flaps to full negative and try and dive her in. You can put the rudder over and try and put the drag on. It depends upon the way the master is doing it, but they are varied, they vary. Certainly the tests results I have seen vary between 150 feet and 400. Certainly the ones I do, and that's only eye-balling, we are not measuring with a tape measure, just estimations, about 250 feet. 30 40 50

COURT: Would that be a convenient time?

MR. LUCAS: Yes. I beg your pardon,
my Lord.

11.38 a.m. Court adjourns

12 noon Court resumes

Appearance as before. Jury present.
All accused present.

P.W.19 - Allan Charles PYRKE o.f.o.

XN. BY MR. LUCAS: continues

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- 10 Q. Mr. Pyrke, we continue with the
stopping distance. You've told us
that you can stop at about 250 ft.
- A. Correct.
- Q. Now is that heading in a straight line
and just - what do you do in a
situation of --
- A. To stop a hydrofoil, you reduce the
engine speed: you put the engines to
neutral and to get it down quickly,
20 you can put the flaps to negative -
in other words, you dive the boat down.
- The 250 ft. - I've made it quite clear
-- can vary a lot, dependent on the
boat. All the ones I have seen done
have been done in a straight line.
- It would be possible to wind on some
helm. There's problems there, the
problems being you have limited hydraulic
pressure. Now the wheel and both flaps
30 use hydraulic pressure and you've only
got two pairs of hands, you can't do
everything at once, and most of the ones
I have seen done are literally straight,
stopping the engine.
- Virtually - I won't say it's an emergency
stop - but the boats are very used to
stopping fast. When they come into Macau,
they flay almost into the berth. In Hong
Kong they tend to keep a little bit
40 further off because they have a turn as
well.
- Q. Now that 250 ft. is from full speed to
stop, is that right?
- A. To stop in the water, yes.
- Q. Now how long would it take from full speed
to landing on the hull?
- A. I wouldn't like to give a figure. The
only observation I would make is that the

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

quicker you get your hull in the water the quicker you stop.
Q. Obviously, that is why - that is the point of my question. You see, what I am getting at is this - you are talking about 250 ft. from 32 knots to stop, but the first part of that reduction of speed would be, would it not, greater than the speed at the end of the hull, if you had a graph - in other words, the speed would go down rapidly at the beginning.

10

A. Yes.

MR. STEEL: My Lord, that is a leading question at the best of times.

A. Answer, my Lord?

COURT: Yes, it may be --

MR. LUCAS: Could I rephrase that question? What happens --

COURT: -- if the question is: is it a constant reduction in speed, or does the rate of deceleration vary?

20

A. It varies very much on what the operator does. The only observation I can give you is if he can get negative flaps on and get that boat down, it will stop quicker than if you keep the positive on and try and keep her up - in other words, you are still trying to lift her up with your flaps.

30

Q. But if you negative the engine and immediately operate the flaps, that is the sequence?

A. It should come down faster. With all boats, it depends on passenger loading -- (not finished)

Q. Well at which end of that process would you expect the deceleration to be greatest?

A. It is normally at the end from what I have seen.

40

You see, if you - and this is purely a visual eyeballing estimation - you cut the engines. Now she is going to carry on going, she is going to carry on flying, and it does take time to put your negative flaps on for them to bite. So she tends to carry on fairly fast to start with and literally drops down and then the last bit to actually take the way off the boat, you've usually go to

50

go astern.

Now you cannot go astern by those engines. There's about a 6-second delay. If you go astern too soon, you stall the engines. Once you stall the engines, you've lost all hydraulic power which means you cannot steer the boat, you cannot do anything.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

- 10 Q. How about stopping and turning?
A. Stopping and turning?
Q. At the same time, is it possible to do --
A. Well they do that every time coming into Macau wharf. They will put helm on. I often see them landing in a turn.

(continued)

- 20 You know, it is very difficult when we start talking about the sort of distances, very short, to say whether one would be 10 ft. shorter than the other; it is not possible.

Q. I would like to take you, if I may --

COURT: Just one point. You said that the stopping distance depends on the load, the number of passengers on board.

A. That is one of the factors.

COURT: In which way does it affect?

- 30 A. I've seen it affect both ways. I cannot give you a straight answer. I have seen sometimes when the boat has been heavy, that she has gone further, but you cannot tell whether that is the passenger load or the bloke that is operating it.

Q. Can we now go to the general question of this. You examined both these hydrofoils, did you not?

A. Yes.

- 40 Q. And you came to certain conclusions as to the collision.

A. Speed and angle of blow, yes.

Q. Would you be good enough to tell us what you did, what you found, etc., with all the aids and assistance you --

A. I think if I may, I would use the board and the photographs, my Lord, if I may please.

50 (Witness goes to the board in the centre of the court)

A. I think that what I'd like to do - rather than running through the damage in absolute detail - is to show the

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

basic sort of angle and then refer
to the photographs that will give
some clues. The other thing is: could
I possibly have my parallels?

COURT: Yes, by all means.

(Witness draws on photograph)

A. That is the closest I can make it,
under the circumstances, about 50?.

COURT: 50.

A. That is the sign over here. Now
considering this angle, it would give
it a first contact between the foils,
and if you have a look at photograph 2,
that shows the foil of the Flamingo
with the cut on the underside, and the
foil of the Goldfinch is at photograph
25. 10

Now leaving aside at the moment the
difference in heights, the effect of
them hitting here and of that foil
cutting in would be to cause a very
violent swing on the Goldfinch. It
would rotate about this point and the
bow will start siding forward along
the side. 20

It seems strange that if this vessel
is going at 32 knots, that in effect
this bow is overtaken along the side,
but if you have a look at photograph
14 - now I know this is a GA of the
Goldfinch, but basically this area we
are talking about is the side of the
belvedere cabin, up here, and this
photograph is taken looking aft. It
just looks a mass of metal, but if
you look carefully, you will see that
the side of this cabin is buckled, and
the buckles are leading forward. 30

It is as though if you've a sheet of
paper and you run your hand over it
and it - it's slightly sticky or wet -
it will buckle, but it will buckle in
the way that you are running it. The
paper will fold with the loop, that
way. The loops will be going the way
that you move your hand. 40

This is what's happened on the side here
and you can see that there is a definite
kink in that belvedere side. It is
quite a sharp kink, and that is the deck 50

edge which is hitting the middle of the belvedere cabin, siding its way along. Now whilst this is going on, this foil is cutting through, but it didn't get to its end of its travel.

In the
High Court
of Hong Kong
Prosecution's
Evidence

10 If you look at photograph 3, you will see that the top part is a downward cut; it's really deep, cut the metal in; and then suddenly at the end it tails off. It doesn't cut any more. It just scratches. You see this on the photograph?

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

Now what's happened here is that the foil box has finally given way. As this is going in, you are putting a terrific pressure on that foil box and you shear your bolts. In fact, there's also a twisting motion there.

20 If you have a look at photograph 26, if you look at particularly these bolts on the bottom side and the top side, you will see that the holes are elongated and it looks as though the foil is twisting from this side, it's twisting like that - in other words, the tip is being forced down.

30 Now this twisting, violent motion finally sheared - and I did count them, but I can't remember whether there are 20 or 24 bolts holding this foil box. Once that gave way, there's only this side holding it, and this becomes a massive spring, it becomes throbbing. So then she carried on penetrating. As I said, it is difficult to know how far she had got, but the next thing that really hit was the bottom of the bow hit the engine.

40 Now if you have a look at photograph 23 and 21, now dealing with 21 first of all, you can see this is - this part of the vessel, the lower stem - you can see there is a bite out of it. Literally, just like a big bite. You can see the stem there and there. A close-up of it shows - photograph 23 I think it is, yes, 23 - shows that bite in more detail.

50 I consider it was the lower part of the stem had hit the engine now and that's solid, and it started rotating about that point, so by this time, as you can see

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Examination

(continued)

she's well buried into the side.

Some time around here, this foil slips and, remember, it's broken now; it's been pulled back like a massive spring. It slips off the edge of this foil and winds forward, and the foil clasps the chime bar. I saw that foil and it's very, very waggly, and the chime bar, you can see where it hit the chime bar on photograph 9, around here. And you can see the mark on the chime bar. There is an equivalent mark on the foil. That is on this part, the edge.

10

She carried on rotating and that engine is holding it. The engine is knocked off the blocks, but you require a lot of power to knock a big engine off its mount blocks, to topple it on its side, and the boat carries on rotating until literally she spears this boat with the port foil. It goes into the double bottom.

20

Now it did not hit this I bracket at this stage. If you have a look at the V cut, photograph 11, you will see that the plates are pulled outwards. Also above they appear to be pushed in. Now that pulling out could be when they pulled the boats apart. It could also be the fact that the Flamingo started sinking and listed to port. It kept on going until the I bracket touched the foil and she was, as it were, being supported with that foil dug in onto the double bottoms and with the I bar resting against the front and she was rolled quite a bit to port. So that actual mark, I think, was done subsequent to the actual impact.

30

40

There is one other thing while we are on the photographs. At the after-end of the belvedere - this is photograph 14 - here you can see what is known as a man-overboard signal. Now there is one on each side. The one on the port side of Flamingo is missing. If it goes into the water it gives off very dense orange smoke. It is a man-overboard marker; to mark somebody who falls into the water. It was missing.

50

Two other photographs I would refer you to, photographs 31 and 30. Photograph 31 - this is on the Goldfinch - is taken at this bar area, from here, and this object that is lying on its side was originally vertical and screwed in to the top of the bar. It contained crisps and other stuff, sails, passengers. It's made of aluminium framing, but the glass is plate glass. It is held by - you can just see the screws - wood screws. They are projected about an inch and a half I also found showers of plate glass and you can see a photograph with some of the broken glass on photograph 30, in this seat, the second seat. It is highly likely that the impact, the damage, ripped that comparatively heavy object off and threw it about 45° to port, smashing the glass. Luckily there was nobody sitting in these seats. But it gives an idea of the throw of objects in, the severe swing that she must have had to starboard on impact. I think that's quite a throw.

Now if I could deal with whether it's 50, whether it's 70. It is very difficult. The cut marks on the foils - there's two things about them. Firstly, they are at different levels more than just the physical difference between the foils and, secondly, that cut mark is well established in a downward mark. There's no horizontal bit at the top on them, down, it is a straight downward cut.

COURT: This is photograph?

A. This is photograph 2, this cut mark we are talking about on the foil of the Flamingo.

If they hit at 50°, the foils would make contact first and then the bow would be literally pulled into the engine, so that the boats would have been flying virtually horizontal and they don't list much when you alter the course by rudder. With flaps it's different; but with rudder it's a small amount; they do list to the inward but it's not a massive roll as you would think.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

So leaving out turning - that one was turning, it could be that this vessel had already initiated a slow-down and was dropping. It could be - and I wasn't there that day, I don't know what the swell was - it could be that there is a very slight swell and one is on one bit and one is on the other; they are heaving; there's a difference in the level. It could be that, instead of the foils having hit first, there's a difference (in the level), a bit more of an angle, and the bow has already given her a nudge and rolled her to port, to start with, and then the foils hit; I can't tell which way it is.

10

All you can see is that the 70° angle - and perhaps I can show you the 70 as against 50 (demonstrates on the board) Also I would point out we are looking horizontally. You must remember that if I was to fit the transverse section of the Flamingo in here, you would see that this part of the bow could hit the cabin side quite easily and you've only just started putting a hole in the bow because the bow is raked, so that it doesn't mean that this sort of thing that you've put a terrific hole in the bow, because the bow is raked underneath. So this 70°, you would get the deck edge hitting the belvedere cabin.

20

30

Now the reason why the bow of the Goldfinch up here, the railings, would hit up here is that these foils generally trim by the stern when they are flying so that when it came to the middle, the bow would be higher in the middle because of the angle it's at.

40

- Q. Does that indicate the Goldfinch was flying?
- A. I don't think that I would rely on this sort of evidence to tell me it was flying. The sheer damage tells you that they must have been going at high speed.
- Q. Putting that in another way, were they flying or not, from the damage, the sheer damage?
- A. From the damage, they were both proceeding at very high speed; they were both foilborne.

50

- Q. Did you mark the 50 to 70? You marked the 50.
- A. I just marked it on the board to get the angles reasonably accurate.
- Q. Could you put 70 on as well? Could you mark that as well?
- A. Yes (marks on the board) That line is 50 and that line is 70°.
- 10 Q. Could you just for our purposes, just in case we need it later, could you put the model up and mark, yes, draw a line right through it. Could you put the model up please, Mr. Pyrke, of the Flamingo first and mark on the model the top, put a line there at the top that would fit in. If someone else is doing it - what I am looking for is if later on someone wants to talk about this - could you just put a mark on it on the board, so that when someone fits the boat on as it were, then they will know where to fit it to.
- 20 A. Yes, it's difficult, even with that. You want me to mark this as 50?
- Q. What I am looking for, Mr. Pyrke, is this: if I come over here and put this thing up, I would like to know where I put the head --
- 30 A. Oh, I'm sorry. (witness marks on board)

(Witness goes back to the witness-box)

- Q. Now apart from the damage caused in the collision, did you examine the ship for, the Goldfinch for example, any defects at all, any mechanical defects, or any other defects?
- A. The only thing I looked for was any other marks on the foils, propellers, or shafting, that was not attributable to this particular damage.
- 40 Q. Was there?
- A. Not that I could see.
- Q. Now the Goldfinch, you examined the Goldfinch yourself. Is there any evidence as to what the engines were, or what the flaps, rudders, or indication of direction or navigational change?
- A. Yes, I had photographs taken of all the various control surfaces but that just tells me what they were when I looked at them. Certainly, when I saw them, the rudders were in a port turn and the flaps were beginning to initiate. There was a slight port turn on them.
- 50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecutions'
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Examination

(continued)

- Q. Now if there had been a slight port turn prior to the collision, in other words, if something happened, that alteration had in fact been made just prior to the collision, what would the angle of approach have been? Would it be still the same or different? 10
- A. It depends how long he had - the controls had been put in that position before collision, assuming, of course, that that is where they were before collision. At that control surface angle, I would guess that he would turn a little bit over 2° a second.
- Q. What I am getting at was this, Mr. Pyrke - I don't know if it's right or not - if there had been a turn to port as indicated by the controls when you saw them and that happened prior to the collision, would that make the course prior to impact before that turn came on broader or narrower? 20
- A. It would make it broader.
- Q. So that the evidence you are giving at the moment is what happened at impact and you have 50 to 70°.
- A. Yes.
- Q. That does not take into consideration or does it - I don't know - the prior manouvre or possible manouvre of the Goldfinch. 30
- A. It is only the angle of blow and speed as I see from the damage during the collision. It tells me nothing about the split seconds before collision.
- Q. Now assuming this: if there had been a port turn as per the - as you found it and there had been a shutting-off of the engines immediately prior to the impact, now first of all, you've indicated that because of the force of impact, it had been travelling at a fast rate of speed. 40
- A. Correct.
- Q. So that if - had there been a shutting-off or turning off of power or stopping, would it have been a long way away or just a fairly short way before, or judging by the damage?
- MR. STEEL: My Lord, I don't understand the question. 50
- A. I think if I may repeat the question back in the terms that I understand it.
- Q. Tell me what you understood.

	A.	What you are meaning is: can I draw any conclusion from the apparent drop of the foils as to how long ago he had stopped the engine? That's the way I read it.	In the High Court of Hong Kong
	Q.	I wished I meant that. Perhaps you'd answer that question first.	<u>Prosecution's Evidence</u>
	A.	The answer is I can't. It depends entirely on the way the person is handling the boat at the time.	No.4 P.W.19 Allan
10	Q.	What I am asking you is this: you see, you say that the damage indicates that these ships were travelling very, very fast. You've also told us that these vessels stop fairly quickly, 250 ft. The fact that the damage was so extensive indicates, or I am asking you: does that indicate that any stoppage was at a very late time prior to impact?	Charles Pyrke Examination (continued)
20	A.	It shows that the stop was split seconds before impact.	
	Q.	Right. Now if split seconds before impact, now first of all, in order to - do you have to follow a sequence: can you turn and then stop, or do you stop and then turn, or can you do either way?	
30	A.	You can do either.	
	Q.	If this turn had been the first thing to happen - you can't do that together, you've told us I think.	
	A.	Oh yes, you can do the turn and put the engines to neutral. When I say "stop", I mean neutral. You don't actually stop the engines. What you can't do is to steer and move the flap control.	
40	Q.	Right. Let's take it step by step then. If you turn the engines to neutral and turn the flaps to the position that you've seen seconds before the collision because the damage indicates that is where it must have happened - would that indicate a narrower or broader approach to the ones indicated?	
	COURT:	I don't know if the witness understands this. I certainly don't. If the engines had been put to neutral --	
50	MR. LUCAS:	If - as I understand it, if we have - the witness has already indicated that had there been a turn per se as indicated by the control just before the impact, one would expect a broader angle of approach than 50 to 70. That is his evidence so far. In other words, had - correct me if I am	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

wrong, Mr. Pyrke - perhaps I misunder-
stood you --

COURT: No, his evidence, as I understood
it, was that if there had been a turn
as indicated by the controls as he saw
them, that would mean that before the
turn started the angle of approach
was broader.

MR. LUCAS: Yes, right, depending on how
far away, etc.

10

Q. What I am simply saying is if you have
a combination of engine stop and turn,
would that make it even broader or not?
Sorry, that's what I am trying to get to.

A. You can get an increased rate of turn
in degrees per second if you reduce
your speed, but again this is such a
- you can't quantify it. I couldn't go
back and say it must have been at 80°,
or it must have been at 75. I mean, all
I can say is it would have been broader,
whether it was half a degree broader or
10 degrees broader, I can't tell you.

Q. Well the fact that the engines were
stopped just prior to collision, does
that, by itself, indicate anything in
relation to the angle of approach as
different from the --

A. From the collision damage. I can only
say that it is one of the possibilities;
that they stop the engine before
collision.

Q. What would the effect have been?

A. Well the effect on the steering if he had
helm on, would be to increase the rate
of turn. You get a smaller turning circle
if you reduce your speed, but again we
are talking of comparatively.

Q. Basically, what it comes down to is this:
you've given 50 to 70°, that is actual
impact. Had there been an alteration of
course to port prior, had there been a
stopping of engine prior, or a combination
of both, would that angle of approach,
not impact, have been broader?

A. Broader.

Q. Is the 50° that you get there, Mr. Pyrke
- is that at its finest, that is, you
say, the finest angle, allowing for the
difficulties on this particular --

A. In my opinion, it is the finest because
you can't have it too much more, otherwise
the foil will go right through the other
side.

50

I didn't explain this but as you did ask the question: there is a finite thickness to the foil on the Flamingo. You've got your edge; if you go too far round, you will hit on the front, but also the foil would project through and literally start cutting the foil into it. It will come out the other side, of which there's no indication.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Examination

(continued)

10

The other thing that tends to lead me to say that it can't be any shallower than 50 is that the foil box on Flamingo would be likely to shear as well.

Q. Sorry, would you explain that last answer?

20

A. Yes, I presume you are talking about the actual foil tips. The foil of the Flamingo, if I may use this as the foil, and without looking at the sketches I couldn't tell you the actual distance along the foil that is marked, but it is quite a long mark.

30

Now if you take that sort of distance and try and project it through the other foil, you are going to come out the other side because the foil is only about that - I could give you actual measurements if you want this sort of measurements.

That is only just one indication, but I think the most persuasive to me is that if they were hitting at 45°, you've got the same sort of impact on each foil and one would expect the Flamingo foil to go as well.

40

Q. So that means it's more a sideways blow.

A. It's more a sideways blow.

Q. In so far as - the foils, as I understand it, are held on by these enormous - very firmly held on for obvious reasons.

A. Yes, each side - it's called the foil box where they are connected to the hull.

That is a very, very strong point and the foils are bolted on - as I say, I can't remember whether it's 20 or 24 bolt-

50

Q. The reason for that is obvious to me, but I won't try and explain it. Would you explain why that must be so?

A. Well that is supporting the full weight of the ship and also it is - there's a lot of dynamic loading on it. It's got to be strong; the seas are hitting it;

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Examination

(continued)

you are keeping the vessel up.
Q. Had there not been this impact between the two foils - in other words, if the impact is slightly further back, what would have happened?

COURT: What?

Q. Where would it hit?

A. If the foils hadn't had hit, you wouldn't have got the bow swung into the engine room, and whilst it is very difficult to work out exactly how far the damage would occur, my own estimation would be that the after cabin would have been severely damaged. Whether it would have gone as far as to actually cut the boat in half is difficult to tell, but certainly it would have been very, very severe damage. 10

Q. Now Mr. Pyrke, sorry, my Lord, pardon me just one moment. Mr. Pyrke, as I understand, there are under the Merchant Shipping Ordinance in Hong Kong mentioned the collision regulations, is that right? Can you tell me anything about the international regulations for the prevention of collisions? 20

A. Yes, I am just trying to think. The collision regulations are mentioned in the Safety Bill - I can't remember the Cap. number. I can't remember - there's has been some changes in the legislation recently. Whether it's an addition in Cap.313, in the Shipping and Port Control, as well as 281, I'll have to look up. 30

Q. Leaving that aside for the time being, all I am interested in are the international shipping regulations for preventing collisions.

A. The international regulations for prevention of collisions at sea are an international agreement on the safe conduct of manouvring vessels in relation to each other. That is then - these regulations are then enshrined in each country's legislation in a particular piece of law. For instance, I think in the UK it is a statutory instrument; I forget the actual title of it. But the international collision regulations themselves have no force. It is when they are put into that country's legislation that they have force. I'm afraid I can't give that. I am getting in rather deep water on this. It's not a matter for me. 40 50

Q. There are also things that you call Merchant Shipping Ordinance, what are they?

In the High Court of Hong Kong

A. M notices are issued by the Department of Trade in the United Kingdom. They are issued for the guidance of ship owners, masters, deck officers - in other words, anybody who has anything to do with the sea. They give recommendations and advice, often M notices are issued after marine court when some lesson has been learned, they pass it onto the shipping community.

Prosecution's Evidence

No.4

P.W.19

Allan

Charles Pyrke

Examination

(continued)

Q. And people applying for certificates in Hong Kong - do they require any knowledge of these things?

A. Yes, it is in the syllabus for people coming for deck officers and masters certificates.

Q. Now before we get involved in this, you told us something about what you call collision risks.

A. Yes, the Col.Reg. -- to abbreviate these regulations - the Col. Regs. say that risks of collisions can be ascertained by carefully watching the bearing of the approaching vessel and I must apologize before Mr. Steel checks, I may quote the old rules because they are the ones I learned by heart. The new ones I am, maybe, not quite so familiar.

"The risks of collision can be ascertained by carefully watching the bearing of the approaching vessel. If the bearing does not appreciably change, such risks would be deemed to exist."

Now could I perhaps demonstrate on the board exactly what this means?

COURT: I think before we start on that, it may be an appropriate time for us to take our lunch.

12.55 p.m. Court adjourns

16th March, 1983

2.30 p.m. Court resumes

Accused present. Appearances as before.
Jury present.

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- Q. Before we go on to that subject we have started before lunch, can I go back just a bit. You say that you found the indication on the Goldfinch on a port-turn?
- A. The control surfaces, when I saw them, were as it would be set for a port-turn, yes. 10
- Q. And what would that mean?
- A. The rudder was about 11° port and the flaps on the port side were very slightly negative, in other words, the flaps were very , very slightly up, and on the starboard side it was slightly down.
- Q. What about the controls?
- A. Of course your flap levers are, as it were, self-centring, and I seem to remember that the indicators were indicating that the flap was maximum negative port side and positive starboard side, but I had no indication of looking at - whether those indicators were in fact operational. 20
- Q. Perhaps you could explain what those indicators are?
- A. On the panel in front of the master are two elongated windows in the panel surface and they have little pointers inside that are supposed to mirror the movement of the flap and tell you how much you've got on. It's a telltale, as it were, and these are, if I recall, they are a mechanical linkage, and on many occasions I have seen these broken, in other words, they do not indicate what the flap was doing. 30
- Q. But what it's supposed to do is if you pull one of these things back and then it rights itself, it corrects itself, the telltale still stays where it was, is that right? 40
- A. No, if you think of the flap lever as a valve, if you push it or pull it you are opening the valve for the hydraulic fluid to flow and move the flap. You let it go and it will stay where it is, the flap will stay where it is, and then you have to bring it back. I think that is the easiest way of looking at a flap control, and the telltale tells you where you move the flap to, how many degrees. 50
- Q. What were the telltales indicating on that?

	A.	I seem to recall that they were indicating a port-turn with the flaps in other words, port one negative, starboard one positive.	In the High Court of Hong Kong
	Q.	So in order to do a port-turn is it right that you push the port one forward and pull the starboard one back?	<u>Prosecution's Evidence</u>
	A.	That's correct.	No.4
10	Q.	Would you look at - once again going back to the log, the write-up in the log, first of all, the write-up in the log reads: "With port flap pushing forward and starboard flap aft and rudder on port helm."	P.W.19 Allan Charles Pyrke Examination
	A.	That's correct.	(continued)
	Q.	Now is that consistent with what you saw at the telltales?	
	A.	Yes.	
20	Q.	If you did the turn indicated by the telltales how many degrees per second would you say?	
	A.	With the telltales which were showing, if I recall, that they were hard over, and with the rudder, I would expect to get about - it's port-turn, it would be less than 4. If I may, my Lord, I have done a test port-turn on the Goldfinch with flaps and I can give a more accurate answer if I can refer to my --	
30	Q.	Would you be good enough to do that please?	
	A.	Yes, I did a 90° port-turn with rudder at 10° and maximum flaps in 27 seconds. So that puts it at slightly under 4° a second.	
	Q.	And this thing talks in terms of 5° a second, this log?	
40	A.	This log talks of a 5° per second for a starboard --	
	Q.	Sheered to starboard?	
	A.	Sheered to starboard.	
	Q.	Now sorry, you were going to explain to us, with the use of the board, questions of bearings?	
	A.	Yes.	
	Q.	With your Lordship's permission.	
50	A.	If you can imagine that you were looking down from above on two vessels proceeding at sea, one vessel going along that course and another vessel proceeding along that course, and we will say that if they carry on we know that they would hit at that point, they would collide. If you take a bearing from this vessel of the other vessel	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

you would get a line of sight like this. The angle or the bearing would be that angle. If you keep on taking bearings of this approaching vessel these line of sights would be parallel, in other words, the bearing stays the same on this vessel, and if this one is taking the bearing, this bearing remains the same, and this is an indication that risk of collision is deemed to exist. We can, 10
to be strictly accurate, when you get very close you can get a change of bearing, particularly with a big ship. It means instead of the ship hitting the bridge where you are standing it will hit your stern, but leaving, what I call, a very close range stuck out, and of course the length of this line is decreasing all the time, and you can calculate, as it were, the relative approach speed and it 20
is a combination of the movement of this ship and that ship. I could perhaps - I did draw up a table for two hydrofoils which will give you an idea of assuming a bearing of 2 points on the bow what course a hydrofoil would have to be steering and what would be the relative approach speed.

Q. Would you do that for us?

A. Yes, if you assume the 45° case, at 45°, 30
and this is a right angle. It is I think fairly common knowledge that this is an isosceles triangle, something those children learn, and we know that that side equals that side because they are going at the same speed. Therefore for the hydrofoils to meet at right angles the bearing has got to remain at 45°. Now a hydrofoil here, will be going 54 feet a second, here 40
54 feet a second, assuming they are both 32 knotters. This line will be shortening at the rate of 77 feet per second. Obviously the finer the angle becomes the more this vessel has to be heading round this way and the faster they approach each other. When it is right ahead, of course it is a combination, 108 feet a second, their combined speed. If, for instance, the hydrofoil was on abeam, exactly right angle, they are the same speed, you can't hit 50
each other because you are going at exactly the same speed. How can you catch somebody that is doing the same speed as you? If it is at 6 points, in other words, if the initial bearing, the collision bearing is 6 points, the other hydrofoil will have to

be heading in about that direction and the approach speed along this line is 41 feet a second, and the further it comes round the slower they approach each other. This is assuming both boats are exactly the same speed.

In the
High Court
of Hong Kong

Prosecution's
Evidence

- 10 Q. Till eventually they start one chasing the other?
A. If it gets to this stage, the boats doing the same speed --
Q. Well --
A. If I can just carry on?
Q. Yes.
A. This is, if you like a classical explanation of taking a bearing. Do you want to know how you would tell of a hydrofoil whether there is a risk of collision?
- 20 Q. Yes, please.
A. There are two ways. One is eyeballing it. In other words, you are like a hunter trying to guess the offset and you look out of your port, your bridge front window and you sort of line it up on the railing forward and assuming you are heading in the same direction when you look again, you don't allow the boat to wander off. You are pointing at the same direction. You judge whether it is opening or closing on that deck extension or some other convenient mark. You are, as it were, not using an instrument. You are, for what I would term, eyeballing it. The other way you can tell is using radar, is to watch the echo on the screen and these vessels are fitted with a relative radar which means that you have to make sure when you are looking at your radar that you are on exactly the same course, that she has not wandered off. Then you got a bearing cursor on your radar and you can watch the echo, and that also will enable you to tell whether there is a risk of collision.
- 30 Q. Can you tell us the courses and the relative speeds - what would be the courses and the relative approach speeds of two hydrofoils on a collision course, the various relative bearings between right ahead and starboard 70°?
A. In actual fact this is the table I was talking about before. It will just give you the closing rates and these sort of courses. Do you want me to draw them?
A. Yes.
- 40
50

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Examination

(continued)

A. It is difficult to draw them on the board.

COURT: How many do you think you can make?

A. I think, my Lord, the explanation that I have given without going into actual figures shows that the further round the vessel is on the bow the slower the relative closing and the more she has to turn round and chase it to catch it.

Q. Could you demonstrate one? 10

A. Yes, if you take the fine bow case, shall we say, where the angle is about 22° - that angle is 22°. If this one, if this vessel was heading due west 270°, that is this vessel, then this vessel would be having to travel at 135°. This closing rate would be 100 feet a second, and this vessel would be 22° on this vessel's starboard bow, and this vessel would be 22° on the port bow. In other words, they are showing green to red. Then you get a collision case. If you come way round here, as I think I have demonstrated before, the other vessel would be going that way and the closing speed is down to 41 feet per second. So it varies. 20

Q. Mr. Pyrke, you did various turning circles and diagrams for us, why did you do that - first of all, what are they? 30

A. This has been showing, if you like the classical long range collision risk where you are coming in with a constant bearing. However, I wanted to see if I could work out what sort of bearing one vessel would have to be on when it started altering course. To put it more crudely, I wanted to know, try and get some indication, if this is the starboard turn, where this vessel would be, to get an idea of the bearing. Now if I could without going into the fine bow case, perhaps following on from the easy case, the isosceles triangle case, I think I drew the 45° case where those two sides are equal and they are going to hit at 90° if they keep going on. If that vessel is going that way at that instant of time but at 45°, in my opinion, they could not hit each other because the time it takes him to turn this one has already disappeared. He can't hit him. In other words, they have got to be approximately on the 4 point bearing at this sort of 40 50

10 heading to hit. If the alteration
of course is not initiated at the 4
point bearing, in my opinion, assuming
they both keep going at their speeds,
they can't hit each other. This one
will curve round its stern. So, if
you like, what I am trying to do is
to get an idea of when it is that it
is going to have to start altering
course to hit the other vessel. Now
I don't pretend these diagrams are
saying what happened because I wasn't
there. It's only to given an estimation
of the sort of angle that an alteration
would have to be made to get close to
it. And the first one, if I may refer,
my Lord, I think the first one I drew
is this. I will make it quite clear I
have put turning circle data on this
20 graph. This turning circle data was
obtained from the Operators' Handbook.
I am not attempting to show to the -
although mathematically you can show it
to the exact degree, no undue reliance
should be placed on whether it is 14°
or 13°, it is to give a range, because
if you change that turning circle data
at the bottom you change the figures.
That turning circle data was got from
30 the Operators' Handbook. I certainly
have got slightly different figures,
but it's not going to change the basic
finding that the turn would have to be
initiated fairly close on the bow. And
as you realise, I can spend all day
drawing these sort of diagrams, being fed
in different data and I am going to get
variations. But within that broad spectrum
it's got to be, in my opinion, fairly
40 close on the bow that one vessel would
have to initiate a turn. This one shows -
it assumes in the first instance that
they are on parallel courses. It also
assumes that if both vessels carried on
going they would pass about 500 feet
apart, and I found that initiating the
turn here would end up with a position
between them - sorry, after this one,
this vessel had turned through 68° and
50 the collision would occur 22-2/3 seconds
after initiating this turn. If you then
ran back 22-2/3 seconds at 54 feet a second
this would give you the approximate
position of the other vessel and then you
could take the bearing from this one to
here at the initiation of the turn and it
would give you an approximate idea of where

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

this vessel was in relation to that vessel, and for this turning circle, and assuming they are both parallel courses, same speed, it means that she would be bearing green 14 at a range of 2,175 feet. I would reiterate, mathematically you can get precise - I am not presenting this is precisely what had happened, it is close. That means that if - this green 14 means that if that is the bow of your vessel the other vessel would be 14° on your starboard side. She would initiate that turn to hit you there and it's 2,000 odd feet away and you got 22-2/3 seconds. Now obviously, if you make a sharper turn then she can come in closer, that is a closer passing distance, initial passing distance, and you can go on with these turn rates, but it all comes down that it's got to be somewhere reasonably close to the bow. You can't start turning at 4 or 5 points and hit. The other two, the next one was assuming that instead of --

Q. Sorry, points, you haven't explained points?

A. Well, I'll keep to degrees. Points - a mariner's compass is divided into 32 points. Now that means 8 points in a quadrant. We would call that right ahead. One point would be 11-1/4° on the bow; 2 points would be 22½. 4 points would be 45. When it gets round here it's 8 points. Most people talk about points and it's purely a relative bearing from you to whatever you are looking at. In this second one I consider the same sort of turn, but where the vessel had turned through 90° and then done a straight run where the distance at the beginning of the straight run was 500 yards and a longer distance, 1,000 yards, where that angle is 45, 45. In other words, at the end of the turn they come on a collision course where they are meeting at 90. Again the only point of doing this was to see where one vessel would be in relation to the other, whether it was visible, whether it's - how close to the bow, and I found that from this vessel, at the start of this turn where you do a straight run, only dealing with the 500 case, here it would be green 27° at a range of 4,160 feet and it

was 49½ seconds to collision. Again the only reason I did these graphs was to see how close to the bow that the other vessel would have to initiate a turn to finally get a collision. We are talking about 27°, 2 and a bit points. I would stress, my Lord, these are not saying what happened. They are only examples.

In the High Court of Hong Kong

Prosecution's Evidence

No.4

P.W.19

Allan

Charles Pyrke

Examination

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Q. Now it doesn't matter where this collision occur in relation to this place?

A. No.

Q. Now you have been shown, have you not, the various explanations given by the four accused - sorry, the statements made by the four accused? (continued)

A. The police statements?

Q. Yes.

20

A. Yes.

Q. And you have examined those?

A. Yes.

Q. And did you come to any conclusions in relation to those? Do you want to see those statements again?

30

MR. STEEL: My Lord, I think my learned friend is now coming to a section of the evidence which will complete the evidence of Capt. Pyrke and there are submissions that I suspect both myself and my learned friend would like to make. I think it is a section of the evidence which will complete the evidence in chief and so it is convenient to make the point now. It might be convenient to make the point in the absence of the jury.

COURT: How long do you think it would take?

40

MR. STEEL: A short time.

COURT: Members of the jury, this is a certain legal argument at this stage. It will not concern you. I wonder if you would leave us.

(Jury leaves court)

50

MR. STEEL: Now what I understand Mr. Lucas is now going to do is to ask Capt. Pyrke to comment on the defendants' statements in turn. Now these statements - and I am not just speaking, I think, about my own client's statement - these statements have been put in by the prosecution in

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

the course of opening and thereafter through Inspector Ling, are expressly regarded as self-serving statements. My learned friend does not seek to make them part of his case. He does not seek to say that they contain admissions of what happened. To the contrary, as I understand, my learned friend is saying that they are untrue.

Now what in my submission is not permissible in those circumstances is to invite an expert to give evidence as to why it is thought it proper to treat those statements as self-serving. All he is doing - he, the expert, will be doing in those circumstances would be to give, in a sense, in advance the way in which he would think it appropriate to cross-examine the defendants on their statements.

10

20

Now the reason I object is that whilst, subject to one other point which I might have to come to later, it is inevitable that each of the defendant's counsel will want to, if necessary, cross-examine Captain Pyrke as to his views on some aspects of the defendants' own statements because, as I see it, the defendants are entitled to pray in aid their story in order to test the expert's own evidence, now the reason I object is that it is just another example of the manner in which prosecution are, if I may say so, presenting their case. They are not seeking to prove a story.

30

Indeed, my learned friend is at pains from time to time to disclaim that he wishes to prove, because he has not opened, there is no court evidence to it, a particular version of the events leading up to the collision during the course of the voyage. What my learned friend is doing, as I understand it, is to prove through his expert that the defendants' stories, and there are a variety, are self-contradictory and unworkable and leave it at that, and - again I may have to come back to it, it is a matter of law - to rely upon the fact of the collision and various other matters as assisting in proving the charge.

40

50

Now in my respectful submission, this

10 approach, of which this is but
one example, is to turn the burden
of proof on its head. Now my Lord,
it is in my respectful submission
unjust in a criminal case where
what is being asserted is that some
or all of the defendants have been
guilty of reckless or grossly
negligent conduct merely to run a
case on the basis "Well, at least
I can show that all your stories
don't work". Now my learned friend
is in the prejudice game. He told
us that at one stage, I think during
the course of the hearing, that this
is, if I may say so, only playing
the prejudice game.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

20 Now my Lord, I invite your Lordship
to rule that my learned friend is not
allowed to cross-examine the defend-
ants in advance through his expert.
He must, if he so wishes, and as yet
he has not, use his expert to assist
him in proving his case. And I
invite your Lordship to say that the
rest of this examination-in-chief,
which we know from the statements that
we received in advance from Capt.Pyrke,
will be solely directed to the question
30 of whether whatever Capt.Coull saw,
or Mr. Ho saw, or Capt.Kong saw is
workable, is not admissible. Those
are my submissions.

COURT: Do you wish to add anything to that?
I take it you join in that?

MR. AIKEN: I don't wish to add anything
to that.

MR. CORRIGAN: Likewise.

40 MR. LUCAS: My Lord, an expert having been
called I am entitled to put to him a
series of assumptions and ask him to
comment on them, perfectly proper for
me to advance in any event - whatever
you may say about my learned friend's
submission on this particular point -
in any event one can say to a witness,
leaving aside the basis upon which my
learned friend makes his submission,
50 "Assuming A, B, C and D to be the
situation, what would happen?" so that
one is - it may well be that in a normal
course of events rather than put before

IN the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

an expert witness these statements one must go about it in a circuitous manner by putting a series of assumptions which the jury of course will - don't need to be a genius either to work out - relate to what is put by these various witnesses and say to this expert - I am now dealing with this point in a vacuum, I am entitled to say, if, for example, one of the defendants says that "the boat that collided with us was at 45° and at 200 yards and then it came in and hit me from the side," I am entitled to say to my expert, "Assuming the situation that boat A is travelling at a straight line and boat B is on a bearing of whatever - 45°, could the other boat, if they are both travelling at the same speed, hit that boat?" - absolutely perfectly proper.

10

20

The next step, my Lord, is this: lies are as probative as to guilt as any other piece of evidence. The authority on lies, in court lies - there has always been of course a distinction which I, with the greatest respect, have always objected to; there has always been the distinction about in court lies and out of court lies. It has always been suggested, and there are situations where it becomes circuitous. A person lies, you don't believe him and therefore his lies corroborate, then that is nonsense. But there are situations, in my respectful submission, which at last the Court of Appeal in England has agreed with where in court lies can be corroboration, in other words, pieces of evidence probative as to guilt.

30

40

In a case just recently, the leading - if I may, the leading article on the subject which brings all the cases together both in the United Kingdom and Australasia is by Professor Heydon who I understand is from New Zealand, but he has good fortune to be sitting in the university. Professor Heydon in the Law Quarterly Review wrote an article - Law Quarterly Review, the reference being Vol.89, my Lord, at page 552 - on this very topic, and he said in that article:

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"That out of court lies can sometimes corroborate is clearly established."

And he sets out the cases.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

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"The principle is that a lie on some material issue by a party indicates a consciousness that if he tells the truth he will lose, and in Hall J.'s words, 'matters which otherwise might be ambiguous or colourless are rendered suspicious and corroborative by reason of the false denial'. The rules based on that principle are that the statement must be material, attributable to a sense of guilt and clearly and independently proved to be a lie."

I won't go into the rest of the article, my Lord. It sets out examples.

20

It was taken up by the Court of Appeal in R. v Lucas. Out of court lies and in court lies were held to be admissible. And that case is reported in [1981] 2 All England Law Reports at page 1008, and Lord Lane said in that case, page 1011:

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"There is, without doubt, some confusion in the authorities as to the extent to which lies may in some circumstances provide corroboration and it was this confusion which probably and understandably led the judge astray in the present case. In our judgment the position is as follows. Statements made out of court, for example statements to the police, which are proved or admitted to be false may in certain circumstances amount to corroboration."

Bearing in mind what corroboration is - it is independent evidence probative of proof.

40

"There is no shortage of authority for this proposition. It accords with good sense that a lie told by a defendant about a material issue may show that the liar knew that if he told the truth he would be sealing his fate."

50

And in that context, my Lord, that we have, if you will recall, from certainly Capt. Kong and Mr. Ng a log book entry which I will plague, and have been seeking to plague on the same sort of basis, namely, a log book entry explaining what was supposed to have happened on the 11th July, signed by both those

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

persons, that have been produced.

I have taken the witness through that particular document and will seek to indicate that I in fact can demonstrate that since this is clearly and patently a lie on both the subsequent stories and in fact on a number of other factors, that that is probative as to guilt.

In relation to the subsequent statement, rather than go through the subterfuge, which I am entitled to do, of going via a "let us assume this is possible; let us assume that is possible", the realities are that I am entitled to say of this witness, "There's the story," I don't do it, assume - "There is the story. What's wrong with that story?" It is not turning the case about.

10

We must bear in mind that we are entitled in the criminal law to presumptions more so than in civil cases. Now people talk in terms of res ipsa loquitur, civil concept. It is in fact not a phrase used in the criminal law, but circumstantial evidence and presumptions of fact are by the very definition of crime required to prove guilt.

20

One of the areas in which we can launch is in fact when we have a statement clearly and demonstrably proved to be untrue which provided it indicates it is capable of amounting to corroboration, if it is deliberate, relates to material issue, and we will submit that the ground is - the motive for lie must be realisation of guilt and a fear of the truth.

30

Now those are matters for the jury. But those are the tests, and to suggest we are seeking in this case to transfer the onus in itself, the onus remains on us throughout, but we are entitled by any principle of law to say of a particular witness, "We can demonstrate this man is telling a lie. We do so either by independent evidence of another witness who is not an expert or an expert." That being the case, this evidence is admissible. If it really is, it is admissible in a vacuum anyway. There is absolutely

40

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nothing to prevent me from taking up the statements of these various accused and going through them and say, "Let us assume that so and so is the bearing of 45° and etc., etc., what would you say was the position of that?" I could do that. But I indicate, and I have indicated throughout, that our expert puts a lie to these stories. That is the reason I have led. That is the reason - the basis upon which I opened. He puts a lie to these statements.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

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COURT: You say he can say they must be deliberately untrue; he can't say - his evidence could not be read --

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MR. LUCAS: My Lord, I have at the moment before this court statements which have been volunteered by these accused persons. If they care to explain after the event that that was a dreadful mistake, that is a different proposition. But I am not expected, surely, to be able or seek to prove that these statements are not only voluntary, but not mistaken. It is my function to produce to the court statements voluntarily made. If there is an ex post facto rationalisation made by the accused person who says, "Quite right, that statement is not accurate, it's wrong because...not because on lie", but it becomes an issue then in the trial.

30

40

At this moment in time I have before me statements taken in the presence of solicitors, or statements taken from Capt. Kong who went voluntarily or explained to him and he gave a long detailed statement. NOW do I have to -- who also says, at the bottom of it, that statement is correct. Should we have asked the police officer to say, "Are you absolutely sure that is not mistaken, or you misunderstood, or something of that nature?" Can we not operate on the basis until we are told? I mean the burden on the Crown is not impossible. It is simply to prove something beyond reasonable doubt.

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We have been presented with these statements. These statements are not objected to. Some questions have been removed from, for various reasons, by

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

agreement from counsel. But the statements remain as being the voluntary statements of those men, and until someone tells your Lordship to the contrary that at the time the man was either medically ill, or out of his mind, or deranged, or mistaken, or something of that nature, or there is some evidence in cross-examination being put to the man who took the statement to indicate at the time the man was semi-comatose and didn't understand what was going on - nothing of that nature had happened - surely we are entitled to say those statements are voluntarily made; those voluntary statements cannot be accurate, cannot be true.

10

Then if the defence seek by some means to indicate - and the chances before is to object to the statements. We don't turn the whole thing around. The statements remain voluntary statements, Q.E.D. there they are.

20

My Lord, Lucas's case sets the situation, and I have a copy here for you if you wish to see it, and I have a photostat copy of the Heydon article.

COURT: Yes, thank you.

MR. STEEL: My Lord, let me take the point, if I may say so, in stages because I think, if I may say so also, my learned friend is missing the point. I will come back, if necessary, at a later stage to the question of the application of the principle of res ipsa loquitur the extent of which - an untruthfulness may sound as corroborative evidence, or the extent of which only goes to matters of credit. My Lord, we are not concerned with those matters as such.

30

40

What we are concerned with is the appropriate way of examining an expert witness in a criminal trial and, in my submission, it is obvious that in the initial stages the expert witness should be invited in a class of case like this to give his evidence in so far as he is able to assist in proving the prosecution's case; and that may involve him demonstrating what, as a matter of physical probability, must have happened for part of the story and showing, as a matter of

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scientific and physical probability,
what the range of possibilities are
for other parts of the story.

In the
High Court
of Hong Kong

10 Having done that it is inevitable
that those defendants will wish to put
to that witness the version of their
own client's story so as to challenge
what the expert has been saying in so
far as it is obviously inconsistent
with their own client's story.

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

20 Now my learned friend says, "No,
you are missing a stage there. I am
entitled to use a witness to prove a
lie." Now, my Lord, I have touched
on this problem yesterday with Inspector
Ling when I invited him, your Lordship
will remember, if he could tell me what
he thought was the difference between
an inaccurate comment and an untruthful
one.

(continued)

Now, my Lord, if I may just take an
example. I hope my learned friend Mr.
Corrigan will forgive me if I take the
example, for instance, of somebody
seeing a vessel, bearing 4 points on the
bow and going on a reciprocal course and
it's being shown, or could be shown, that
that is a physical impossibility for it
thereafter to come into collision.

30 Now for the likes of me - maybe Mr.
Corrigan couldn't conceivably agree -
but I can't see how that proves a lie a
deliberate falsehood. My Lord, whether
I can say this or not but I'll try, I have
been involved in hundreds of shipping
casualties, and I personally don't think
that I have ever heard a witness give a
precisely accurate account of the events
that led up to the collision which is
40 thereafter found to have occurred by the
judge. People just can't do it.

50 And if my learned friend is going to
advance the proposition: "If I can show
that A is a physical impossibility,
therefore anybody who says A is a liar",
then my Lord, he is, I would respectfully
say, not only flying in the face of
experience but flying in the face of human
nature. So I would submit to your Lordship
that the exception that my learned friend
seeks to advance, namely, "Well, I am
entitled to prove a lie with the witness"

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

is not an exception which has any
application here.

COURT: Yes, I think you are right. I think
the Crown can't as indeed it has done,
ask the witness to comment on facts or
assumptions that a bearing being taken
of the other vessel at certain degrees,
speed, could, if that was the case,
could the collision occur in the way
which we have already... I don't think
you are entitled to put the defendant's
statements to the witness and ask him
to say could that be correct.

10

MR. LUCAS: Your Lordship is not ruling that
I cannot now put the various propositions
put in those statements and ask him to
go through.....

COURT: Indeed, you have to....

MR. LUCAS: In that case I will just continue
the way we are until all possibilities
have been excluded. By all means.

20

COURT: When you say all possibilities, that
is the explanations contained in the...

MR. LUCAS: Well, my Lord, I am sorry, but
the situation is that we have a number
of possibilities thrown up by the
defence as to the various positions prior
to the collision. What I would seek to
do is to put those possibilities and
variations on those possibilities as
assumptions to the witness and ask him,
for example, how long would this boat
be in view if it was doing X, Y and Z,
at what angle, how long would it take
the closing speeds, the distances, how
far away it could be seen. In other
words, continue what I have done in brief
so far but continue that up.

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COURT: Yes, I think you are entitled to do
that. I think putting the statements,
the defendants' statements, (a), I think
it has got to be if not -- I mean you
can't have the situation where they
obviously cannot be simply incorrect.
They must be lies. If they are wrong,
they must be deliberate lies. In a
situation like that, then I think you
would be entitled to. Here I don't see
that situation arises. It does possibly
seem a rather round-the-way way of doing

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it, of putting the explanations in vacuum, but I think that is the way it has got to be.

In the
High Court
of Hong Kong

MR. LUCAS: Thank you, my Lord.

Prosecution's
Evidence

COURT: I understand, Mr. Aiken, you've something in the Court of Appeal tomorrow morning. We will start at 10.30 tomorrow morning.

No.4
P.W.19
Allan
Charles Pyrke
Examination

3.34 p.m. jury returns

10 P.W.19 - A.C. Pyrke o.f.o. (continued)
XN. BY MR. LUCAS (continues)

Q. I'd like you to assume, if you could, this situation, someone in a hydrofoil coming towards Hong Kong finds himself north of his course.

A. Yes.

20 Q. And so that person heads, sorry, changes his heading towards Siu A. Chau. In the opposite direction he sees travelling in a straight line another hydrofoil coming towards him, a distance of about 4 miles, and that helmsman stays on course until the boats are two miles away, he then alters course to the starboard side slowly towards Niu Tau. At that stage, the position of the boat coming at the opposite direction, he puts at 10 to 15 degrees portside of the boat.

A. Yes.

30 Q. And he keeps on sailing, he finds no significant change in the relative position between the boats, his boat and the boat from the opposite direction, and at that stage they are half a mile away. Do you follow this narrative?

A. When you've finished, I would like to go over it again. It is a lot to digest.

40 Q. Yes. So he then alters course 7 degrees to starboard and maintains that speed and to the other ship it was about .2 to .3 of a mile away, about 30 degrees to the portside of his boat.

A. Yes.

Q. He looks away and looks up and sees the other boat 2 to 3 hundred feet away, 3 to 4 points on his portside. Could you show us what that -- assuming that is so, what is actually happening?

50 A. If I may, I would like to draw it in plan on the board step by step because a verbal description like this becomes very difficult to realize what the bearings are between the vessels.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

COURT: You say "what is happening"?

- Q. Assuming two boats heading towards each other, one....
- A. Exactly end-on with each other, what we call "end-on", in a straight line, yes, and he then alters - I will just repeat it so that I can get the question - this is at 4-mile range.
- Q. Yes.
- A. He then alters 15 degrees to starboard for navigational reasons he then proceeds along like this until they are two miles apart and then alters, you said, 7 degrees to starboard. Do you mean that he put 7 degrees rudder on or he alters the compass heading 7 degrees? 10
- Q. Alter the course 7 degrees. When they are head to head first, he moves 10 to 15 degrees.
- A. He changes the course 15 degrees for a navigational reason. So if he is heading east, he has 15 degrees to the starboard, he just changes his course, and then he alters 7 degrees. Now, I reiterate, you mean 7 degrees on the compass or he puts 7 degrees helm on? Because 7 degrees helm on, if he leaves it on, it means he is carrying in a slow starboard turn. The other means a very small starboard alteration. 20
- Q. Small starboard alteration. 30
- A. Yes.
- Q. Assuming that situation, could these two, if the first one was travelling in a straight line, could they collide?
- A. Not if they had both kept exactly the same course. The one that is altering to starboard would cross ahead of the other one.
- Q. What I am asking you to do is this, you assume two hydrofoils..... 40

COURT: It is almost true. If two vessels are approaching head-on, one alters course to starboard, they can't collide. We don't need an expert to tell us that.

MR. STEEL: My Lord, exactly. It is obvious. If I may interrupt again, my learned friend starts the question "Assume that there is a hydrofoil which is north of its course" and then he says heading..... 50

MR. LUCAS: My Lord, may I please continue. I am asking a series of questions in

relation to a series of assumptions. My first assumption, my Lord, is this, that there are two boats heading head-on, one of them moves 10 to 15 degrees in this direction, to starboard, the other one continues on; and then after about two miles away the second boat, the first boat has already moved, moves again 7 degrees, makes a slight course alteration. It doesn't require -- even I in the context of this case can understand that those two boats are not going to collide. I am next going to put to Captain Pyrke that in order for those two to collide, what would this other boat have to do. In other words, if this boat moves those 22 degrees, what does this boat have to do because it must by definition mean, and it is a truism, that this boat must have to move to the left before the collision. Now, I must do it in stages and I must be permitted, with respect, to get on and do it in my own peculiar way. If I transgress, if my learned friends object to it, I will sit down. But in the meantime, I would be grateful if I could be permitted to carry on with my examination.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

MR. STEEL: I hate to get Mr. Lucas in trouble, but we did start that last question and I have noted it down, "Assume there is a hydrofoil north of its course".....

MR. LUCAS: I withdraw that.

MR. STEEL: Well, let's start again.

MR. LUCAS: Well, I will start it again. May I start from the outset.

Q. Mr. Pyrke

MR. CORRIGAN: I wonder if I can help. This particular question doesn't trouble me. I am not in any way suggesting that my learned friend can't ask it, the prosecution, I want him to ask it and I want it to be clear. I am wondering, in order to assist the clarity of the matter, whether Captain Pyrke could be asked to - we haven't got a blackboard, but is that the same, to draw this and demonstrate as we go along. Isn't that

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

easier to make it clear rather than
a long verbal narrative? Because the
question, to begin with, is so complex.

MR. LUCAS: I think if people will stop
helping me, I might be able to get on.
I am extremely grateful for all this
assistance. Can I be the judge of that?
Thank you. I am very grateful and I
will get Mr. Pyrke in due course to the
board.

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Q. We start from this basis, that if two
hydrofoils or any other moving vehicles
are heading towards each other head-on
without changing course they are going
to hit each other.

A. That's correct.

Q. If one of them changes its course 10 to
15 degrees away to the starboard or
righthand side, it is going to miss the
boat.

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A. That's correct.

Q. If it moves another 7 degrees it is going
to miss it even further than that.

A. Correct.

Q. In fact, the only way it can possibly
hit it is if it does a complete circle
at some stage or another and the thing
is still around the place and hits it
again.

A. That's correct.

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Q. So given that situation if the boat that
is heading in the direction of the one who
is doing the moving doesn't deviate
course at all, is it possible for those
two boats to collide?

A. No.

Q. Thank you. If you accept for the moment
that this boat coming this direction is
doing the turning, first 10 to 15 degrees
and then 7 degrees, and the distance when
first seen is 4 miles and the second
distance for the 7 degree alteration is
2 miles and we know at the end of the
day they do collide, what deviation would
be required by the on-coming boat to
arrive at a collision point where they
hit each other at a broad angle, this boat
doing a turning heading this way....

40

A. The one going straight must at some stage
alter course to port, depends what
distance - we can work it out - but
basically it's got to do a port alteration
somewhere along the line.

50

Q. How much would you say?

- A. It varies. It depends how far they are away. You can't say exactly how much. He's obviously got to do sufficient to port to counteract the starboard alteration that this fellow has done.
- Q. But, you see, in the context of my assumption, how much port becomes fairly important, so I would like to know, actually everyone here may know, but what I am talking about is this, 4 miles away someone coming towards me head-on, moves 10 to 15 degrees, and then 2 miles moves 7 degrees, we eventually collide with each other, my boat being this boat here at a broad angle like this, how much movement would they have to be to port by the--
- A. If he took the port alteration of 4 miles, it would be a few degrees. If he left it to the last minutes, it would be a very broad alteration because he's got to transversely move off the line about the same amount. So the actual amount of port alteration depends how long - when he did the initial push over to port. If, shall we say, one example could be is he would have to mirror what the other boat is doing. Obviously if he took the port alteration earlier, he could do it a little less because he is off course that much longer. So again it is a difficult question to answer. I think all you can say is that it is a port alteration as substantial as the one that has been made to starboard.
- Q. In this example that I am giving, this assumption, the point is this, that if in fact after having travelled two miles, the boat that has moved 10 to 15 degrees, finds that there is no relative change, he looks up after 2 miles having done its 10 to 15 degree turn, he looks ahead and there's no change in bearing. What would that indicate? That there had also been a 10 to 15 degree change in the other boat or not?
- A. Yes, the boat has come on to a collision course. The other boat has altered to port sufficiently to make it a collision course.
- Q. Which is what? Can you tell us? Can you do it on the board?
- A. Yes. (A pause) They are supposed to be in line. I am drawing free-hand. If this vessel alters to starboard by 15 degrees, that angle is 15 degrees and carries on,

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

this vessel will have to alter to port. He could have altered to port earlier than this, in which case it would be a shallow angle, or he could leave it to alter which would be a broader angle because they have both got to be in the same physical position, they've got to get the same distance from that original course line to get to the collision position. Does that make it clearer? If the collision position is here, to have a collision they've both got to be physically in the same position, same time. So he could either get to that position that way by making a smaller alteration early, or he could get to the same position by making a bigger alteration later. So when you asked how much, it is all related to the....

Q. Does it help in these series of assumptions 10
if you know that the collision that actually took place, you know that the angle of the impact by the boat was at about 50 to 70 degrees? Does that give you any assistance at all?

A. If you start off end-on and this fellow has altered 22 degrees and they've got to hit at 50 degrees, and assuming that this fellow only makes one alteration, it must mean that he alters 28 degrees 30
because you've got to get 50 between them.
Yes.

Q. It would have to be a very definite turn to port.

A. Yes.

Q. Now, you see, let's assume that the same situation except the distances are different. They are opposite each other at 4 miles dead ahead. One person continues dead ahead until -- they both 40
continue dead ahead. When they're 2 miles away they are still dead ahead. So he makes an alteration of 10 to 15 degrees, continues on that for a bit and then when he looks up and then makes another alteration because the bearing remains the same, in order for the other boat to hit it at a broad angle, how much of a turn would be required?

A. It would be the same because the range that 50
you start doing the alteration, that would only effect the distance away from the original tracks. If you bring it closer, the angles are the same, just the transverse translation, in other words, how far off the original tracks. That is the

only thing that would be affected.

Q. The angles remain the same

A. Yes.

Q. Thank you. Would you be kind enough, Mr. Pyrke, to do this for us. You have done it, I think, in these charts. You look at it more clearly. Assume that boat is travelling in a straight line, assume the collision to the side of that boat being 50 to 70 degrees or broader, can you give me what period of time, in order to come in, the distance away and the amount of time required where they would be in view of each other? In other words, the boat here is going in a straight line and the other boat comes in to the side of it and crashes it. We don't know exactly where that other boat came from but it must have come from somewhere up to the righthand side and it must have come in at an angle. Can you give me a range of how long it would be in view?

A. I think I have already given an indication on the other sketches that I did. When you say in view, obviously for somebody looking they could assuming they are looking, they could see it. It is how long the alteration of course would be in view. In other words, if they are end-on -- if I may back-track one. Are we talking about an end-on case or where one is on one bow of the other, they are passing ...

Q. Passing on a, say, starboard to starboard or port to port?

Q. 5 or 6 hundred yards.

A. So they would have passed 5 or 6 hundred yards.

Q. Feet, I beg your pardon.

A. Feet, sorry. For a 3 degree a second turn, if he initiates the turn and keeps the turn on, we are talking of over 20 seconds that he would have been altering course to impact.

Q. Assume this situation, assume a sharp turn, then a run-in which lasts, say, 10 seconds.

A. A very sharp turn and a 10-second run-in, I would only be hazarding a guess, but most of these things you would have to plot it, to try and get somewhere near accurate. If he is altering, if he has to alter 50 degrees at 5 degrees a second, that gives you 10 seconds for the turn to do 50. If he is running in now at a -- where the angle is

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- going to end up at 50, we are talking of an approach range of about 85 feet a second, so for a distance of 500 feet, I think you said, it is about another 7 seconds. So that is a total of about 17 seconds from the initiation of the sharp starboard turn.
- Q. And how many seconds to stop one of these things if they are travelling at --
- A. I never actually timed the actual stopping time. I have only taken distances. We are talking in the region of 7 or 8 seconds. 10
- Q. That is to stop and reverse.
- A. That is to virtually stop her dead in the water.
- Q. Given that situation, would the other -- assuming a look-out, would the other boat be in view throughout to the boat that is going straight ahead? 20
- A. Yes, it must be, as I explained before, somewhere reasonably close to the bow, 20 degrees, 25 somewhere in that region. It depends entirely upon how sharp the turn is.
- Q. Now, moving from that point to look-out, can you tell us something about look-out, what is required?
- A. The collision regulations place an onus on maintaining a look-out. The M Notice on keeping a safe navigational watch also recommends that the person steering the vessel, except in very small vessels with an all-round view, should not be the look-out. In my opinion, having been on the bridge of hydrofoils, travelling to and fro to Macau and having seen other DSC operate, I am of the opinion that two persons should be involved in the look-out and they should use the most appropriate means available. 30 40
- Q. And what is the most appropriate means available in a hydrofoil?
- A. In my opinion, on a hydrofoil fitted with radar, the helmsman should be keeping a visual look-out and the person on the lefthand seat should be maintaining a look-out for what I would call material vessels. By that I mean that he is not going to say "I can see a vessel at 15 miles away". You are not interested. 50
He is wanting vessels that are comparatively close to that vessel. Do remember we are operating in very busy waters, very close waters. You are only interested in something that is material. And certainly on the night jetfoils we work a system

whereby the person is keeping a radar look-out and is reporting to the master echoes, giving bearings, the ranges of these echoes. On the other DSC that I have been on, there is a dedicated navigator who is using radar and also is advising of collision risk and using a radar for a look-out.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke
Examination

(continued)

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Q. Day or night?

A. The other ones that I have seen, it doesn't matter day, night, fog, any weather, any time, using radar.

Q. You see, what about the situation where you have a clear, clear day with visibility that stretches for miles, does that make a difference?

20

A. Yes, in my opinion, it does. It is not easy to, what I would call, eye-ball other vessels. It is notoriously difficult to judge ranges. Even experienced mariners that I know -- I have played games trying to guess ranges, it is very, very difficult. Your radar will tell you ranges. They will also, if it is used properly, give you a good indication of how close you are going to pass another vessel. It will also alert you if you are using it properly that the other vessel has perhaps made a series of small alterations which are darn difficult to pick up with a naked eye. Eye-balling is a very crude way and it is very difficult on fine cases to note small alterations of course, and in my opinion, with a fast vessel like this where you are working in very close situations and where the visibility from that bridge is not good, where you haven't got a 360-degree view any way, where a jetfoil can come creeping up astern of you, radar is the most appropriate, and if used intelligently in conjunction with the visual look-out, is giving you the best protection for those passengers on a very high speed and light scantling craft.

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Q. Even on a clear day.

A. Even on a clear day.

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Q. What would you be looking for? What is your helmsman supposed to be looking for?

A. He is watching visually, but as I have said it is not easy to visually appreciate alterations of course. You are judging purely whether he looks to you that he is keeping the same course. And do remember, even on a clear day, on a calm day, some

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Examination

(continued)

hydrofoils do tend to yaw. Now, yaw means that they can't keep a dead straight course, they are wagging a bit. Now, I can't give evidence because I haven't steered the Goldfinch for a long length of time, but I have noticed on hydrofoils when I have been on them, of approaching hydrofoils, particularly when they are nearly end-on you can pick it up easier, that they tend to yaw. It is difficult to tell exactly what course they are on and your radar will give you, if it is used intelligently, another method of check.

- 10
- Q. What is your helmsman supposed to look out?
- A. He is supposed to be watching for other vessels. He is also supposed to be watching for rubbish in the water. Don't forget your propellers are, because you are out of the water, the propellers are cutting a way through the water with nothing in front of them and if you hit some wood you can damage your propellers. obviously if the thing you hit is bigger, it can damage your foils. But I would say that a PT50 in the past has hit a 6-inch telegraph pole and cut through that pole just like a knife through butter with no damage to the foils. But if you get something bigger, a big log, you can cause - you can knock your foil off it and cause severe damage to the boat. So you are keeping, which is special to hydrofoil, you are looking for stuff in the water that would damage your boat.
- 20
- 30
- Q. So in your opinion, even on a clear day, both the helmsman and the deck officers are required to keep a look-out.
- A. In my opinion, DSC, as all fast craft, should be operated on routine. You follow a set routine, you don't vary it according to the state of the weather. You maintain that bridge regime, that bridge discipline. We are talking about very, very fast craft.
- 40
- Q. Shouldn't they help? I mean shouldn't that mean that they can get out of the way.....
- A. If I could perhaps give an example - and I trust you will forgive me for taking liberties. If I was running through the street in Central, because I am running fast and everybody else is walking, I can dodge and weave and get round. If the pedestrian tries to dodge, I am so fast I have run away from troubles, so to speak.
- 50

That's fine until I meet somebody else who is running. So that, with comparatively slow displacement craft, there is a tendency which I have watched for these vessels to use their speed to get out of trouble. They've got everything else and they can weave. The trouble is when you meet another fast craft, he can do the same as you and this is to me the danger. Certainly, on the cross channel hoverferries where they are going across one of the busiest routes of the world, the Dover Strait, they are not worried about the big ships. They are worried about the other hovercraft, the French hovercraft, the British Rail seaspeed because their approach speed is so high. They are so concerned that they have their own dedicated VHF channel and they talk to each other when they go off the route. For instance, he is saying, "I am going north of the normal route. The sand bank's got a big edge on today" - because, remember, these boats go across land, and they tell each other where they are. They are concerned with a high speed approach.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

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Q. How busy are our waters?

A. Our waters are very busy.

Q. And what about -- do the number of islands make a difference?

A. You have to be exceptionally careful that somebody doesn't shoot out from behind an island, and remember hydrofoils and jetfoils are not the only fast craft in these waters. There are pleasure craft which are very fast. There are naval craft which are very fast. It would give you far less - you may not see him at a long distance, it may be a comparatively short distance, but of course hydrofoils are highly manoeuvrable, and you are working on short distances. It is not like a big ship.

Q. You mentioned looking behind for jetfoils. Is that necessary?

A. Yes. On a hydrofoil they've got 10 knots on you. If you decide to make a navigational alteration of course, or even with 'lap sap' I suppose you've got to be careful. If somebody is following very close you can suddenly cut across his bow, and if you don't watch out a vessel can pass you very close without you realizing that he is following you. And also if you suddenly

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- stop for some reason, you can stop right ahead of somebody that's coming up behind you.
- Q. The Flamingo, as was pointed out by my learned friend Mr. Corrigan, has in fact the belvedere or passenger top cabin immediately adjacent to the cabin, does it make it more important to have a second look-out?
- A. It makes it very difficult to get a 360-degree view from the steering position. You can't, as far as I recall, you cannot see astern of you. You would have to start moving and trying to look out of the side doors. Of course, radar does give you 360. 10
- COURT: That's on?
- A. The Flamingo.
- Q. What about the Goldfinch?
- A. The Goldfinch, as I recall, does have little windows. There is a bit of difference and you can see, and I must admit I haven't checked whether you have to stand up but I would imagine you would have to stand up to get a good view astern. 20
- MR. LUCAS: Can I have a look at Exhibit P.29? It's a photograph actually. Sorry, P.29 is in fact the Goldfinch. P.38.
- Q. Are there any restrictions to the views of the helmsman? In other words, are there any sort of blind spots that.... 30
- A. Of the helmsman?
- Q. Apart from you can't look back obviously.
- A. There are fairly large, if you like, pillars between the bridge front windows. You would have to move around, you would have to move your head. But there were, when I examined those vessels, curtains on the side windows that could be drawn, which when I had a look at them were not drawn. 40
- Q. Not fully drawn, just drawn to stop the glare, is that right?
- A. They are used to stop the glare on the side windows, yes.
- Q. The route taken to travel between Hong Kong and Macau, does that depend on anything particular?
- A. From Fan Lau across to Macau, it is entirely as the company specify or the master deems fit. From Fan Lau coming in to Hong Kong and out to Fan Lau again, the Marine Department have recommended a 50

routing system for these ferries.

10 Q. And that is that the boats going from Macau to Hong Kong go south of the ones going from Hong Kong to Macau.

A. Basically it is like a traffic separation scheme. You keep to starboard so that you pass port to port.

Q. In an area where there is a traffic separation scheme - first of all, what is a traffic separation scheme?

20 A. The traffic separation scheme under the Collision Regulations is adopted by the organization and the organization means "IMO" as it is now called. They have to formally adopt a traffic separation scheme. The routing in Hong Kong that you see on the charts is not a traffic separation scheme within the meaning of the Collision Regulations. It is not adopted by "IMO". It does, to a certain extent, have the same effect. You are wanting to separate traffic so that if you like it's like a road. One way you stick to one side of the road, the other way you stick to the -- just routing, keeping them in a -- so that you don't get head-on or flying crossing situations, all going the same way.

30 Q. And that traffic separation area is at around Fan Lau Point, is that right?

A. It stops at Fan Lau at the edge of Hong Kong waters.

Q. Mr. Pyrke, would you be good enough to look please at the radar.

A. Yes.

40 Q. Now, we have some photographs showing where on the Goldfinch that that came from, looking at the exhibits P.2, number 6.

A. Yes.

Q. Is that where it normally sits? Is that a photograph of that we see there or is that --

A. This one?

Q. Is that the same? It's silver and that's black.

A. No, because you are looking at the base. This is in actual fact when I inspected the Goldfinch I saw this hood and it was I who instructed him to go and retrieve it and take photographs of it. And certainly this looks like the hood that I saw the day when I was on board the Goldfinch.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

Allan
Charles Pyrke
Examination

(continued)

- Q. How does that other thing fit?
A. This thing?
Q. Yes.
A. This fits on the top and the idea is in day-light it allows you to put your eyes down like this and it makes it black so that you can see it, at night you can take this off. It is commonly called a day-light viewing hood. This one in addition has a magnifier in the top, that just makes the screen appear bigger magnifies it. So normally it's like this, if they are operating at night - and I might stress these vessels are not allowed to operate foil-borne at night, but if they are proceeding at night on the hull, they can have this on. By day they have this on to allow - to get it dark enough to look in it. 10
- Q. Is it bent?
A. Yes. This base should be circular.
Q. How is it bent? Is it bent inwards? Where would it be if you place it in front of you in the way it would be on the boat if you were just heading in that direction?
A. It should be like this in front of the lefthand seat. These form a "Y". I can't remember at the moment which one was the base of the "Y". I tend to think it is this one. I seem to recall it was elongated in the fore and aft line. This is the bottom click. There are three pins that hold it. It goes on and you take a bit of a turn to lock it. It sits on the pins and you take a turn to lock it. It's a little click. 30
- Q. Inside the base there is the magnifier.
A. No. The magnifier is in the top here. This is the bit that fits on top of the radar set. 40
- Q. So inside that thing, what is that? Just ordinary glass?
A. No, it is a lens. It's a magnifying lens, it makes things bigger.
Q. Would you have a look at the photograph. Perhaps you could explain to us where it came from and how.
A. Photograph 6 shows it in position but with the day-light viewing visor off. The next photograph shows it tilted up, showing that deformation. 50
- Q. It's normally round, is it?
A. It's normally round. It matches the round screen.

	MR. AIKEN: Wait a minute. Can we have it in the angle that he put it in at first please, otherwise it is pointless.	In the High Court of Hong Kong
	A. If this is in front of me.	<u>Prosecution's Evidence</u>
	MR. AIKEN: So that's the bow of the vessel. I'd like him to maintain that alignment that he's demonstrating.	No.4 P.W.19 Allan Charles Pyrke Examination
10	A. If this is the radar here, that's the bow. It is sitting down like this. And the next picture will show like this.	(continued)
	Q. The next picture shows the radar inside. Photo number?	
	A. That's 7. 8 shows it - this sort of angle, and the next picture shows the round screen with the fits on. That's picture No.9.	
20	Q. Did you see these seats which were shown in the other photographs?	
	A. When I went to the Goldfinch, I can't recall whether the seats were in position or not. I certainly remember looking at the supporting column because I was trying to see whether the deformation on the top would give me an indication of which way the seats were thrown. It appeared that the deformation of the top of the column was about 30 degrees to port. I think we have the columns here, I could perhaps ... (A pause) These pedestals sit, if you like, on a big bracket, I suppose that's an easy word. In other words, it secures it to the floor and the actual seat fits down this column. Now, this is the top. You can see that the normally circular column has been flanged out this way, and if I recall, that would be the bow, that is the way it normally is. That would be the bow above there, up here. So that the seat came out 30 degrees to port, when I saw them anyway. I seem to recall -- I cannot recall whether the seats were down here and I had them taken off or whether they were like this when I saw them, but I definitely had a look to see which way the deformation was. This is the other seat and I certainly can't -- it's a less deformation. I couldn't tell you which one is which. I didn't mark them.	
30		
40	Q. And the buckle in the radar top, that's on the righthand side.	
50	A. Yes, there is also an indentation down here and these locating lugs, certainly these two	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- have been torn badly. This one doesn't appear to have been torn as much, that would be the one on the starboard side.
- Q. These are firmly - and you were talking earlier about that tray which held the chips are stuff like that in the cabin - these are also firmly embedded into the deck, are they? 10
- A. No, this one? We are talking about this, the hood. This hood, there are three locating pins around the radar. You can see them on photograph 9 and they are in the form of a "Y". There is one at the bottom, there is one at 10 o'clock and one at 2 o'clock. And they are quite stout stub pins and they go in the holes and you take a click turn, you don't have to turn it much and it locks it in position. When you want to take it off, a little bit of turn, take it away. 20
- Q. What is the effect of the mirror, not the mirror, sorry, the magnifying glass inside that?
- A. Its function is to magnify the radar screen, to make it easier to view.
- Q. Does it have any reinforcing effect or not or don't you know?
- A. Common sense tells me that it does have a reinforcing effect, but that is as far as I can go, just strict common sense. 30
- MR. LUCAS: My Lord, I wonder, in view of the time, I don't think I've got very much longer...
- COURT: What is the significance of this - the distortion of the radar and the seats?
- MR. LUCAS: The reading by agreement was a statement of Paul Richard Owen who said that the distortion may have been caused either by a person being thrown forward with some considerable force and hitting the radar hood at the top which is about chest high or by someone holding onto the sides of the hood with their hands as if bracing themselves against sudden movement, such movement being restricted by transmitting any forces encountered through the persons arms to the radar hood, thus causing distortion to the radar hood. That is the radar that sits in front of the deck officer on the Goldfinch. 40 50

COURT: Yes, very well. Members of the jury, one of the counsel has to appear in the Court of Appeal tomorrow morning, so it will be 10.30 tomorrow morning.

In the
High Court
of Hong Kong

Prosecution's
Evidence

4.30 p.m. Court adjourns

16th March, 1983

No.4

P.W.19

Allan

Charles Pyrke

Examination

17th March, 1983 at 10.35 a.m. Court resumes.

(continued)

10 Appearances as before. Jury Present.
All accused present.

MR. LUCAS: My Lord, there's one preliminary matter, if I may. Your Lordship asked late in the afternoon yesterday as to the relevance of the radar hood.

COURT. Yes.

20 MR. LUCAS: I indicated the relevance of it as being the evidence read into the court record by me in relation to Mr. Owen. I described him as an expert and he is in fact a marine captain. He is no expert metallurgist or anything of that nature. He is in the same position as Mr. Pyrke, and in so far as that was misleading I withdraw that remark and apologise to my friend, Mr. Aiken, and to his client. It was the opinion given by a man whose expertise is not in the field of metallurgy or anything of that sort.

30 MR. AIKEN: I'm very grateful to my learned friend.

P.W.19 - Allan Charles PYRKE o.f.o.

XN. BY MR. LUCAS: continues:

Q. Just one preliminary matter: collision regulations that we discussed and mentioned yesterday - they broadly do what? What are they aimed at, can you tell me?

40 A. They are aimed at preventing vessels colliding with each other at sea; a set of rules to ensure that collisions or to try to ensure that collisions do not occur.

Q. What is "the risk of collision"? Is that a different thing from "collision"? Are they different phrases or expressions, technically, "risk of collision"?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- A. "Risk of collision" is a phrase used in the collision regulations.
Q. Now I'm sorry to do this, but would you be kind enough to go back to that board, be patient with me as I will take you through a series of assumed propositions.

(Witness complies)

- Q. We have, throughout the proceedings dealt with one boat going in a straight line and another boat colliding into it. We have through all the witnesses used the one going in a straight line as pointing up that board. In order to avoid confusion for me and everyone else, could we remain that way? 10

Let's also, for the benefit of these series of situations, assume this: unless otherwise told, the boat heading up the board is heading in a direct line. Just assume that, right? 20

Now first of all, in so far as hydrofoils are concerned - if you'd just mark a hydrofoil at the bottom - if you have a hydrofoil coming towards you, whether it be directly ahead, what are you supposed to do? Say, you see a hydrofoil three or four miles back are there any rules or regulations as to what proper conduct - your conduct should be?

- A. You are bound -- 30

Q. Sorry, heading on a reciprocal course.

A. Yes, you are bound by the collision regulations once risk of collision exists and I would prefer to talk in the terms as I see it as a seafarer because the risk of collision is a massive body of law and a lot of these terms, a lot of legal definitions. I am just purely talking as a mariner.

- Q. Mr. Pyrke, you are not entitled to give legal interpretations. 40

A. Yes.

Q. What I am asking you is questions as a mariner. If you are - if a boat is in that position heading towards - assuming it is heading towards Macau and assuming that the other boat is heading towards Hong Kong, now if, first of all, let's take the first situation: assume that they are head-on. 50

A. Head-on, right.

Q. And 3 to 4 miles apart. What, if anything should be done?

A. At a reasonable distance, in ample time, both vessels should alter course to starboard so as to pass port side to port side. In the High Court of Hong Kong

Q. If the situation is not head-on. Let's assume a reciprocal course but, yes, where the boat coming down the board towards Hong Kong is at an angle so that it is going to pass, say 5 or 600 yards to one side of you, if both going in a straight line. Prosecution's Evidence

10 A. There is no risk of collision in this situation, you are passing safely. No.4 P.W.19 Allan Charles Pyrke Examination

Q. Say, you have that situation, say you are about 2 miles apart and one or other, for some reason, for some good and sufficient reason, seeks to go to starboard - in other words, the top one wants to go to the right and the bottom one wants to go to the right, what should be done in those circumstances? We are talking about hydrofoils. (continued)

20 A. It shouldn't be done.

Q. It shouldn't be done.

A. It shouldn't be done. It depends very much on the range. Once risk of collision - once you get into this sort of situation, you don't suddenly alter course across somebody else's bows.

30 Q. Let's assume that when the two hydrofoils come into view of each other, say, two to three miles, the one that is coming down is already in fact on a course --

A. Already passing like this?

Q. No, no, I'm sorry. You've just moved this slightly. Let's assume that with -clearly this cannot be of scale and it cannot be of distances, etc., but basically, if this boat continues to go as we can see straight ahead, it looks up and sees 2 to 3 miles ahead of it a boat which is in fact cutting across its bow --

40 A. You cannot tell with certainty just by looking at a vessel whether she is going to cross ahead of you, whether she is going to hit you, or whether you would come across her bow.

Now this is where the bearing comes in. If the bearing is closing - and, remember, to make it easier for everybody, we will talk about coloured sides. If you have the green side of this boat opposed to the red side of this boat, you can get three - dependent on speeds and angles, three things can happen.

50 Either because of the relevant speeds this one will cut ahead of this one. That means

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrkę
Examination

(continued)

the bearing - if that is your bow,
the bearing will close. Or the bearing
will open - in other words, you will
cut ahead of his bow. If the bearing
doesn't change, you are going to hit.

- Q. Now given all three of those situations,
starting off with the situation where
you are satisfied it is going to cross,
do you bother to do anything at all?
- A. Once you've a situation with another 10
vessel on your starboard bow, it is a
situation that is dangerous. It is very
difficult to judge by rate of change of
bearing how close ahead you are going to
pass. The prudent thing to do is to
alter course to assume that risk of
collision exists and this vessel is the
duty-bound vessel and should alter course
to starboard, substantially and in ample 20
time so everybody knows what you are
doing; and it give a good, clear path.
- Q "Substantially", you use this word
"substantially" twice. Why do you use the
word "substantially"?
- A. Even visually it is very difficult to
see small alterations. The object of the
exercise is to tell the other person you
have taken action and you have left him
in no doubt that you are getting out of
the way and are treating it as a collision 30
case and are obeying the collision
regulations. If you alter 2 or 3 degrees -
to use a - to close-shave him, that is
not good seamanship.
- Q. So any alteration has to be substantial,
is that the collision regulations --
- A. Yes.
- Q. -- or is that you?
- A. Collision regulations.
- Q. Now in that situation, once again, a 40
situation in which you look ahead and you
see what you call the red side as it were,
is there any, apart from the term "eyeball",
with using radar or --
- A. Radar complements a visual look out for
these types of crafts. It give you a very
good indication of range. It also enables
you, if you use it intelligently, to get
an idea of what the passing distance is
going to be, but it certainly can't take 50
the place of visual lookout. It is
complementary.
- Q. Now just to get this right: in layman's
terms, the boat at the top has the right
of way, the boat at the bottom has to move.
- A. Until you start getting in close, yes.

Q. And when you get close, what do you say?
A. Then - and I have to be careful because, as I did say the other day, I do know the old rules by heart, the new rules I am not so familiar with. Would it perhaps, my Lord, be better if I did quote from the rules because I do - will tend to give the old rules, I'm afraid.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

COURT: Very well.

A. (quotes) (Rule 17)

(continued)

"(a)(i) Where one of two vessels is to keep out of the way the other shall keep her course and speed."

So, (emphasises) "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."

And I would stress the word "may". The next one says.

"(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 a crossing situation 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."

In other words, this vessel, if it is taking this action, shouldn't go to port because this one is going to starboard if he goes any way and you get to the two old ladies dodging in the street, similar.

Q. So basically, the one on the top has the right of way in a crossing situation and

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- this one has to turn to starboard.
- A. Yes.
- Q. And it should be substantial so that the other one can see what is going on.
- A. And in ample time.
- Q. If it does nothing, then there is then eventually an obligation in the other one to avoid a collision but not by going to port, by going to starboard.
- A. No, it just says: if the circumstances of the case admit, should not go to port. That leaves other options open to her. 10
- COURT: This is Rule --
- A. This, my Lord, is Rule 17.
- COURT: And this is 1972 --
- A. -- 1972 Collision Regulations.
- Q. And clearly, the further the top boat goes round - and obviously it is from the right-hand side - the more obvious is it a give-way situation for the bottom boat, do you follow me? 20
- A. No, no.
- Q. So is it right - could it be right then, this, and you gauge that the bearing is not - doesn't change, what is supposed to happen next?
- A. Exactly the same: alter course to starboard, you are on the stern.
- Q. Thank you. Now let's take this assumed situation: the bottom boat is heading as normal, straight along; coming in the other direction is a hydrofoil which is about to - if everything remains normal - will pass on a reciprocal course. You've already told us no danger of collision or risk of collision. If the thing is going to continue - say, we are now talking about hydrofoils, we are talking about Hong Kong and Macau. If they pass each other at a range of about 5 or 600 yards, what are they supposed to do? I mean, do they, having gauged that they are going clearly on a reciprocal course and gauged that some time back, do they have any obligations? 30
- A. Oh yes, you must keep watching the other vessel until she has finally passed you clear. You can't just say she is going to pass and then ignore her.
- Q. Is 5 to 600 yards close passing distance? 50
- I mean, we are talking about --
- A. Feet or yards?
- Q. Well feet and yards. Feet, first of all.

A.	On this sort of route - and remember that you are used to passing close in traffic separation schemes - I personally would feel happy at 600 ft. passing.	In the High Court of Hong Kong
Q.	600 ft. passing.	<u>Prosecution's Evidence</u>
A.	Cable, I wouldn't like it any closer, dependent on the weather conditions.	No.4
10 Q.	Clear day - throughout these presumptions, assume visibility unlimited, 12 miles, assume clear, calm seas.	P.W.19 Allan Charles Pyrke Examination
A.	It's the sea conditions which would worry me most. Bad sea conditions, I wouldn't like it that close.	(continued)
Q.	But good sea conditions?	
A.	Fine.	
Q.	Fine, about 600 ft.	
20 A.	Yes.	
Q.	But there is still, notwithstanding that, an obligation to keep a lookout?	
A.	Yes.	
Q.	Until when?	
A.	You are supposed to keep a lookout 360° round the horizontal.	
Q.	In relation to the other boat.	
A.	You should watch her certainly until she has come down here abeam.	
30 Q.	Now let's assume this situation: these two boats are passing on a reciprocal course and something goes mechanically wrong with the boat coming in this direction, causing it to veer sharply so that it comes in and collides with the bottom one at an angle of between - the angles you have there --	
A.	50 to 70°.	
Q.	Now the boat suddenly veers for no reason known to you, what should happen then?	
40 A.	You are getting into a situation where you have to view it and take action very quickly. Now a sharp turn and a sudden collision must mean that the initial passing distance was very small. In other words, you are - you don't expect boats to sheer suddenly, you don't expect mechanical failure, but you've got plenty of sea room. With 600 ft. between you, even a sudden mechanical failure on this boat, I would	
50	have thought if people have taken the correct action: drop the boat down immediately, you are not going to hit each other.	
Q.	That is what I am interested in, the correct action. Given this assumed situation, this boat suddenly finds itself veering at, say 4 to 5 - 4° - you say 5° a second is not possible - say, 4° a second,	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- it suddenly finds, for mechanical reasons, it veers 4° a second, what is the correct action?
- A. If these boats were passing instead of, shall we say, 600 ft. off as it is in the Macau Channel, you are passing wing tip to wing tip either at 30/40 ft. off and she suddenly veers and hits you because you are passing that close, there is nothing - I cannot see that people would react that fast. Very easy in hindsight to say you should do this but, in reality, I think you would have an inevitable collision passing at that range with a sudden veer, assuming that sudden veer could happen. 10
- Q. What range you are talking about, passing at what range?
- A. You are asking imponderables, but I am talking about 50 ft./70ft. between the foil tips as they go past. The thing is whether she could hit 50 or 70 -- (pause) 20
- Q. We will come to that in a moment.
- A. Whether she could hit that angle, that sort of range.
- Q. So if they are on a reciprocal course and they are 50/60 ft. away, nothing --
- A. I don't think there's anything anybody can do. 30
- Q. But if they are on a reciprocal course and there is a veer, a maximum veer - whatever is the maximum - 4 or 3° - could have hit at an angle of 50 to 70°.
- A. Even if you take it at 5° a second and you say that she's got to veer off 50°, that's 10 seconds (pause) I would have to do a graph to see how close they would be passing, but at 5 to 600 ft. initial passing distance, I don't think she can hit 40 you at 50 with a 5° veer because she is still going to be short - I would have to work it out on a graph. Certainly, the sort of bearing we are talking about that this veer would start is 30/25° on the bow.
- Q. Now but then if you are talking about that sort of distance, you are also simply talking about 10 seconds. In 10 seconds, given that situation, could you do anything about stopping or dropping on the hull? 50
- A. You could do an emergency stop and the boats - as I say, it depends very much on the boats, it depends how the master reacts. You could certainly destroy most

of the forward momentum if not stop it.

10 Q. Let's take another assumed situation, just pausing there for a moment.

A. Excuse me! I did mention - I talked about passing in the Macau Channel. Please remember that in the Macau Channel they should pass this way, port to port.

Q. In the Macau Channel, are they foilborne?

A. Yes, they are foilborne, they are passing the channel foilborne.

Q. Same two hydrofoils, same two assumed hydrofoils travelling in a straight line. Now does a straight line have any nautical meaning?

A. It's just you are maintaining your course and speed. You are just going straight.

20 Q. But if someone says - if you said as a sailor that another ship and yours were travelling in a straight line, what does that mean?

A. It is a very loose term. "In a straight line". I would assume that the person means that it is a end-on situation. You are on a reciprocal course or near reciprocal course right ahead.

30 Q. Now assume that, first of all, those two see each other four miles apart, do they need to do anything, both of them, either of them or both of them?

A. In my opinion, on a hydrofoil it depends entirely where you are. If you are out in the Pearl River Estuary where you've got lots of room and there's not going to be any alterations in between, I would tend to take, maybe not at 4 miles, I would leave it at about 3, before I would come across to starboard. Because there are rapid changes in courses for navigational reasons, you don't alter when the other person is miles away, particularly if you know there's liable to be a navigational alteration.

40 Q. What about - I mean that because to both boats - I mean they both should at, say, not 4 miles, but you say about 3 miles, alter to starboard.

A. Yes.

50 Q. So the collision regulations would call for both of you to do the movement.

A. You've both got an obligation.

Q. Let's assume again that the bottom ship does not make any move and at 2 miles, the top ship alters its course and, after alteration, finds that the other boat is 10 to 15° to port side of his, what would that mean?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- A. Well in a head-on situation, if one boat goes to starboard, it will have the same effect. You are ending up with a closer passing distance down here. It is not what should happen. You should both go to starboard, but it doesn't say how much.
- Q. 10 to 15° is perfectly okay?
- A. At the sort of ranges for this sort of boats, yes, I would think so, 15°, not 10, Mr. Lucas. 15 I would say is more adequate. 10
- Q. Now when the boats reach half a mile from each other - remember now that the top one has moved 10 to 15° - he notices that - assume he notices the other boat hasn't changed its bearing from him, what direction would the other boat have been?
- A. Well, this can only occur if this boat starts altering to port.
- Q. And by that same amount? 20
- A. Yes, you could say so.
- Q. So if that boat had travelled a mile and a half at 10 to 15° to starboard and looked up and saw the other boat was 10 to 15° still - sorry, was still in the same bearing, it would have meant during the same period of time, whether by one turn or a series of turns, the other boat would also turn 10 to 15°.
- A. Yes, but it would also be apparent to this boat because initially they are end-on. If you like, you are looking at the bow of the other boat, both its sides you can't see. When you come across, his port side starts opening up. Now if he is going to go to port you will see the starboard side. You will see the changing aspect of the ship and you should realize from visually, let alone bearings, that he must be hauling round to port. 30
- Q. Just pause there for a moment. Having made an alteration of this type, would one be expected to keep an eye and see what the other boat is doing? 40
- A. You have a duty to - I'll try and find it in the collision regulations. Perhaps if I read Rule 8, it will tell you the obligations when you are taking action to avoid collision because there is a lot in this rule. 50

"(a) Any action taken to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to the other vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

10

(c) If there is sufficient sea room"

- that means away from the land,
"sufficient sea room" -

(continued)

20

"alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear."

Q. Carefully checked.

A. There is one other thing I would add on:

30

"(e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion."

Q. Let's deal with checking. First of all, 15°, is that a substantial enough deviation?

40

A. In these waters, with hydrofoils, when they are used to passing, yes, I think 15 is adequate. They are very manoeuvrable craft.

Q. Assume, for the moment, the man holding that boat at the top has done a 15° turn because the other boat is head-on and doesn't bother to look again until they are half a mile distance from each other

A. This one doesn't bother to look.

Q. Yes. Is that checking?

50

A. No, that is not checking.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- Q. What would you call it?
A. Failure to keep a good lookout.
Q. You see, as I understand you - correct me if I am wrong - you have made a change in course to avoid collision risk.

MR. AIKEN: I'm not sure that I understood the question or the answer.

MR. LUCAS: I think it's the first time during the course of this case, Mr. Aiken. I thought, sorry.

10

MR. AIKEN: He was asked what he would have called it. His opinion on that I don't think is admissible.

Q. Is that a proper check? The regulations say that - what do the regulations say about it? Would you just read those again?

COURT: Is he not entitled to give his view: is that a proper thing to do, or --

MR. AIKEN: He can't be asked whether a particular vessel was keeping a proper lookout. That is inadmissible.

20

COURT: Can't he be asked if they were keeping --

MR. AIKEN: Because that is what the law is. He can't be asked that. There is authority for that if anybody wants it.

COURT: If he is given certain suppositions, is he not entitled to say what that would indicate to him?

30

MR. AIKEN: Yes, but he can't be asked to give suppositions in a supposition. You can't assume a hypothetical situation and then ask whether a proper lookout is being kept because that is just a device for asking an inadmissible question.

COURT: Now he can't say whether in fact a proper lookout was being kept, but can't he say that would indicate to me --

MR. AIKEN: All right, if he says that would indicate to me a proper lookout wasn't being kept, he is giving an opinion which is not admissible evidence.

40

COURT: He is entitled to give his opinion on

this. The jury may or may not agree.

In the
High Court
of Hong Kong

MR. AIKEN: If my friend phrases it more carefully, I won't object. He is not allowed to say whether, in his opinion, a proper lookout was being kept. That is all I ask.

Prosecution's
Evidence

10 COURT: Can't he be asked: you assume certain facts, what that would indicate to him?

No.4
P.W.19
Allan
Charles Pyrke
Examination

MR. AIKEN: Yes.

(continued)

COURT: -- as he has been doing that.

MR. AIKEN: He has been doing that. He can't go to the next step and say, "In my opinion, a proper lookout was not being kept."

COURT: Can't he say that would indicate that there has not been a proper lookout?

20 MR. AIKEN: I don't see the distinction.

COURT: He is not saying a proper lookout was not being kept. He is saying those facts would indicate to me --

MR. AIKEN: All I am asking is the question should be more carefully phrased. I don't want him to be asked - give any evidence on what he is not entitled to give.

30 COURT: I think he is entitled to give evidence along those lines.

MR. AIKEN: He can give his opinion up to a certain point, but not go beyond it.

COURT: Well I think he is entitled to say if one assumes facts a, b and c, as an expert, that they would suggest to me certain things.

MR. AIKEN: Yes, that would suggest to me but he can't go further than that.

40 Q. Mr. Pyrke, the proposition I put to you is this: the helmsman of that particular boat makes an alteration of, say, 15° to starboard when they are two miles apart. He next sees the other craft when it's half

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- a mile away. They had, therefore, travelled for a mile and a half without that helmsman having noticed the other boat. What would that indicate to you?
- A. Not keeping a proper lookout.
- Q. You see, read that thing again, that you've just read.
- A. The section 8(d):
- " Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear." 10
- Q. So that the rule calls for you to - not just to make your alteration but to carefully check it.
- A. Correct.
- Q. Now in that same hypothetical situation, when a boat is half a mile away, the helmsman discovers that there is no significant change in the relative position between the two vessels, now what would - would you demonstrate what that must mean, he having turned 10 to 15°? 20
- A. That this vessel must have altered course to port.
- Q. By?
- A. -- an amount. 30
- Q. The same amount? I mean they are both travelling at the same speed.
- A. If they both alter at the same time, yes, the same amount.
- Q. Otherwise, it could be --
- A. -- more later, or less earlier.
- Q. It could be done --
- A. -- later.
- Q. -- and more sharply?
- A. And more sharply. 40
- Q. But it would total the same amount.
- A. Yes.
- Q. In other words, they would both be moving 15°, so if they are both in the same relative position, a mile and a half later, they have both moved 15°?
- A. They have - this one has moved an amount to port to counteract this starboard alteration.
- Q. Now given that situation, what is the appropriate and proper action to take? 50
- A. At a half a mile range?
- Q. Yes.

- A. These vessels have an approach speed a mile a minute. You've got 30 seconds At that stage on either vessel, assuming that I suddenly came on the bridge and I could assess the situation, I would come down immediately: in other words, drop the boat on the hull, stop it.
- 10 Q. You could do that quite safely and easily at that stage?
A. Yes.
Q. Both boats?
A. Yes.
Q. Now what if the helmsman deviated course 7°. Now first of all, that could mean two things.
- 20 A. No, if you say you alter course by 7°, it means that if, shall we say, you are heading 200° by compass, it means you then go to 207° by compass and stay on 207°. You could go very slowly and just take a few degrees over to starboard, but that is what an alteration of course by 7° means.
Q. Now given that situation, what would happen?
A. If I may reiterate the situation you are putting me in. You are putting me in a situation where I am on this vessel, I have altered 15° to starboard for a vessel end-on, I have got closer and I assume that I have realized this one has altered course to port, and then I go a further 7° alteration of course at half a mile range, and you are asking me --
- 30 Q. -- what your view of that manoeuvre is.
A. Totally ineffective.
Q. In what way.
- 40 A. You are too close. 7° alteration of course at half a mile range at a closing speed of 64 knots is no value in avoiding that collision at all.
Q. If they continue - I'm not sure if you can tell us - if they continue, having moved first of all 7°, is that the sort of - one of the rules which you have read, you've indicated that any manoeuvring should be such that it is obvious to another. Well would that be obvious?
- 50 A. No, it is very easy, I might add, when you are dealing with models on the board to start talking like this. It is when you are visually seeing it, it is - obviously you are using your seamanship instincts to get out of trouble, but it is made in good time and it should be substantial. 7° at that range is neither of those, and just from the sheer practicality of it, it is of no value, so minute.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- Q. Now having seen this, instead of stopping, the top boat, you are on the top boat, turn the boat so that the other one is 30° to the port side of yours --
- A. The angles that you are giving me - and we are getting down to very close range - the angles that you are giving me don't appear to add up. 10
- Q. What would the effect of a 7° turn be to put the other at 30°. I don't know if that is right.
- A. If it is originally 15 and it is 15° on the bow and on a constant bearing, if you alter another 7, the relative bearing will go round to 22.
- Q. So 30 doesn't make sense.
- A. No, we are getting very - once you start getting to very close ranges, you can get a change of bearing. As I said, before hitting you here, it is going to hit you down here. 20
- Q. That I mean at that stage, your reaction would be half a mile, put it down on its hull.
- A. For somebody that is going the wrong way, and I have seen it, yes.
- Q. What you have is a boat that is going to port and it shouldn't.
- A. Yes. 30
- Q. And that is, in your view, a dangerous situation down there and the closer, of course, you get, half a mile away, it becomes more dangerous.
- A. Yes, I think I did answer that at half a mile - you asked me and I said "I'll drop it on hull. I'll put it on hull."
- Q. Now just diverging for a moment, when you check things like indicators, rudder indicators, revolution indicators, flap indicators, when you do that, what do you do that for? 40
- A. I did say earlier that my handling experience of hydrofoils is very limited. Certainly, watching other people and having been on the bridge of these boats, people fly them by feel. This is why if you have a broken indicator, although people may complain about it - and I have seen many complaints of broken indicators - you can still feel the boat. You are flying, I think I have said earlier, by the seat of your pants. 50
- Q. Coming back to that situation, they both continue on, this one is now 22°, this one is 15° to port. Is it possible

for those two to collide with each other in the manner we have described, the bottom boat being hit at 15 to 17° on the starboard side?

In the
High Court
of Hong Kong

10 A. It depends entirely how much this one is moved because we are talking about angles and, as I said earlier, this vessel could alter a little bit to port early or a lot later. Now certainly, at this sort of thing you are not getting to the 50° sort of angle and once you start getting down into close ranges, changes of bearings become - it is something you have to visually assess. It is a very difficult question.

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

20 Q. Can we go back, please, let's start again because those series of assumptions, on the basis that it is straight ahead - straight line means head-on?

A. Yes.

30 Q. Now just assume that straight line doesn't mean that, but it means in fact a situation where they pass on a reciprocal course, so that this boat continues to go in a straight line and the other boat at two miles, turns to starboard so that the other boat is 10 to 15° --

A. On its port side? If it hauls across the boat like this, so that is about 15°.

40 Q. You see, what we have done in the first example - I have taken you through a series of assumptions on the basis of a straight line. If a mariner says it is a straight line it means straight ahead, but let's change it so that a straight line simply means you pass on a reciprocal course. Now at two miles, that boat moves at 15° to starboard.

A. So that it is showing the red side on your green side.

Q. First of all, at two miles, away from each other, these two boats, is the helmsman of that boat acting quite safely and properly in making that manoeuvre?

A. This one?

50 Q. Yes.
A. In my opinion, no.

Q. Why not?

A. You are creating a collision situation. He is cutting ahead of the other vessel at comparatively short range. This would be my interpretation of it, of this sort of range.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

MR. STEEL: I would like some notice of this evidence. Indeed, I would like some notice - I would have liked some notice of all the stuff we have had this morning. It has never been opened; it has never been described; it has never been furnished to us. I agree with a lot of it, I don't agree with a lot of it. It is very difficult to follow. It has been put in a form that I find it difficult to understand - and I am reasonably experienced in this - I suspect others particularly might find it difficult. How can I possibly cross-examine this witness? My learned friend, I suppose, is going to go through a process of putting a whole series of different assumptions to this witness. He is going to do it upon the basis of matters that he has been putting up to now and, of course, I have seen his statement. There are other versions and possibilities he is going to go through with this witness and will be a long time about it. 10

What is new is two things - sorry, what is new is trying to analyse various possibilities in the light of collision regulations. That is new. Now if this evidence is admissible, then I must have some notice of it, not just the notice my learned friend is now giving me, and if - of course, if it is not admissible, he should stop now. 20

Secondly, something that is not new - we still do not have a clear picture of what it is that the prosecution say is the right story. We can go on having various possibilities till the cows come home. I object to it. 30 40

MR. LUCAS: My Lord, with respect, I opened to this court on the basis of stories that have been put as the defence case. It is now the prosecution case that we would contradict those stories put up in the statements voluntarily made to the police by the four defendants. That is notice as to what I intended to do.

I intended certainly to do it by another method, but that was objected to. 50

The reality of it is that I intend - I would give notice of it - I thought I had given notice of it on day one that in relation to the statements of the four

accused, it is the Crown's contention and part of its probative evidence against these four accused that the statements they gave are, at the very least, inaccurate.

In the
High Court
of Hong Kong

Prosecution's
Evidence

I have an expert whose notice has been given that those particular statements have been analysed by that particular expert and notice of additional evidence has been given as to that. If my learned friends require time to study the statement, my Lord, with respect, they are entitled to do that. I would give them as much time as they want.

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

The reality of it is they have been given notice and that is the course of conduct that the Crown have taken. Nothing novel in this. We do not have - I mean, having reached the point where it has been suggested that in committal proceedings we have to call each and every witness and take him through every possible piece of evidence, so that the defence can be ready, at the end of the day, and have proper notice - it reaches a point, but my learned friend says I can put possibilities until the cows come home. Let me assure him, and your Lordship and the jury, that the possibilities I seek to put before the jury and to this expert are the possibilities raised by the defence. There is no novelty in this. These are, as I understand it, the instructions of my learned friends.

It is the case for these four accused persons that these are the various - certainly, that they made statements indicating that these are the situations. Now in this particular statement - and the matter that has obviously caused my learned friend some concern - is the word "straight line" which has no particular meaning. It could mean a head-on situation. I have covered that, but a straight line could also mean a reciprocal case. It is not a word of expertise. It is a word used which could be interpreted in different ways.

Now I do not want a situation of having made an assumption that it means a head-on

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

situation, finding out at a later date that that is not what it meant at all. So I am covering that particular situation and I would continue to do that throughout these proceedings. If notice is required because - let me make, with respect, one thing very clear; the Crown is entitled at any stage to call additional evidence and then it serves notice. The defence have the right, if they are taken by surprise, to take instructions. How my learned friend can suggest that their own instructions take them by surprise I absolutely do not understand.

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Now if that is the objection that they have been taken by surprise by their own statements, then let them apply for an adjournment. I would consent to it.

MR. STEEL: My Lord, that is a distortion of the point I was making. My learned friend wants to put series of possibilities to this witness, and I know what those are. He is going to describe what we have been going through up to now and then he is going on to go to other stories which may or may not be based upon what the various defendants say. And my learned friend is perfectly entitled to do that. I am not complaining about that.

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What I am complaining about is this, it goes miles beyond the material with which I have been pledged. But I think I can cope with that. What I can't understand and what I think is not merely inadmissible but a terrible waste of time - if my learned friend's case is that none of the stories, or versions, or assumption that he is putting to this witness are true, what is the point of asking the witness to tell us what the impact the Collision Regulations is on those presumptions?

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COURT: Mr. Steel, the Crown is entitled, in fact the Crown is obliged to say, "If we think on the basis of the evidence before us that the defence is such, we must in the course of the Crown case call evidence to rebut it."

MR. STEEL: Yes.

COURT: You can't wait and see whether that effect does come up and then apply to rebut it if you can reasonably anticipate it.

MR. STEEL: My Lord, I am not objecting to that, to make it quite clearly. I am only too happy that all the various stories be investigated to see whether any parts of them are possible or true or accurate or what. I am not objecting to that. What I am objecting to is the strange situation in which we debate an issue of law

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with the witness upon assumptions of fact which the prosecution say are untrue or inaccurate.

In the
High Court
of Hong Kong

COURT: Is the prosecution not entitled to say, "Well, it may be that the evidence will be given along the line of the statements that have been made"?

Prosecution's
Evidence

MR. STEEL: Yes.

No.4
P.W.19
Allan
Charles Pyrke
Examination

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COURT: And if it is, with what expert evidence upon it, it may be no evidence is given but ...

(continued)

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MR. STEEL: If I may say so, it doesn't answer the specific matter. The prosecution are not saying that any of the assumptions they are putting are true or accurate. So what is the purpose of asking the witness to consider stories which are untrue and inaccurate? Not just to prove the fact that they aren't true and accurate, but to try and show that the significance of stories which aren't the truth, aren't reality have to the law, as to what should have happened in circumstances which didn't take place. I really regard that not merely inadmissible but a waste of time. There have been days in which we have lost time - time is lost, if I may say so. We haven't got an enormous amount of time left. I am anxious to try and see really where we are going, my Lord. At the moment I feel that it is unhelpful and confusing to everybody to go through the exercise of saying, "Assuming something which did not happen took place what would the law be?" That is the question my learned friend has been putting.

30

COURT: Are you saying this is assuming various situations, various courses, speeds and distances what is the effect of that in accordance with the Regulations?

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MR. STEEL: Yes, those are the questions my learned friend has been putting. Now what my learned friend has told me what he wants this witness to say is that the story that Capt. Kong tells, the story that Mr. Ho tells, the story that Mr. Ng tells, the story that Capt. Coull tells, they are all mutually contradictory, they all can't physically work, none of them. So there my learned friend wants to prove, that, he could use this witness and I know what he is going to say. But what - and again it may be a waste of time by making the point - but if my learned friend says, "All those stories you could wash out of the window as untrue and physical impossibilities",

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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

why do we have to go through the exercise of testing unreality against the Collision Regulations? I find that a very strange approach. It's rather like saying, "There has been a collision between two cars. There are two stories about how it happened, and neither of it can conceivably be true, but I would like you to tell me what the highway code says about the versions which have been given which can't conceivably be true?"

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(continued)

COURT: done at the moment in effect is trying to see whether in fact they can be true.

MR. STEEL: No, my Lord, that is going much further than that. What my learned friend is inviting the witness to do, for instance, perfectly properly, is to say, "Suppose the vessels are on a certain bearing and each on various headings, is it physically possible for something else to happen?" and the witness, I know what he will say, will say, "No, if those figures you give me are right, no, it can't happen." But may I just take an extreme example: "Supposing somebody sees another ship 45° on the bow and they are on reciprocal courses, can a collision happen?" Answer, "No, it is physically impossible." Now what is the point of then going on, if I may say so, to say, "What are the rules for this situation?" What is the point of asking a witness to tell us what the law says should happen in a circumstance which is physically impossible? So I object to it because I feel we ought to get on to something which is real rather than unreal.

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COURT: The particular question which is being asked a moment ago doesn't fall within that.

MR. STEEL: My Lord, I was speaking of the line of questions that we have been going through.

COURT: No, I think I

MR. STEEL: Then I hope that my learned friend will go through the exercise, the complete exercise, and go through all the stories and do the same exercise with each,

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otherwise it is unhelpful and unfair.

In the
High Court
of Hong Kong
Prosecution's
Evidence

MR. LUCAS: My learned friend can do the exercise. I am leading the evidence which I consider relevant to my particular case.

No.4
P.W.19
Allan
Charles Pyrke
Examination

10 Q. Mr. Pyrke, assuming straight line means reciprocal course and two miles separate these two boats, and the top boat which you have just moved turns at an angle of 15°, now what is the effect of that?

A. This changes a safe passing into a situation that is most probably a collision course, certainly it is a dangerous passing.

(continued)

20 Q. Let's assume the next step that the other boat, the bottom boat, is found at -- that there was no relative -- what you would need to do, what would the other boat need to do to make it that there is no change in the relative bearing? Does that make sense?

30 A. No, it doesn't. If they are like this, passing at a safe distance, starboard to starboard, and this vessel alters round until it is showing a red, depending on the angle etc., but you will end up possibly with a steady bearing, a risk of collision. This boat doesn't need to do anything.

Q. Could you put the bottom boat in a position where the relative bearing from that one is 10° to 15° - 15° portside of the other boat?

40 A. Assuming we are talking about where the person sits, that is about right. Remember we aren't talking at very close range and trying to measure the angles between where the people are sitting without physically doing it is very difficult. It is about right.

Q. Is that 10° to 15°?

A. That means that this vessel is now 15° on the portside of this vessel.

Q. Now a further alteration of 7° by that boat at ½ mile away, what would be the effect of that?

50 A. When you say the effect of that - if you put ranges in... I think I have said before, effect, do you mean as to avoiding a collision?

Q. Yes.

A. Well, again I would have to work it out in more detail, but I would tend to say instead of hitting the bridge you will

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- hit the bow.
- Q. Let me put this reciprocal course again: boat at the top is 15° to starboard first and subsequently ¼ mile away 7° to starboard; they eventually collide with each other with that boat hitting the other at 50° to 70° on the starboard side; how far would the bottom boat have had to turn to cause that situation? 10
- A. I would need to do this on paper. I mean it appears tempting for me to say it must have altered so much of course, but when we are dealing with angles I know it's very easy to jump to assumptions that are wrong.
- Q. Would you say, it's less than 22° or more than 22°, the other boat?
- A. I am sorry, Mr. Lucas, my mind has got a blank. I am trying to look through a trap in saying this vessel has altered to port and talking about an angle distance like this. Certainly I could try and work it out later, but logically it appears this one must have gone to port. But I'm afraid you are pressing me on something that I would like more time to calculate. It is very dangerous to jump to assumptions. 20 30

MR. LUCAS: We will come back to the question again.

11.53 a.m. Court adjourns

12.15 p. m. Court resumes

Accused present. Appearances as before.
Jury present.

P.W.19 - Allan Charles Pyrke O.f.o.

XN. BY MR. LUCAS: (Continues)

- Q. On this particular aspect, Mr. Pyrke, the reciprocal course, reciprocal passing situation, change of course by the top boat 15° and then 7°, that in order for there to be a collision would the other boat have to move, deviate course? 40
- A. No, she could maintain a straight course. It all depends on where you start the change, from what the bearings are between them, but certainly if it is far enough round you could get where just one boat is altering, I might add on this one, I 50

did say that you were pressing me about what the situation was; I think you were talking about 2 miles, now I think I said it is a dangerous situation. I think perhaps I should clarify it to say that a danger exists, it doesn't mean to say that there is an immediate dangerous situation; there is potential, doesn't mean it's immediate.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

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Q. At $\frac{1}{2}$ mile the other boat is 10° to 15° - 15° to port side.

A. If at $\frac{1}{2}$ miles range so the distance between the boats is $\frac{1}{2}$ mile, this one is 15° on this one's port side, yes.

Q. Now would the bottom boat have to move, turn at that state to collide?

20

A. Again it all depends on the bearing from here to here. You have to work the Vectors out. Certainly once you got from red to green it is just a case of Vectors as to whether it is a steady bearing or whether it is closing slightly, opening slightly or whatever.

Q. Steady bearing.

30

A. If it is steady bearing then you are on a collision course, and if they maintain that course, and again at $\frac{1}{2}$ mile, 100 feet length boat, you might get a very small change of bearing which, I would reiterate, means that instead of hitting your bridge it's going to hit your stern. So there is no substantial alteration of bearing.

Q. If - or having realised it is a 15° bearing the top boat moves another 7° ?

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A. At $\frac{1}{2}$ mile?

Q. Yes, at $\frac{1}{2}$ mile.

A. Mr. Lucas, you are putting me in a position that people are breaking, in my opinion, all sorts of rules, going against all sorts of good seamanship, and you are compounding it by a 7° alteration of course, at that range on a collision is not substantial. It is going against all rules and good seamanship. I am sorry, I can't give you a view on what would happen.

50

Q. Could you help me with this please, Mr. Pyrke. If two hydrofoils coming towards each other at 3 to 4 miles, bearing is 10° to starboard side, and 1 mile it is 15° --

A. I am sorry, could you repeat that again.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- Q. Same two hydrofoils heading towards each other; someone looks out at 3 to 4 miles away and finds the other one at 10° on the starboard side, bearing is 10° on the starboard side, reciprocal course.
- A. They are on reciprocal course and this fellow sees him 10° on the starboard side. 10
- Q. 3 to 4 miles.
- A. 3 to 4 miles.
- Q. And then a mile away he further sees him at 15° - the bottom boat.
- A. You are sitting on this bottom boat and you initially see it at 10° 3 to 4 miles away?
- Q. Yes.
- A. And then you see it at --?
- Q. - 15°, a mile away- Can you tell me what the other boat has done, if any? 20
- A. Just purely from guessing in my --
- Q. No, no, no, not guessing. Well, has it moved?
- A. It certainly - the bearing is opening, it must be on a safe starboard to starboard passing. I can't tell you what the distances are here or - you have to work it out. Certainly passing.
- Q. Now let us take this hypothetical situation: the distance 3 to 4 miles apart, the same two, and the bottom boat sees the other one at a bearing of 20° on the starboard side and the bottom boat takes the view that they will pass each other at 500 to 600 feet away. 30
- A. Would you repeat your distances again, Mr. Lucas?
- Q. 3 to 4 miles away, 20° on the starboard side, and the helmsman of this bottom boat was with the view that they can pass each other at 500 to 600 feet. 40
- A. Yes, I have done a Vector diagram on this particular situation.
- Q. What did you find?
- A. Working from memory, and I think that it was at 3 mile range, 20° on the bow which is a fair way round, this vessel in fact has to be showing 17° on its port side, the top one has to be showing 17° to get a passing distance here of 500 to 600 feet, and I seem to recall that this one would cross ahead of him, in other words, he would be bow-on to this vessel at about 1/4 mile range and I think a bearing of green 30, that means 30° on this one's bow at 1/4 mile range he would be heading straight forward, and as they carry on going this 50

one would begin opening up its starboard side after that range. That is as I recall the plot. You cannot get reciprocal courses at 20° bearing at 3 to 4 miles range and to get a 400 to 500 passing.

In the
High Court
of Hong Kong
Prosecution's
Evidence

10 Q. What I am simply asking you is this: if you have the 20° bearing and the distance that you have, it is possible that they will pass at 500 or 600 yards to each other?

A. No, I must add that that is on those ranges and bearings.

Q. Now the same position: one boat continues, the helmsman on the bottom boat sees the other boat at 40° and at 200 feet.

A. He sees the other boat --

Q. 40°.

20 A. 40° on his bow?

Q. Yes, 200 feet.

A. 200 feet away. Well, that only just tells me where the boat is. It doesn't tell me which way it's heading.

Q, No, and there is a collision of the nature that we have been talking about, is that possible? You see, we have the information from someone, take these assumptions: the helmsman of that particular boat says that at one stage I saw the other boat 40° on my starboard side and it was 200 feet away. We have the fact of collision at a 50° to 70° angle, according to that diagram on the left hand side. Are those two sets of situation compatible? In fact can they happen?

30 A. Yes, 40°, but he must be heading in - I can't give you the exact angles, but he's got to be well across. It may be from where the helmsman is viewing it, at 200 feet, 40°, he's got to be well across. I can't give you the exact angles because the course of collision could be down here somewhere on the stern.

Q. No, no.

A. I would say he's got to be across somewhere at this angle. You are getting very close range. It is very difficult to give the exact angles.

50 Q. This hypothetical position please: the first view - this is the bottom boat, the first view of the second, the other boat, coming towards him is 4 to 5 miles distance, 10 to 15° starboard.

A. Reciprocal course?

Q. Yes.

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

- A. 4 to 5 miles away, 20° starboard?
Q. That is the approximate angle.
A. Yes.
Q. Now the next situation I would like you to put up there, if you would, is the bottom boat remains like this, the top boat 45° starboard, 2 or 3 cables from the lower boat.
A. Again working from angles, from one observer on one bridge looking at the observer on the other bridge --- 10
Q. The observer on the bottom boat looking across to the other?
A. Yes, that is about a 45 line.
Q. Now from there, bearing in mind it's 2 or 3 cables, 45°, could there be a collision of the sort we know happen?
A. Both vessels going at the same speed, no.
Q. What would in fact happen?
A. At the 45° angle, to be a collision bearing, this one has to be at right angles. We are back to the isosceles triangle that I have dealt with the other day. Obviously the boat can't suddenly in a split second jump around like this. There is a turning - both vessels are now moving. What will happen is this one goes harder, you will get this sort of thing happening. He'll pass his stern. 20 30
Q. A cable is 600 feet?
A. Right.
Q. So when someone talks about 3 cables they are talking about 1200 to 1800 feet?
A. 3 cables is 1800 feet. 2 to 3 cables is 1200 to 1800.
Q. And with a likely reciprocal passing at that stage of 500 to 600 feet, is it possible in those circumstances for that boat to actually turn and collide with the other boat? 40
A. No.
Q. Could you please, Mr. Pyrke, tell us a little about the difference between jetfoils and hydrofoils with the point of view of look-out, if there is any difference?
A. No, there is no difference. They are both from the same waters. We are talking about Hongkong waters on this route. 50
Jetfoils, you are equally blind astern. It's even worse because at 45 knots if you open that door you are hit by a very strong blast of air. It's very difficult to see astern. The view out of the window of a jetfoil is much better. By that I mean it is a bigger window, it is not so

cluttered. Jetfoils also you get two radars: one next to the master as well as the one to the mate. But these are physical differences. The actual need to keep a good look-out by both people, in my opinion, is equally the same.

In the
High Court
of Hong Kong

Prosecution's
Evidence

Q. What about steering?

No.4

10 A. The jetfoils, you can steer it two ways. You can either do it on the wheel - it's almost like an aircraft control - or you can put it in auto helmsman and change it. You cannot control flaps. This is all done by a black box. You can control the height it flies with a depth. Certainly you can bring it out until she kisses the sea and bring her back up again - play around like that. You can't alter flaps when you are flying. That's done by a box.

P.W.19

Allan
Charles Pyrke
Examination

(continued)

20 Q. There were some questions put about the effect of currents on these boats and why; what effect they have, if any, and what causes those effects. Would you answer those questions? What effect if any do you expect on course?

30 A. If I could perhaps just do a small sketch to show you: If I make that line 40 units long, say, equivalent to 40 knots for a jetfoil, and I make the tide at 2 units, same time up there, then the jetfoil will follow that line, that angle, very small. Certainly on these routes you are piloting, you are eye-balling in navigation. You don't take any notice. It's the speed of the vessel that makes the tide insignificant. It only becomes significant if you drop down on the hull, particularly off Fan Lau you tend to get a tide raise up there. Tides are complex. We are talking about a river regime, depends on the amount of water control. It is complex. But basically to answer your question, because you are going so fast you can ignore the tide. If it gets up to 5 knots then it may begin to get significant. But you are eye-balling away,

40 Q. We have the hydrofoil plan sitting up on the board for some considerable time. They obviously sit well off the water when they are flying?

50 A. Yes, it is very easy. If I could get the foilborne draft and the hullborne draft I could tell you, maybe on the plan. If not, the Operators' Handbook would tell me.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Examination

(continued)

Yes, this one gives a hullborne draft of 3 metres 50 and the foilborne draft of 1 metre 50, so you are coming up 2 metres.

Q. What I am interested in is this: someone sitting at the end of the belvedere cabin outside looking backwards.

A. Someone sitting in here?

Q. Right, looking back over the stern, the wake, he noticed some wake. 10

A. Yes.

Q. How far back, can you say how far back behind the boat?

A. I can't obviously say accurately. You'd have to go there and see it and try and measure it because it also depends on whether she is flying on deck level or whether she is - how much she is head up. But there is obviously a blind area behind the boat that you can't see. 20
The wake will - you will see it somewhere astern. I wouldn't like you to hold me to the guess. So I won't make one.

MR. LUCAS: Thank you, no further questions.

Cross-
Examination

XXN. BY MR. STEEL:

Q. It's inevitable, Mr. Pyrke, I'm afraid that during the course of my questions I am going to ask you to give careful and accurate considerations to various assumptions. 30

A. Yes.

Q. Before starting my questions which I was going to start on the topic of some aspects of hydrofoils and how they work, can I just bring you back to a point you were making only a short while ago. You were asked this: Please assume that there are two hydrofoils on reciprocal courses shaping to pass each other 600 feet, starboard to starboard, 2 miles apart, and that one of them alters course to put the other 15° on its port bow. 40

A. Yes.

Q. You were asked to say what you thought of that. Your answer was: that changes a safe situation into one of danger. Would you explain that answer please?

A. You are passing starboard to starboard?

Q. It was precisely the same question as you were asked: Please assume that there are two hydrofoils on reciprocal courses shaping to pass each other 600 feet, starboard to starboard; they are 2 miles apart, one of them alters course to put 50

the other 15° on its port bow. What do you think? Answer: That changes a safe situation into a dangerous situation. Would you please explain your answer?

In the
High Court
of Hong Kong

Prosecution's
Evidence

10 A. Yes. The figures that you have given with a 600 foot passing distance to starboard, if you put the other vessel 15° on its port bow, I'll have to do a diagram, I would tend to think she would cross ahead.

No.4
Allan
Charles Pyrke
Cross-
Examination

Q. She would cross ahead and pass port to port at a distance of 1,800 feet, is that right?

(continued)

A. As I said, I would have to do a diagram to give you the actual distance.

Q. If I am right, what is dangerous about that?

20 A. At that range, 2 miles - assuming she maintains the course, you will get a safe port to port passing. Certainly on those figures I could not see any danger. It is a bad seamanship to cut ahead of somebody.

Q. But indeed, you were content, as I understand it, to permit, maybe necessary, but to permit the vessel to change, say, 15° or so to port at a range of 3 miles without really any qualifications at all?

30 A. They were head on at 3 miles, 15°, is a substantial alteration.

Q. And for this purpose at 3 miles, I will have to come back to the question, it would be impossible to tell whether the vessels were, I am saying this firmly, impossible to tell whether the vessels were precisely end-on or passing at 600 feet?

40 A. Could you repeat your question again?

Q. Well, perhaps I rephrase it. If two vessels are, say, 3 miles apart, or put it this way: if two vessels are 3 miles apart and they are on absolutely parallel courses shaping to pass each other at about 600 feet, the bearing at that range is about 1½°?

A. Yes, very, very fine.

Q. And these vessels don't keep a precisely steady heading?

50 A. No, they do tend to yaw.

Q. They yaw perhaps 1° or 2° either side of their heading?

A. Depends upon the boat, some are worse than the others.

Q. I think the Goldfinch is something - perhaps a crew mentioned in his statement, is renowned as being, in a sense, a bit of

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- a greater yaw than most, but leave that aside, certainly 1° on either side for any of these hydrofoils?
- A. At that range, at 3 miles, I would not like to hazard a guess which side she is going. 10
- Q. Quite, so the distinction between being end-on and passing at 600 feet at those ranges is not a distinction at all?
- A. No.
- Q. Well, I must come back to that. But I wanted to make quite clear to you that I was troubled about your answer that altering course 15° to port at 2 miles changes something that was safe to something that was dangerous.
- A. I must admit that I cannot recall here the 600 feet passing because immediately you start giving ranges, as you realise, you have to start trying to calculate. 20
- Q. Well, I think there is no doubt about my accurate record of the question on assumptions you were asked to make. It would of course be a fortiori, I am sorry to use that phrase, a fortiori if it was end-on. The point would be the stronger if the vessels were end-on.
- A. Yes.
- Q. Now may I come back to, in a sense, the beginning. You have a certain amount of experience with hydrofoils and you also have an opportunity, I think, to study the manual for this class of hydrofoil with which we are concerned? 30
- A. Yes.
- Q. And you also have an opportunity, I gather, to study some manoeuvring characteristics, both of this class and your own personal experience, I gather, of some manoeuvring of the Goldfinch itself? 40
- A. Correct.
- Q. Now let us just take the manual for a moment to pick up one or two points. The rudder can be turned 30° either way?
- A. Yes.
- Q. That is to say in its normal position it is on the fore and aft line of the ship, but a full harder port turn would involve moving the rudder 30°? 50
- A. Yes.
- Q. But what the manufacturers say, is this not right, is that when flying rudder angle should be limited to about 10°?
- A. If I recall, they mention the 10° figure twice. There is another place in the manual, they also mention 10°. May I

- refer to the manual?
- 10 Q. Please, of course. I have missed that. Do you have your own copy?
- A. I think I have.
- Q. You may well be right, but I'm afraid I hadn't spotted it. I was looking at page 7. There may be another reference.
- A. Yes, page 14.
- Q. Thank you so much, would you just tell me where roughly?
- A. Bottom four lines: "As mentioned in 3-1-2, maximum rudder angle should be limited to 10° in flying on foils.
- Q. Yes, I follow, thank you. But given this instruction I assume that you would not quarrel with a helmsman who uses either 9° or 11° of rudder?
- A. No.
- 20 Q. You draw attention of course to the fact that there is a potential limit to the use of the rudder when flying because of the drag it would exert on the ship?
- A. That's correct.
- Q. And the risk of - well, the effect it would have of reducing speed and even conceivably stalling the engine?
- A. Yes, I think it also has an effect on engine temperatures and other factors.
- 30 Q. And there is, in a sense, a problem here that the mariner using the helm has to decide whether to, in a sense, go beyond the recommended limit but in doing so risk damaging his engine or losing speed and affecting his ability to turn?
- A. You are, as I have mentioned, earlier, you are flying the boat on the seat of your pants. You judge the boat's reaction rather than looking to see whether it's 9½, 10½, or whatever.
- 40 Q. Now the next thing I wanted to consider with you is the question of the rate at which these vessels turn and you have got a variety of material.

COURT: Is this going to take some time?

MR. STEEL: Regretably, my Lord, yes.

COURT: Would this be convenient?

12.53 p.m. Court adjourns

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

2.32 p.m. Court resumes

All accused present. Appearances as before.
Jury present.

P.W.19 - Allan Charles Pyrke o.f.o.
XXN. BY MR. STEEL (continues)

- Q. Captain Pyrke, we are going to consider the turning abilities of these craft. The manual tells us that a foil-borne craft with 10 degrees of rudder applied will turn 90 degrees in 30 seconds. 10
- A. Yes, that's correct.
- Q. And the simple arithmetic result is that she will average a rate of 3 degrees a second to complete a 90-degree turn.
- A. That's correct.
- Q. And I assume that she tends to turn quicker at the beginning and gradually as the turn goes 90 or even beyond, the turning rate reduces somewhat because the speed is falling. 20
- A. Logically, but I would look at the PT50, I have other tests which give me more detailed ...
- Q. Yes, but logically that would be right.
- A. Logically, it should be. No, wait, no, no. On a hydrofoil you can increase your rate of turn by decreasing your speed and I think you can see this on page 8. "When urgent running is required e.g., to get out of the way of another vessel and to dodge the floating obstacle, steering after reducing the speed is recommended." 30
- Q. I see. So that the rate of turn may, if anything, slightly increase.
- A. I wouldn't be sure on this, Mr. Steel.
- Q. Now, you have also conducted some sea trials with the Goldfinch herself.
- A. That's correct.
- Q. And you have done that on a variety of conditions. 40
- A. Yes.
- Q. And you have found that with rudder at 10 degrees she will turn 90 degrees in 42 seconds to starboard.
- A. With rudder
- Q. Sorry, rudder at 10 degrees.
- A. Rudder at 10 degrees she will turn 90 degrees to starboard in 42 second.
- Q. And that is an average rate of just over 2 degrees a second. 50
- A. That's right.
- Q. But if she uses her flaps as well as the rudder, she can turn twice as fast effectively.

A. Correct. It is in fact exactly twice as fast on the test I have done.
Q. She completed a 180-degree turn in the same time.
A. Further down, you will see "90 degrees to starboard...."
Q. Oh, yes, you're quite right. I missed that. And that is a rate of something over 4 degrees a second.
10 A. That's correct.
Q. There's quite a difference, isn't there, between the - just sticking with 10 degrees of rudder and a 90-degree turn - there's quite a material difference between what the manual suggests the performance would be and what the Goldfinch trials reveal.
A. Yes, that's true. The only thing is this doesn't tell you what loading the boat is at. The manual doesn't tell you what loading the boat is at, what displacement she is running at. Also the manual does say that they've got 4 degrees flap on. And when they say 4-degree flap, I take that to mean that they are just using that flap to keep her up. I did query the Japanese by telex on the use of flaps and turns in their tests and they told me they didn't use flaps. So to me it's got rather an excessive flap on just to keep her flying. Usually that flap is at 2 to 3 degrees. I am a bit puzzled by the figures and certain other figures do give - they give varying results.
30 Q. There is a fair amount of variation. And with maximum flaps and 10 degrees of rudder, with this class of craft you may well get, in some circumstances, rates of turn as much as 5 degrees a second.
40 A. We tried - it isn't recorded here because we didn't keep a record. I asked the person who was flying to put a lot of helm on and to try and turn her really fast. You could feel the boat struggling and he was having difficulty keeping her flying.
Q. There is a difficulty, but just looking at the Goldfinch records for December '82 she had been through a repair and no doubt a repaint and all sorts of things. So you can get a fair amount of variation in the potential rates of turn.
50 A. That's correct.
Q. But for the purpose of considering the significance of 10 degrees of rudder with

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(cc

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- no flaps, something in the region of 2 or 3 degrees a second would be a fair assumption.
- A. Yes.
- Q. And can I make any conclusion at all - help me with this - if the rudder application is only 7 degrees?
- A. I would only interpolate between the two.
- Q. On a straight line basis. 10
- A. (A pause)
- Q. I was going to suggest that you might get a rate of something like $1\frac{1}{2}$ to $2\frac{1}{2}$ degrees a second with 7 degrees of rudder.
- A. Roughly you could say on a straight line basis ...
- Q. So much for rates of turn. Sorry, could you just help me with one point on that. You have produced another document for us from Rodriques which gives some manoeuvring results. 20
- A. Yes.
- Q. These are yet different figures, I think.
- A. Yes. You will notice these are not as detailed as some of the Japanese figures I've got, but you will notice, take a 1,300 RPMs, she's got 5 degrees rudder on, but you will notice she's going into that turn and I don't know whether that's the speed going in or the average speed on the turn, she's going $35\frac{1}{2}$ knots, she's doing a lot faster. And you will see they even give a 1,300 RPMs, a time for 15 and 20 degrees rudder angle. 30
- Q. Yes.
- A. But one assumes from these figures that she is going in at a higher speed. 40
- Q. Can I just take the more direct example there which is 10 degrees of rudder, 1,300 RPMs. Now, is this describing a full 360-degree turn?
- A. Yes, I have taken on the time alone that she's doing a full 360.
- Q. But that's comparable to our position, isn't it, 10 degrees of rudder, 1,300 RPMs.
- A. Yes, she does it in 99 seconds.... 50
- Q. So again one has slightly different figures yet again.
- A. It does tell you in this of course that the port flap is at -3 and the starboard flap is at -8 and it also says "would obtain performing left turns". So I am sorry to complicate it even further but that's the....

Q. Yes, I follow that. So let's leave turning. Now, again we have the material from Rodriguez which gives a stopping distance from 33 knots of 120 metres.

A. Yes.

Q. Which is about 380 feet.

A. Correct.

Q. I haven't seen any other material suggesting a figure of 250 feet.

10 A. In 1975 the hydrofoil masters through their company were asked to perform emergency stop distances for each boat and to record them. Unfortunately, the Goldfinch is not included because I believe she wasn't built in those days. However, I do have that material in court and it is in both light and load condition, in other words, no

20 passengers, a lot of passengers and I can give you an idea in respect of...

Q. Can you give me a max. and min. figure?

A. 400 feet and 150.

Q. So there is a substantial variation between the various craft, some stop twice as quickly as others.

A. Also the data that was returned to us shows that some people didn't use the stern engines, other people did. These

30 boats - I think I said earlier that the stopping distance depends very much on what the operator does.

Q. But I was going to suggest to you that the manufacturers have given us a stopping distance of 120 metres, 380 feet, and that wouldn't be an unreasonable figure to play with.

A. All I can reiterate is that I certainly

40 have been on boats that have stopped faster.

Q. Just coming back to the question of the various masters who carried out these tests, how on earth did they measure the distance?

A. A lot of them did it in the Macau Channel and again eye-balling on the bamboo markers on the channel, and all these distances are, I would imagine, even

50 Rodriguez are visual estimates.

Q. So there may be a bit more, there may be a bit less.

A. Yes.

Q. Just two other points about the hydrofoils. The question of noise - can you help us a bit about this in the cock-pit of these hydrofoils? Could you tell us what your experience is?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- A. They are reasonably noisy but certainly not unbearably so. It would make it exceptionally difficult to hear sound signal, shall we say, particularly when all the windows are closed.
- Q. Yes. So if a vessel gave a sound signal to indicate that it was turning to starboard or to port, it would be most unlikely it would be heard in one of these craft. 10
- A. Unless it was right alongside the bow.
- Q. The Flying Goldfinch and Flying Flamingo are the same class, are they, as the Flying Albatross.
- A. The Flying Goldfinch is an RHS140 and the Flamingo is a PT50 and the Albatross is a PT50.
- Q. And it is right, isn't it, that after the collision that the Flying Albatross had with one of the ferries, the Man Tak, the court of enquiry that investigated that accident attributed one of the difficulties in communication on board the Flying Albatross to - was it called the high noise factor inside its wheelhouse and recommended, did it not, that consideration be given to fitting them with headsets, the people with headsets. 20
- A. I am not totally familiar with that case. I was not involved in it. 30
- Q. But that is the sort of noise level, is it not, that one does experience in the wheelhouses of these craft.
- A. Yes, there is a noise level.
- Q. You have spoken a little bit about the comparison between navigating one of these hydrofoils and the method of navigating one of these jetfoils. Mr. Lucas has asked you some questions about that. I appreciate the point you made that whatever facilities are available on either craft there is still the obligation to keep a look-out and obviously obey regulations, but is there in a sense a distinction in principle between the way they are navigated? 40
- A. If we are talking about navigation in the sense of the word of going from A to B, there is no distinction. If you are talking about the way you control it, obviously there is a distinction. 50
- Q. Could you just elaborate on the distinction in the manner of control in order to effect a particular passage?
- A. The hydrofoils are steered by a wheel and remember it is a -- not like in normal

ships, it is not return wheel; in other words, we put the helm on and let it go, it stays there, and you are physically controlling that boat all the time by either steering or flaps or whatever you want to do. Now, on a jetfoil you can go into auto-pilot and you switch into that mode and you can control the course, you just dial in and it will alter a few degrees. Of course, you've got the wheel in front of you -- it's not a wheel, it's like an aircraft, I don't know what to call it, you can immediately override that....

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

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Q. Yes, I follow that. But there is no physical need for the helmsman to be holding onto the tiller or whatever, he is, if he is in automatic mode, freer to do other tasks.

20

A. Well, his hands are free.

Q. Now, before coming to some of the features of what happened in July, can I just ask you a few questions about your experience as a mariner about various manifestations of navigation. I think you observed this morning - perhaps it was yesterday - that assessing distances at sea, even for an experienced mariner, is a difficult task.

30

A. Yes, particularly at the longer ranges when one is talking about 20 feet, 30 feet. Longer ranges are difficult

Q. Yes, I follow that. One is talking about 3 miles, one may be talking about 2 miles possibly and one may be talking about 4 miles. There is a very substantial margin of error.

40

A. Yes.

Q. And that is in a sense particularly so when you have no particular reason to notice or record the distance. Do you follow my point?

A. To try and remember a distance in recollection is very difficult.

Q. If people do not know the ship they are going to collide with when they first see it and when they later have to cast their mind back to remember how far it was away when they first saw it, there is both an element of reconstruction and an element of margin of error and a substantial margin of error.

50

A. If it would be of any help, if you ask somebody actually looking at something, a ship, and you say 'how far away is it'

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- and you look at the radar, you can be substantially in error even when you are trying to get close. I have seen this - I have done it myself.
- Q. As you have said, it is only by use of the radar that you can get an accurate indication of range or distance.
- A. Correct.
- Q. And for this purpose, the weather and the degree of visibility in a sense are neither here nor there. Sorry, that's obviously a silly point. If the fog is thick, you can't see anything. 10
- A. No, I mean even if you can see, one of the sort of clues that you use is how far it is below the horizon. If the horizon is gone, you tend to get even more disorientated.
- Q. If the?
- A. If the horizon is gone, you know, if it is slightly misty, you tend to get disorientated. 20
- Q. Have you considered, and if so, do you think there is any materiality in the azimuth of the sun on the particular day of this collision?
- A. Are you asking me whether I have considered?
- Q. Yes.
- A. Yes, I did consider it. 30
- Q. And what views did you form about that?
- A. That the sun was too high to cause any dazzle off the water.
- Q. What do you say the angle?
- A. I did work it out and I seem to remember that it wasn't far off a bearing at east, a little bit south, in other words, it would be somewhere ahead of the Goldfinch. I did work out the altitude and I seem to think that it was too high and I did look fairly shortly afterwards at the sea horizon myself at about the same time to get an idea how much dazzle there was. 40
- Q. The next thing I wanted to deal with you is the questions of - we dealt with distances - bearings. Visual appreciation of bearings like visual appreciation of distances are not easy.
- A. No.
- Q. It is perhaps one of the reasons why mariners tend to talk in terms of points because, if I may say so, would you agree, they don't really expect to do much better than getting to the nearest point. 50
- A. That is true. Perhaps if it is -- the bearing is closest to the bow, it becomes a little bit easier to try and estimate the..

Q. But it is right, isn't it, that it is - you are an expert in this - that people often talk in terms of points, 11 degrees or 10 degrees - I needn't be more precise than that - that is an indication of the general margin of error that can creep into assessments of bearing by visual appreciation.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

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A. Yes.

Q. And again is this your experience that if a bearing is fine on a bow, people tend to over-estimate it rather than under-estimate it.

A. If you are trying to record it in retrospect you tend to over-estimate it even more than in reality if somebody says "Stop. What's the bearing".

Q. Right. So if the bearing, say, was in fact a couple of degrees on the bow, you very often find people speaking in terms of 5 or even 10 degrees on the bow.

20

A. That's correct.

Q. And again that is an appreciation which can only be made the more exact with the use of radar.

A. Assuming that gyro-stabilized radar, yes; with that relative you have to check with the boats.

Q. The radars on these hydrofoils are not stabilized, are they?

30

A. No. They are not on the hydrofoils, they are on the jetfoils.

Q. And so we understand clearly what that means, that means that a radar is not connected to a gyro and the heading marker on the radar is not the same as the heading of the ship.

A. That's correct.

Q. If I may develop the point on this difficulty of appreciation of bearings and distances, this is in striking, in a sense, contrast to, in a sense, the precision with which people can remember such things as the colour of lights. You can make a mistake about distances, you can make a mistake about bearings, but it is very difficult to make a mistake between a red and a green light. Is that again your experience?

40

A. Or what about what we call aspect, in other words, even by day-time whether she is showing you a portside or she is showing you her starboard side.

Q. I follow. And lastly on this question of dealing with recollection there is always the problem about inviting people to remember times. I mean by that not just remembering

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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

when they were near a particular place because there can be even a margin of error in that, even if they kept a record of it, there can be a margin of error in the record.

- A. Yes.
- Q. But more importantly it is very difficult for people to have really any appreciation of how long a particular event lasted.
- A. Only unless they have some other yardstick to measure it against, that they are doing something and they can go back. 10
- Q. Now, I'd like to perhaps start considering the events of the collision day by trying to disregard for the moment everybody's recollection - of those, I should say, of the people who were navigating the two ships and see whether you are able to help me with whether there are other features by which in a sense one can test the version of events. Now, of course once a started point, and let us start on this, is the position in which - the position physically in which the vessels ended up, namely, the angle of blow, and my understanding of your analysis of the damage is that you feel that the angle could be somewhere between 50 and 70 degrees. 20
- A. Agreed. 30
- Q. And would this be a fair observation that the more likely figure is 50?
- A. I cannot be firm and I wouldn't like to guess within that bound.
- Q. What I suggest...
- A. Not only the damage you have to consider but also the angle things were thrown inside the boat do give you a certain indication of how much that vessel slewed. 40
- Q. The reason I put it that way to you is that in the statement that you prepared for this trial you said this, "A more likely explanation is that Flying Goldfinch was already reducing speed and was thus slightly lower. Evidence indicates that the engines of Flying Goldfinch were stopped just prior to impact. This explanation would not require initial hull contact thus the angle of blow would have to be at the finer angle of about 50 degrees." 50
- A. Yes, I believe I did say that, and I think in the other part there are contra indications that it could be broader.
- Q. I am not challenging the view that it could have been broader, what I am

suggesting to you is that it was and is your preferred view that it was a finer angle of about 50 degrees.

In the
High Court
of Hong Kong

10 A. If I was -- I must admit I am guessing because there is nothing firm about it, it does tend to lead more towards a finer angle not from the actual damage but the object inside the belvedere was thrown, as far as I can see, about 45 degrees, which shows that after the initial impact that would have become airborne and the boat would have turned underneath it. And that 45 degrees, even if you run back from 110 -- again it is difficult to know exactly which part of the cabinet hit which part of the chair.

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Cross-
Examination

(continued)

20 Q. But that piece of evidence together with the feature of the foil contact and difference in level, the question of speed lead you, do they not, irresistibly to prefer, not to exclude anything else, but to prefer 50 degrees.

30 A. There is another contra indication that when the foils first hit, if they were at a finer angle, one would suspect not to get that immediate straight cut down. One would expect to see a, if you like, a side tail to the top. It was well-established -- that fact.

Q. But you had all these points in mind, as I understand it, when you expressed your view in this statement that the more likely explanation leads to the conclusion that the angle must have been or would have been 50 degrees rather than 70.

A. It is on the 50 degrees side, but I wouldn't say it was --

40 Q. Yes, okay. There is nothing of course about the angle of blow which tells us the direction in which either of the vessels was going at the time of impact.

A. Nothing at all.

Q. And nor is there as such any magical or perhaps any significance in which, let me put it this way, in which bow was embedded in which ship.

A. In respect of?

50 Q. In respect of indicating what had happened before or what had gone on

A. No. There is no.

Q. If there is a collision, it is almost a matter of chance as to which bow contacts which side.

A. Yes, that's correct.

Q. Just to touch on one point on which you were

In the
High Court
of Hong Kong

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

invited I think more than once to make your comment. You recall seeing that the foils of the Goldfinch were indicating a slight port turn together with the rudder being -- sorry, 10 degrees to 11 degrees to port.

A. Yes.

Q. And you were asked to assume that port helm was applied before the collision and to conclude from that as to what the relative approach angle had been before the impact, and as you rightly explained, it depends how long that helm had been applied.

10

A. That's correct.

Q. If it had been applied, to take an example, a second before the collision, the relative approach would not have been, say, 50 degrees but 52 degrees.

A. That's correct.

20

Q. And again that of itself has no materiality in trying to consider the basic ingredients of the two approaches of these two vessels.

A. No, not last minute action.

Q. No. Can you help us about the foils of the Flamingo, how were they positioned?

A. The starboard flap appeared to be fully down. The starboard flap fully down, the port one, I seem to think, was just about in neutral.

30

Q. And the hydraulic lines had been damaged in the course of collision.

A. I didn't inspect the engineering side at all.

Q. I see. Mr. Tang told us that that indicated that the foils had been in that position at the moment of collision.

A. I have no comment on that.

Q. But as far as the Goldfinch is concerned, all her engines and hydraulic apparatus were still in working condition.

40

A. That's correct.

Q. And again maybe you can't help us but Mr. Tang has told us that it follows that one can't tell whether or not those foils were in that position at the moment of collision.

A. The position of the foils after the collision, when they are operable as long as the engines are running, means that they can be varied wherever you want to put them.

50

Q. Yes. Now the next thing I wanted to consider with you is where the collision happened. Now, I follow of course that when you drew your diagrams to show

various -- the consequence of various assumptions, it doesn't matter for the purpose of making these diagrams and the charts where the collision in reality happened.

In the High Court of Hong Kong

Prosecution's Evidence

A. That's correct.

Q. In any event, as I understand it, you were at pains to tell us that you weren't suggesting that these various diagrams showed how the collision happened.

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

A. That's correct.

Q. But if one is left in a situation where one does not know what the approach courses of the two vessels were, one of the pictures or pieces of puzzle which is of considerable help in assessing it is where in fact the two ships ended up.

(continued)

A. Yes.

Q. Now, as I understand it, you agreed that the position of collision as recorded in the two log books is probably about right.

A. My Lord, it is very difficult as I have access to the other statements and other information that is not before the court that allows me to be a little bit surer about the collision position than perhaps the gentlemen here or at least to indicate that it is substantially correct.

Q. But I must come back to that point in just a moment. Can I leave it for the moment on this basis that again in your statement and I am afraid that I have just lost the place, you made the observation that the position of collision as recorded was substantially correct.

A. Yes, I did make that statement.

MR. CORRIGAN: As recorded in what?

MR. STEEL: In his statement that was furnished to us before this trial started.

Q. Do you want to check that? It's your supplementary statement, page 4. paragraph 12.

A. I am not querying that. I am wondering whether I have referred to the position in the log books.

Q. Yes. "I concluded the collision position stated in the Official Log Books of the Flying Flamingo and Flying Goldfinch was substantially correct."

A. I am just wondering, Mr. Steel, whether this

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination
(continued)

is in the official log books.

MR. CORRIGAN: Certainly it is not in any log book from the Flamingo, only Goldfinch.

MR. STEEL: I apologize. I think it is, but I may be wrong.

A. I can't recall.

MR. STEEL: Mr. Corrigan is quite right. It is not in the official log of the Flamingo but it is in the official log of the Goldfinch. 10

A. In the Flamingo, does it give the latitude and longitude of the occurrence?

Q. No, for the Goldfinch you have co-ordinance, and in the Flamingo log there is no reference to the position of the collision. Well, let me put it this way then. You have at least formed this view that the position of collision as recorded in the official log of the Goldfinch is substantially correct. 20

A. Yes.

Q. Of course again there is a margin of error, we may have to come back to the topic, but to the extent that it may be based upon some observations taken after the collision, there will be a tendency for these vessels to move a bit to the north on the current. 30

A. I based my assumption that the position is substantially correct on the position of other vessels that had passed the area or were in the area, and as regards tide in the Pearl River estuary, it is an estuary, it is very difficult to look at the tide tables and say, "Ah, the tide will be --", depends on how much river water there is. It is very dangerous to say it must set because the tide tables say it will. 40

Q. Okay, we'll leave that for the moment. Coming now to look briefly please at one of the diagrams that you drew, the diagram in which you showed one vessel proceeding on a steady course and the other turning to starboard.

A. Yes.

Q. This is the one. It's got at the top 'constant helm to collision'. 50

A. Correct.

Q. Now, what this shows is based upon the assumption that the two vessels concerned

	are on parallel or reciprocal courses, they are going in precisely opposite directions.	In the High Court of Hong Kong
	A. That's right.	
	Q. And it shows that consideration of the turning circle data reveals that if one of the vessels alters course by 70 degrees, it will come into collision with the other ship at that angle when the vessels were passing, would otherwise have passed about 540 feet apart.	<u>Prosecution's Evidence</u>
10		No.4 P.W.19 Allan Charles Pyrke Cross- Examination
	A. That's correct.	
	Q. That's a fair description.	
	A. Yes.	(continued)
	Q. And what it shows upon those assumptions is the last 20 seconds or so of the approaches of these two craft.	
20	A. That's correct.	
	Q. If, again I invite you to assume this, if you were asked to make the assumption that the one has done a turn only turns 50 degrees, then it would be necessary to move the straight line of the other ship to dissect the curve at the 50-degree line.	
	A. That's correct.	
30	Q. And it would follow that if one did that, the ships are shaping to pass at less than 540 feet.	
	A. Somewhere in the region of 300....	
	Q. Yes, they would be shaping to pass at about 300 feet. Just one last question on it. If in fact the vessels are not on reciprocal courses but are on crossing courses, I don't use that as a term of art, but their courses are intercepting, then the greater the difference between the two course lines the narrower the passing distance. Have I explained myself clear enough?	
40	A. No, can we take it slowly because crossing situations are difficult. The greater the angle...Perhaps you can show me on the board.	
	Q. Now, so far we have agreed, have we not, that if this ship turns 70 degrees, it shows that she had not done so, the ships would have passed 540 feet apart.	
50	A. That's correct.	
	Q. But she had altered 50 degrees a little earlier, say, here.	
	A. Yes, which makes it 300.	
	Q. And so if the turn had never taken place, the passing distance would have been 300 feet.	
	A. 300 feet.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- Q. I want you now to assume that this ship does not turn 50 degrees but a little bit less, say, 45 degrees, for the sake of example, but she had started on a course which was not reciprocal to this but was crossing at 5 degrees, so the part of the 50-degree angle is made out by the crossing course. It follows in that circumstances that if she had continued straight on, the passing distance would have been a little bit less. Do you follow my point? 10
- A. The passing distance would have been less and also you are -- the approach would have come in with a - the one angling in, would have a....
- Q. I am sorry?
- A. Well, if you are getting a closer and closer passing distance on the starboard side of the one coming down the board, if you only draw the last little bit, it makes it seem as though the boats are starboard to starboard. They are at that time. But if you backtrack, the vessel who is coming in on the course is showing... 20
- Q. I follow that. I will come to that in a moment, but we are talking about the last 20 seconds at the moment. The more this is crossing, the narrower or the less the passing distance. 30
- A. Yes.
- Q. And the less the angle of blow, the less the passing distance on all these assumptions.
- A. Yes.
- Q. It must be right.
- A. Yes, the less the angle of blow, the less the passing distance, yes.
- Q. A passing distance of 300 feet is too close 40 for hydrofoils flying.
- A. In my opinion, yes, particularly on a starboard to starboard passing.
- Q. Now, I want to turn to something else. The Goldfinch was outward bound from Macau and she came to a position somewhere north of Ching Chou.
- A. Yes.
- Q. Eventually.
- A. Right.
- Q. Now, it appears, does it not, from the 50 deck log of the Goldfinch for the previous days that she used to pass about a mile off.
- A. The position in the deck log is one that is guessed by the deck officer possibly at the end of the trip.

Q. Yes. So it may be that it is a strange feature, isn't it, of these logs that the radio officer does not record any distances. They are somehow completed later.

In the
High Court
of Hong Kong

A. Yes.

Prosecution's
Evidence

10 Q. Well, let's leave that aside then for the moment. Captain Coull had said in the statement that the Flamingo, when he saw her, saw about 1 or 2 miles north of Ching Chou.

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

A. Captain Coull?

Q. Yes.

(continued)

MR. CORRIGAN: You said Flamingo.

MR. STEEL: I am so sorry.

20 Q. Captain Coull recollects seeing the Goldfinch about 1 to 2 miles north of Ching Chau.

A. I cannot recall.

Q. Just assume I am right about that. Assume also that Captain KONG puts the position as 1.3 to 1.4 miles north and assume also that Mr. George Young passed Ching Chou at a distance of just over a mile and had the Goldfinch half a mile further north of it.

A. Can I have a look at the chart?

30 Q. Yes, sure. I would like you to do that.

A. My Lord, I am in - if I assume what is being said, it's only a supposition because again, I must reiterate, I have other information about the position.

40 Q. Perhaps we'll turn away immediately there from the topic we are facing and touch on something else which is beginning to trouble me. Captain Pyrke, I gathered you were appointed by the Director of Marine to carry out an inquiry under Section 51 of the Merchant Shipping Ordinance.

A. That's correct, yes.

Q. That appointment was made on the 12th of July?

A. That's correct.

50 Q. And in pursuance of that appointment, do I understand that you took statements on oath from various witnesses?

A. That's correct, yes.

Q. Did you take statements from all those who were in the wheelhouses of the two vessels concerned?

A. Yes.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

- Q. And did you also take statements on oath from passengers and seamen on board the two ships?
- A. Yes.
- Q. And did you also take statements from witnesses on other ships?
- A. Yes.
- Q. And did you, I suppose, collate documentary material in all the log books?
- A. Log books of all other vessels that day - 10
that were keeping log books in that area.
- Q. And what was the purpose of this? What were you going to do with all this information?
- A. I am bound when I am appointed to conduct a preliminary enquiry, I have to report to the Governor. This, of course, goes through the Director of Marine and through Legal Department and it is an internal enquiry to decide whether a formal 20
investigation should be held.
- Q. And did you make that report?
- A. I submitted a preliminary report in the interest of speed. I had done it before. I interviewed, for instance, the sailors, but I had substantially completed the report to date although there's obviously other lines of enquiry I can keep on following. For instance, trying to get hold of all of the passengers is a 30
monumental task. I haven't managed to get hold of all of them.
- Q. And as I understand it - I do not want to know what's in them, but as I understand it, is this right: that the report is intended to furnish the Governor or the Director of Marine with the material that you managed to collate and, no doubt, that is affixed on or annexed or appended to, and does it also contain - again, I don't 40
want to know what it says - some expressions of view as to what had happened?
- A. Normally, in a preliminary enquiry, you do try and give an indication on the evidence that you have, on its straight face value as to what's happened. It is not for the enquiring officer to speculate which bit is right, which bit is wrong, no.
- Q. But you obviously try and spot, is this 50
right, those features of the evidence which you feel require further investigation?
- A. You try and get evidence to collaborate, to fit together like a jigsaw. I mean, you never do, but --
- Q. But you are trying to complete the jigsaw?
- A. You are trying to complete the jigsaw.

Q. And you are also trying, I suppose, to give an indication to the Governor as to whether it was an appropriate case to order a formal marine investigation?

In the
High Court
of Hong Kong

A. When you are doing an enquiry, you have to keep a totally unbiased mind. As you well know, the purpose of an enquiry is usually to prevent similar accidents. It is not specifically the function of the enquiry to say that somebody has been professionally negligent.

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

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Q. But if a marine investigation or formal court is appointed, it, presumably, has disciplinary powers?

(continued)

A. That is the function of the court, not the person doing a preliminary enquiry.

20

Q. I take the point, but that is one of the powers?

A. That is one of the powers.

Q. And the power, presumably, to suspend or whatever, the tickets of competency of people involved in the collision if it was felt desirable?

A. If the court finds wrongful act or neglect or fault in professional standards, yes, the court finds.

30

Q. So am I right in thinking that one of the difficulties you have with us, if I may put it that way, is that you have learned quite a bit that we just do not know.

A. This is fair, and I think to make it quite clear, that I am talking about things like positions, that there is information which professionally leads me to have certain conclusions about positions and about times. If I may say, it puts me in a very difficult position.

40

Q. Well it puts me now in a very difficult position too.

MR. STEEL: My Lord, I would like to make an observation about the situation. I don't really mind if it is in front of the jury or not.

50

I am very troubled with the situation now. I am faced with - this is not the slightest criticism of Captain Pyrke, but he has been put in a difficult position too.

Your Lordship has heard the position, as I understand it: Captain Pyrke has been taking a variety of statements on oath, obtaining a large amount of other material

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

which is not merely not before us but, as I understand, couldn't be before us because it is material obtained in the course of the preliminary enquiry under Section 51, and he has begun, for those purposes, to fit the jigsaw together in his own mind on material that I don't know, or in part I don't know, and I have to also bear in mind that Captain Pyrke - and again this is not the slightest 10 criticism of Captain Pyrke - has briefed Insp. LING and, according to Insp.LING, has has passed on what Insp.LING thought was suspicious again which we know nothing about.

I am very concerned as to whether the evidence Captain Pyrke is giving is admissible at all. May I contrast it with a - to take an extreme example, 20 calling at a retrial the judge from the previous trial. I do not say, of course, that Captain Pyrke has gone so far as to make a formal judgment about these matters, but he has obviously begun to try to form a view which we know nothing about, and I am embarrassed by this and I find it - really I am in your Lordship's hands - but on the face of it, I would submit that the position that Captain Pyrke 30 finds himself in puts me in representing Captain KONG - and I suspect my learned friends as well, representing the respective defendants - in an impossible situation, and I would invite your Lordship's directions on this, but I would submit there must be the severest doubts about the admissibility of Captain - I don't put it on the basis of impartiality - that the desirablity of Captain Pyrke giving expert evidence at all.40

COURT: Mr. Aiken, have you any views?

MR. AIKEN: My Lord, I mentioned, I think, this yesterday and I support entirely with what my learned friend Mr. Steel has said.

MR. CORRIGAN: Likewise.

COURT: Yes, Mr. Lucas?

MR. LUCAS: May it please you, my Lord. As I understand the position, first of all, let me make it clear, I understand my learned friend Mr. Aiken's problem of 50 impartiality; it is quite a different

proposition. My learned friend associates himself. He is talking of impartiality. I don't think my learned friend Mr. Steel is suggesting anything of that sort in relation to this witness.

In the
High Court
of Hong Kong
Prosecution's
Evidence

10 My understanding, my Lord, is that Mr. Pyrke has taken a number of statements on oath from witnesses. Those same witnesses have given statements to the police and are, in the main, in the depositions. He has drawn certain conclusions from statements he took at an early stage prior to the police being briefed as it were and coming into it after he made his preliminary report, but the factual situation, so far as I understand, remains the same.

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No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

I don't know, but perhaps, just to clear it up with Captain Pyrke, he took statements from the witnesses giving evidence in this court, the defendants, the other ships' officers and had access to the other logs all of which have been part of the committal bundle.

WITNESS: That's correct.

30 MR. LUCAS: I don't think, as I understand it, there's any other statements or relevant statements or documents that aren't before the court.

WITNESS: Only as regards positions, and it is this side, if you like the marine enquiry side of positions and times, that and which I think, if I may say, my Lord, I understood was not going to be the basis of anything to do with this. It is not important. It is that side.

40 MR. LUCAS: Captain Pyrke, in so far as I understand the position, having interviewed other officers on other ships and seen their logs, has come to the conclusion that the position about the crash is as indicated in the log of the Goldfinch. He has a query in relation to times which has been raised in any event during the course of this trial. He has drawn certain conclusions of his own which are not matters related to this trial - unless my learned friend wants

50 them; he had not been asked about.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

The technical difficulty, the only technical difficulty is this: in so far as those statements are concerned, having been taken on oath, they cannot be used in this enquiry. That is why the police had to take a second statement. Those statements remain the statements of Captain Pyrke. They have been released to the individuals concerned if and when they want to, and questions by those individuals if they wish to do so, they can ask, but I don't see the difficulty suggested by my learned friend as if there has been a far more extensive enquiry than we are conducting at the moment. There has not been one.

10

The evidence that you hear - I have not called a number of witnesses who are available for the defence. Those relating to positions and times which, for my purpose, I do not consider of any great moment at all, certainly in relation to the collision - those witnesses are available, statements have been taken from them and can be called by my learned friends if they wish.

20

My understanding - and Mr. Pyrke will, I hope, correct me if I am wrong - that area is the only factual area where he may or may not have ventured an opinion. Where there is no evidence in this court because the other stuff hasn't been put in and his conclusions are not for him while giving evidence, they are for the jury, and certainly I sincerely hope no one is proposing to ask that particular question.

30

MR. STEEL: My Lord, the difficulty is this: Captain Pyrke tells us that he has seen and used certain material to form views about times and positions which we have not seen. I necessarily, in the proper conduct I hope of the defence of my client, would wish that the question as to whether he is guilty of any offence should be tested against what actually happened, and it is inevitable that in doing that, one has to investigate matters of times and positions, and that is exactly the exercise I am about to or partly embark upon with Captain Pyrke, but as I embark upon it, Captain Pyrke finds himself embarrassed because in

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answering my questions, he has to have regard - he can't just exclude from his mind material that he has obtained from elsewhere which is not admissible and is not available.

In the
High Court
of Hong Kong
Prosecution's
Evidence

10 I would have thought the notion that somehow these defendants could be tried for this charge, without having regard to reality, to what happened, when and where, as an extravagant measure, and certainly it will be part of my case to deal with those matters and I make this point at this stage simply because I thought that I was embarrassed, because Captain Pyrke is embarrassed, and that is the truth.

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

20 I do not see how I could sensibly go on debating these matters with Captain Pyrke when we are, to some extent, shadow-boxing with each other because he knows things that I don't know and will formulate views necessarily because he can't exclude them somehow from his mind as if they never got there about the material that he has seen and the piece of conditional, provisional conclusions that he has begun to take on it. My Lord, that is the difficulty.

30 COURT: In respect of position, I understand Captain Pyrke agrees substantially is the position given by Captain KONG in his log. He says, quite fairly, well, in agreeing with that, I have seen certain material which is not in evidence here. If he said, "I disagree with it because I have been certain material", then I can understand the difficulty.

40 MR. STEEL: The point we have got to, my Lord, is not that, but where the ships were before they got to a collision and I can't consider this case in isolation in the sense of just taking a position of collision at random. I must look at - and I was about to embark with Captain Pyrke on the discussion - as to where the Goldfinch had come from, and I was going to go on inevitably to discuss where the Goldfinch had come from and how they had ever got to the position which - it is common ground, this is - was where they ended up.

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Now it was in those circumstances I was just embarking upon the position of the

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

Goldfinch a few minutes before the collision that Captain Pyrke finds himself in a difficulty. There isn't just the collision position. There are other positions. Where was the ship at 9.22? Where was the Flamingo at the same time?

COURT: Can Captain Pyrke give evidence on that matter?

MR. LUCAS: No, my Lord.

COURT: He is called as an expert.

10

MR. STEEL: My Lord, he cannot tell us where they were, but if I was starting to put some assumptions to him and he was unwilling to, in a sense, work on those assumptions because he is saying to me, "Well the difficulty with that is that there is material that I have which is inconsistent with the assumptions you are putting to me," so he is throwing back at me the assumptions I'm making on the basis that it is an unhelpful exercise because they are not legitimate assumptions.

20

All I was inviting the witness to do is to consider this vessel starting off with the position 1.55 miles north of Ching Chou.

WITNESS: My Lord, could I perhaps give you one of my difficulties?

COURT: Yes.

30

WITNESS: I have said in my statement that the position is substantially correct. I have made no mention of time, and the difficulty that I find myself in is that from the material that I have, I do not think that the collision was at the time as is commonly recorded, 0925/0926.

MR. LUCAS: Can Captain Pyrke go on a step further: that can be ascertained from the bundle, from the various documents? You've already said that --

40

WITNESS: Yes.

MR. LUCAS: -- in relation to 9.26. You see, my Lord, I'm in the same position as a psychiatrist who is called to examine someone. He examines all sorts of people in the context and comes to a conclusion. Captain Pyrke, if a question is put to him,

"assume X, Y and Z", he must assume that and answer the question.

In the
High Court
of Hong Kong

WITNESS: Yes.

Prosecution's
Evidence

10 MR. LUCAS: No difficulty with that. My learned friend is perfectly entitled to say to him: assume that it was X miles away from Ching Chou, wouldn't this be the position? And he must answer that question based on that assumption; no more and no less. This is not a novel situation. My learned friend couches his question in particular terms, assuming A, B, C, and D, what is it, then that can be done.

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

20 The question of - and it relates only to questions of time - the time has already been - by Captain Pyrke in his examination-in-chief, an indication that the time cannot be correct because of the previous log books. This is not new: that there is a disagreement as to time. There is a disagreement as to - there is no disagreement as to position. Captain Pyrke in examination-in-chief has said he disagrees as to the times. My learned friend is entitled to ask because of it, he is an expert, Mr. Pyrke, to assume all sorts of situations as we do in cases dealing with psychiatric problems and ask him to draw conclusions from those.

30 If you ask a psychiatrist, in the course of determining insanity and diminished responsibility, questions beyond those assumptions, then one can find himself in difficulty with the answers one gets. Hearsay then comes in and may come into play, but if my learned friend's question was, as I understood it, assume A, B and C, Mr. Pyrke quite properly said, "I have information". The answer to that is, "Please, Mr. Pyrke, ignore that information, whatever information it may be. Confine yourself to answering the questions." If you have documents in these bundles which contradict that assumption, then it is for me in re-examination to raise it if I think proper and that is the end of the matter. We do not, at the end of the day, suddenly exclude an expert who happens to have a little bit more knowledge on a particular

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

subject.

MR. STEEL: The point I make is that for an expert in the case to have already made a preliminary report for another purpose on material that we've never seen is prejudicial to the defendants.

COURT: You say, Mr. Steel, as you agreed, Captin Pyrke can't give evidence as to what happened or where it happened or how it happened in vacuum. He can only say, on the basis of certain assumptions which you put to him, "from that, as an expert, I would come to certain conclusions." Now are you saying that he can't do that properly if in fact there are certain other matters or other facts of which he is aware and of which we are not, which would make that conclusion wrong?

10

MR. STEEL: Well he himself says that the task is difficult. So how am I supposed to say that the task is easy?

20

Now my Lord, it is - and since the point that I was on is simply asking him to make some assumptions about a position where the Goldfinch may have started from for the purpose of investigating this casualty, the witness is in a difficulty that, as he expressly says so, he thinks that the assumption is not a very helpful, useful or reliable one. That is a point which is made in the sight of and hearing of the jury and is a point that I can't deal with. So I am not raising the difficulty myself.

30

I am saying that the witness himself is saying that he is in a difficulty and I respectfully submit that the difficulty is potentially prejudicial to the defendants. That is the point I felt I must raise.

40

COURT: Yes, Captain Pyrke, that is the position? You find yourself unable really to, if counsel says to you, "assume or take the following proposition," you find difficulty in giving your opinion on that because in fact you are aware of factors which make the proposition itself unsound?

50

10 WITNESS: I can give, I trust, an impartial line of argument if I am told to assume A, B and C. The fact that I know the or feel that the assumptions may be incorrect would not stop me giving an opinion based on those assumptions, but as Mr. Steel says, the trouble is that he is using assumptions which may well mislead the court.

20 There is, I might add, my Lord, quite a bit of evidence in front of this court already that shows the timings are suspect. I could almost - I mean, it is not for me to prove it but certainly if somebody else put their minds to it, they could perhaps come up with the - could see the error of the times or the likelihood of an error in the times. I don't know how far --

COURT: What was in fact the question that you were putting to --

30 MR. STEEL: Apparently my learned friend does not have a note. The question I put to the witness was "Please assume that I am right in saying that" - wait a minute - I was asking the witness to assume that I was accurately telling him (a) what Captain Coull said and (b) what Captain KONG said and (c) what Mr. George YOUNG of the Sao Jorge said about the position of the Goldfinch off Ching Chou and my learned junior does not have a note I think of the answer, but my recollection was - I'm sure others will have it - my recollection was that the witness said that that was a difficulty because he would accept that, but he knew that there was other material which was inconsistent with the propositions I was putting to him. Now that is embarrassing for me.

40 MR. LUCAS: I wondered if we could have the questions from the shorthand writer.

(Court reporter indicates that the relevant questions are in the record of the previous reporter)

50 COURT: Captain, you feel you could give expert opinion on the basis of assumptions which are put to you even if you feel that those assumptions may not necessarily be correct or

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

may not be a correct statement of
what in fact the position was.

A. Yes, my Lord, if the assumptions are
put to me, I would answer on the
assumptions, not whether --

MR. CORRIGAN: That is no more and no less
than what Captain Pyrke has been doing
in answer to my learned friend for the
prosecution.

WITNESS: Yes, sir.

10

MR. CORRIGAN: He has been asked a series of
assumptions, many many of which I rather
gathered myself, he had serious doubts
about whether they were at all appropriate,
but at any rate, the answers were quite
objective, and is it really any different,
with respect? The difference is --

COURT: If there is no point taken of
impartiality, then I think on that basis
Captain Pyrke can give evidence simply
on the basis of assumptions put to him.

20

MR. LUCAS: My Lord, my learned friend has
made it clear that the only area that
is in any way in question is the time and
that is in question in so far as this case
is concerned in any event. This is not
new ground. Nothing new has happened in
the last 15 minutes.

What has happened is that in the area
as to time, this witness has indicated
that - has already indicated in his
evidence-in-chief that he had some doubts
as to that, but he says, "notwithstanding
that, I am prepared to go on answering
questions on assumptions just as I have
been doing throughout this trial."

30

COURT: Yes, I think so. I think we can
proceed on that basis. Mr. Pyrke, if
you could please base your opinion or
your answers on the assumptions given to
you.

40

XXN. BY MR. STEEL (continues)

Q. If the Goldfinch was in a position 1.55
miles north of Ching Chou --

A. Yes.

Q. -- and then steered a course towards the
position of collision, what would it be?

- A. 093.
- 10 Q. If the only alteration that the Goldfinch made was an alteration of 50° immediately prior to the collision, her general approach, of course, would have been effectively the same. The offset at 300 ft. would make no material difference.
- A. Yes.
- Q. If the Flamingo steered from a position south of Fan Lau Light in the middle - sorry, in a position in the sense opposite the middle of the westbound lane of the traffic lanes --
- A. Yes.
- Q. -- to the collision, what would her course be?
- A. Between 269 and 270, just comes in the middle.
- 20 Q. Those courses are plotting courses?
- A. Only 3° between the course --
- Q. Well then let me start the question again. Assume that there is a risk of collision, which is the right rule, the crossing rule or the end-on rule?
- A. I would take it with 3° that they are on reciprocal or near-reciprocal course and would take it as the end-on-rule, at 3°.
- 30 Q. If it was 4°?
- A. Again, I would take it as end-on.
- Q. If it was 5°?
- A. This is getting into the very difficult grey area as to whether you treat it as end-on or a crossing situation.
- Q. If I may say so - don't take this rudely - that you are having to give some pretty careful thought as to which rule you are expecting these mariners to apply in circumstances which are not substantially different. It is not easy, is it?
- 40 A. It is not easy.
- Q. If that was the position and if the end-on rule applied, both ships should go to starboard.
- A. That's correct.
- Q. If that was the position and the crossing rule applied, the Flamingo should keep out of the way of the Goldfinch?
- 50 A. If the crossing rule is applying, assuming ranges are not sudden, yes.
- Q. What is the course of the westbound lane?
- A. 263.
- Q. So to get to the position of collision, the Flamingo has got to alter course to starboard after emerging from the traffic lanes?
- A. If she maintains foilborne mode, then she

In the
High Court
of Hong Kong

Prosecution's
Evidence

NO.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- will have to alter course to starboard.
- Q. I don't follow the distinction.
Supposing she proceeds on her hull?
- A. Then she will be in a strong tide-rip off
Fan Lau and may be carried north.
- Q. What do you say the tidal current is,
firstly, in a position between Niu-tou
and Fan Lau?
- A. I have explained before the difficulty
of judging tides from tide tables in 10
a river estuary. I could only give the
opinion that I would expect the tide to
be flooding at about 2 knots to the north,
but I would reiterate this depends upon
the amount of water in the Pearl River
catchment, how much fresh water there
is coming down and partially also based
on personal knowledge of the area.
- Q. So what you are saying is that the Flamingo,
if she was foilborne from Fan Lau onwards, 20
it must have altered course to starboard
at some stage.
- A. Yes.
- Q. And if she was not foilborne all the time,
she may have been taken by the current to
a position which accounted for the fact
that the collision position is north of
the line out of the traffic lanes.
- A. Exactly.
- COURT: I didn't quite get the - the line of 30
course you gave from the traffic zone of
269/270, that was from the middle of the
traffic zone?
- A. It was from the middle of the westbound
lane.
- Q. Let's leave that picture aside for the
moment. I want to leave aside for the
moment the story of Captain KONG and the
story of Captain Coull. Just leave those
aside. 40
- MR. LUCAS: My Lord, I'm sorry to interrupt,
but lines are being drawn which are --
- A. I have not drawn any lines. I just
measured.
- MR. LUCAS: But lines have been indicated, as
I understand. I wondered could that thing
be marked in some way?
- COURT: It might be a good idea. Could you mark
on that where you think the collision
point that you have been basing your 50
evidence on concerning the --

A. I had already marked this particular chart myself the other day. That is all. What I haven't marked are these courses that we are talking about.

In the
High Court
of Hong Kong

COURT: We don't need the other courses. You've marked the collision point?

Prosecution's
Evidence

A. Yes.

No.4

COURT: It's a cross?

P.W.19

A. It's a cross with C/P written against it.

Allan
Charles Pyrke
Cross-

Q. I must ask you why you say the collision position is where you say it is.

Examination

A. On the evidence in front of this court, George YOUNG of the Sao Jorge has recorded his course from Macau through to Fan Lau based on observed radar distances of and times which he himself kept. He passed the collision position between 0925 and 0926.

(continued)

20

Subsequently, he passed on his port side to the north of him an HMH PT-50. Previously, when he left Macau - and the time is in his log book - he said he saw an HMH PT-50 in that channel. The PT-50 was ahead of him. He also stated that he overtook that PT-50 between 0913 and 0915.

30

Given the times that George YOUNG has plotted on this chart, it is possible to get an indication of where these PT-50s were. He didn't identify them beyond saying - and I cannot recall - you'd have to look up - I think he did specify they were both HMH PT-50s. He passed the one going to Macau to his port side. He overtook the other one and it was also on his port side.

40

Q. I still don't understand why that piece of information alone gives you any assistance at all in identifying where the collision happened.

A. If this course line --

Q. Sorry, which course line?

A. -- the course line that George Young drew on the chart. He is seeing a PT-50 to the north of him, he is seeing another PT-50 back here to the north of him. Certainly, one of them, the PT-50 off Fan Lau, was comparatively shortly before the collision.

50

Q. I follow that this would tell you and give independent evidence that these two hydrofoils were somewhere in the vicinity of Niu-tou and Ching Chou shortly before the collision. Could I ask you again: how

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- does that material allow you to form the view that the position of the collision in the co-ordinates suggested in the official log book of the Goldfinch is precisely where the collision happened?
- A. I take your point, Mr. Steel. That evidence in itself just tells me that it is, assumably, somewhere to the north, assuming that they did not alter course - by itself. 10
- Q. And if he passes, if - I can't remember if that's right - he passes the Flamingo at a range of, say, 6 or 800 ft., port to port, how does that help you to say how far to the north or south of his course - how far to the north of his course line the collision happened?
- A. As a bare fact by itself, it doesn't.
- Q. Then I ask you again the question: why do you say that the position recorded is substantially correct? 20
- A. I must say that it is an examination of log books of vessels in the area, also of position of another craft, the tug and the tow, in the area at the time and the time that it took the tug and the tow to reach the collision position after it had skipped the tow.
- Q. Well I am back in a difficulty.
- A. The log books I am referring to are the 30
log books of rescue vessels that were on the scene within minutes and recorded positions.
- Q. Well I haven't got this material.
- A. I realize that, Mr. Steel.
- MR. CORRIGAN: My Lord, within the depositions there is a witness whose name is on the back of the indictment, he was never called or tendered, a Mr. IP Ting-on at page 104 of the depositions, together with an exhibit which is the only document 40
which purports, so far as we have been made aware, to have arrived at the scene of collision some time after the collision and to have made a definite fix on the island of Niu-tou, given the bearing and distance of, which he says are approximate but which, in latitude and longitude terms, tallies exactly with the entry made in the Goldfinch official log. It is all there. Why the evidence hasn't been 50
called I don't know.
- MR. STEEL: My learned friend is quite right.
- MR. CORRIGAN: The interesting aspect of it is, of course, the time at which this vessel

Flores arrived at or about the vicinity and took that fix on that position which, I suppose, begs the whole question again of what time the collision occurred and therefore the reliability of the position fixed, which appears to have been over a quarter of an hour after the evidence of collision took place that we have in this case before members of the jury. At any rate, there is a position fixed.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

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MR. LUCAS: There's also one in the Condor, my Lord.

(continued)

COURT: This is Mr. IP, page 104?

MR. CORRIGAN: My Lord, yes, page 104. The interesting thing about this evidence, of course, is - well it is not evidence, but it is in the depositions - the time at which he says he saw distressed signals and made his way over there and so on and so forth, arriving - top of page 105, your Honour will see - as late as 9.40, that's when he arrived. He took a fix. It's all detailed in his log book.

20

My instructions were that everybody else eventually got hold of the exact latitude and longitude, so to speak, from him. He is the key to the whole thing, from my instructions.

30

MR. LUCAS: My Lord, I'm sorry, my Lord. Perhaps this witness doesn't realize, before the court he is not actually called, and part of the depositions are the deck logs of the Albatross, the Condor, the Egret, the Ibis, the Sandpiper, the Skimmer, the Sao Jorge, the Flores. All those documents are part of the depositions.

40

- Q. Let me ask the question again: why do you say the collision happened in this position?
- A. As I said, the position is substantially correct.
- Q. All right. Why do you say it's substantially correct, in your reasoning?
- A. The fix taken by the Flores, the position of a tug which is --
- Q. Let's take it in stages. The position fixed by the Flores, 120° --
- A. 1.5 from Niu-tou.
- Q. 1.5 miles from Niu-tou. Yes, that was taken some time after the collision.
- A. Yes.

50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- Q. How long? Nobody knows. All right, you don't know. So that's one piece of evidence, wasn't it. What is the next piece that you say helps - assists in fixing this as being substantially correct?
- A. A tug boat was in the area.
- Q. What's its name?
- A. Liu - I'd have to look up - Liu Hing something. I can't remember the name of the tug. I'd have to look up my own records. Liu Hing No.2 I think it was - which I think assisted me, somewhere in the log books assisted me. 10
- Q. That is one of the log books?
- A. No, it is not one of the log books, I don't think here, but it might mention it in the narrative of who was rescuing afterwards. It might mention the name. I think it is Liu Hing No.2 20
- Q. The original material, you say, is not here, or a copy of the original.
- A. The Liu Hing does not keep a log book. She is a --
- Q. Well I needn't press you any further, the material just isn't here. What is the next piece of evidence that you say assists you in saying that this position is substantially correct?
- A. Apart from the statements of the witnesses themselves, there is no other evidence that I can recall. There is - obviously, you are trying to guess the tide, how much they sweep to the north on other positions that were given at varying times. 30
- Q. One thing one can be fairly certain about is that if there is an error at all, it is an error that it is too far to the north, is that right? Sorry, I didn't express that very clearly. What I meant is that the collision position must be, if anything, south of the position recorded by the Flores. 40
- A. If it is (pause) - the tides in that area are difficult --
- Q. (interrupts) I say "must" because the tide is almost certain to have pushed these crafts after the casualty to the north.
- A. If the tide is doing what it is supposed to do - and I would add, Mr. Steel, that in this estuary, it is difficult to predict exactly what the tide will do, dependent on the amount of water that has fallen up river - yes, the position should be somewhat to the south. I suppose it begs the question: how much is substantial. 50
- Q. Right, if the tide is setting, is it not, in ten minutes, these crafts would have

moved a thousand feet.
A. If it is setting.
Q. That is not an absurd thing?
A. No.
Q. At the time.
A. No.
Q. And if the position of the collision was
materially to the south of this Flores
position, we get quite different course
lines on the assumptions that I was
putting to you earlier.
A. Yes.
Q. And we may get quite difficult
regulations which are applicable to the
circumstances in a reach. It may be
now no longer an end-on case: it may
be a crossing case.
A. It is very difficult to correlate navi-
gational positions to then try and work
out whose duty it is to keep out of the
way under the collision regulations which
is a visual rather than a navigational
matter, and these vessels are going at
very, very high speed, 54 ft. a second.

MR. STEEL: My Lord, I see the time. I am
going on to another topic.

COURT: Do we have a typed copy of the entry
in the log book of the Flores. There is
quite a large, long entry which is, on my
copy at any rate, is difficult to read.
It is "0934 Orange distress smoke signal
sighted off Niu Tou and course deviated
to head for the scene 0940..." and then
it goes on.

MR. LUCAS: This is in --

COURT: -- The Flores deck log.

MR. LUCAS: No, my Lord, there is not. But, in
the context of that it might be of interest
to your Lordship to look at also the Skimmer,
which is Exh. P34.

MR. STEEL: No, I object.

MR. CORRIGAN: With respect, my friend says
gayly all these things are in the depositions
and before the court. They are not. None
of these matters are evidence in this court;
none of them. I mentioned one document
trying to be helpful.

COURT: They are not at the moment.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

MR. CORRIGAN: Yes, they might be introduced.
There are ways to do it.

MR. LUCAS: They can be introduced by the
defence.

MR. CORRIGAN: If my friend doesn't wish to
try to prove the position of the
collision according to his evidence, it
is very surprising, but the Flores
document certainly I would welcome. It
could be introduced under the terms of
section 65c.

10

COURT: The Flores log is P36.

MR. LUCAS: My Lord, with respect, these
documents have been produced by Mr.LING
and have been marked as exhibits. Mr.LING
took and put in - and they have been
marked by your Lordship's clerk - piles
of documents including the logs of these
various boats which are available as
exhibits. They have been taken by Mr.
LING and produced. No one is giving
evidence about this because it is part
of my case. If my learned friend seeks
the documents, they are there. If your
Lordship wishes them to be typed, some
passages typed out, so that it becomes
clear, by all means.

20

WITNESS: Also, my Lord, if I may, I have
been asked questions about other log
books. I obviously cannot pull out my
preliminary enquiry report and start
looking up which boats were there. It
may well be if I went through the log
books - I have an idea the Corvo was in
the area and also gave a position. I
would certainly have to look through
all the log books to answer fully as to
what other bases I was using for saying
the position was substantially correct.
I would stress the word "substantially".

30

40

COURT: It does seem to me that the question
of the course which the two vessels
took, one after leaving Macau and one
after leaving Fan Lau, to the point of
collision must be material, and if we
can establish as near as possible as to
where the point of collision was, then
of course that is important.

MR. LUCAS: If you will recall, Mr. George from the Sao Jorge gave evidence that when they left his boat was slightly to the north. We sought to find out from him which direction he was going and he said towards Lantao, and that is the only evidence which is available, apart from log books at the end of the day, a series of log books which fix the position after the event. And we have civilian witnesses and other witnesses who say when the Flamingo left it went in a straight line and we have the log books. Now all these documents are here, available, are being put in.

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

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To draw a course, we sought through Mr. George to try and get some sort of - if you recall, some sort of bearing, and we couldn't do so, so he simply said, in general terms, it was to the north of me heading towards Lantao. Now that, of course, makes it impossible, so far as we are concerned, to draw a line of course.

COURT: It does seem to me that if you have a deck officer of the Flores who says that a certain time, 0934, he saw an orange smoke signal and he took a bearing on it, I would have thought that must be helpful. It is not evidence at the moment because it is simply a statement in the log.

MR. LUCAS: It may be not. These documents are available and before the court if anyone needs to fix that.

COURT: Well it is a matter for the Crown, but if we are considering as we are I think inevitably, the courses all these vessels took, as to whether it was an end-on situation, crossing situation, who, if anybody, was under a duty to turn, which direction, then it seems to me --

MR. LUCAS: It is the Crown case, my Lord, that that cannot be done. The Crown case is that this boat was seen leaving north of the Flores at the beginning of his trip. We are unable to say the course taken. We are able to say through Captain Pyrke, through documents - not through some mysterious pondering - through documents available here, the approximate position of the impact. We have no evidence, so far as we are concerned of a course, the course taken by the Goldfinch to reach that point;

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

there is no evidence.

COURT: But if you know where the point is,
you know where the vessel started from.

MR. LUCAS: Nobody does because if the boat
was going slightly north when it left
Macau, then it depends on where it
turned the course. I'm sorry, I am no
expert, but it seems to me that, with
respect, that if the things goes on for
15 minutes longer and then turns south,
then the course is certainly quite
different from --

10

COURT: You just said your civilian witnesses
say the course is straight, they did
not notice any change of course.

MR. LUCAS: The evidence is not in dispute,
so far as I can see it, until this
moment, that the Flamingo went on a
straight course from about Lantao. No
one seems to suggest that it did not go
in a straight line. In so far as the
other boat is concerned, we cannot fix
a course because we don't know how far
north of it.

20

I'm sorry, my Lord. One doesn't need to
be a navigator. You do have to know
where something starts or a turn starts
in order to determine what the course
is, and if you have vague evidence which
says when this boat left here, it was
going to the north towards Lantao and
an impact later on, with the greatest
respect, fixing that spot - one does
not fix a collision point if one doesn't
have the necessary course to follow.

30

COURT: Perhaps not necessarily, but it
certainly is a help.

MR LUCAS: Provided one knows where it helps.
There is the expert in the box. Perhaps
I'm wrong, but on the information I have
available and on my instructions one
cannot do that.

40

COURT: As Captain Pyrke is saying, I have
been using it in order to fix the
collision point as he has done, I have
been using information contained in
particular in the Flores log book, is
that correct?

COURT: A combination of Flores and Corvo.

In the
High Court
of Hong Kong

COURT: Now we have the Flores log book.

MR. LUCAS: And the Condor.

Prosecution's
Evidence

COURT: We have the Flores log book as an exhibit. We have a statement from the chief officer of the Flores, but we haven't got his evidence as to the record. We just simply have the log book which itself is not evidence.

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

10 MR. LUCAS: That's correct. I'll make it available. I mean, could we simply ask the expert who is in the box, is it possible, having found the approximate substantial position of impact, on the information that we have, to draw the course of that boat?

(continued)

MR. STEEL: I object to the question. It is a meaningless question. Of course, he couldn't.

20 COURT: I think - it is not a matter for me - I think that it is important to fix the position of the collision as accurately as we can.

MR. STEEL: My Lord, I must observe that my learned friend has expressly said time and time again the position of the collision does not matter.

MR. LUCAS: That's right.

30 MR. STEEL: And I rely on that on record the whole of my - that is a sort of observation which has a serious impact in the way to conduct a trial.

40 MR. LUCAS: And I don't with respect, unless I am corrected by your Lordship - I mean, that is the basis upon which I have proceeded in this trial. I have available because I have taken a particular course - I have available an expert, I have available the documents. If anyone wishes to take up the point made by your Lordship, by all means, but my point has been, as my learned friend points out, it matters not.

COURT: Well I think it is for the Crown to present its case, that obviously if this witness is using material to fix the collision point which is not evidence before this court--

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

MR. LUCAS: (interrupts) It is prima facie
evidence, as I understand it, my Lord,
these logs are prima facie evidence per
se, and I will have to check that.
I would think --

COURT: Well -- (judge stands up)

4.45 p.m. Court adjourns

17th March, 1983.

18th March, 1983

10.00 a.m. Court resumes

10

Accused present. Appearances as before.
Jury present.

P.W.19 - Allan Charles Pyrke o.f.o.

XXN. BY MR. STEEL (continues)

Q. Mr. Pyrke, yesterday we were considering,
I was inviting you to consider what I
might call a three-point plot. I
invited you to assume a certain position
for the Goldfinch 5 or 6 minutes before
the collision and assume a certain
position for the Flamingo 5 or 6 minutes
before the collision, and assume a
certain place for the collision, and
assume that the vessels are on steady
courses shaping to pass at about 300 feet
apart and the only alteration being an
alteration of starboard to starboard by
the Goldfinch. Now forgive me if I just
elaborate one or two parts of that point
with you. If one could do it on a
document it is going to be easier for
everybody. If I just do it on the black-
board if I may. The difficulty of using
these is that you get an unreal
appreciation of scale. What I am effectively
asking you to do is to assume that is
Fan Lau, these are traffic lanes. Assume
that Flamingo starting somewhere at the
exit of traffic lanes west-bound. Assume
that this is the position of the
collision. Assume this is the position
off Ching Chau of the Goldfinch. What I
was inviting you to do, was I not, was to
consider the respective tracks of these
two ships?

A. That is correct.

Q. If this angle is, say, 3° or 4° one is in a grey area slightly?
 A. That is correct.
 Q. One is in a grey area because it is not clear whether it is a crossing case or an end-on case?
 A. That is correct.
 Q. If this was nil or 3° it would be clearly an end-on case?
 A. Yes.
 Q. If it was, as I have suggested, 5° to 10° it is clearly a crossing case?
 A. Yes.
 Q. Now I want you just to come back, not to invite you to tell me whether my assumptions are right but to tell me whether my assumptions are impossible or, alternatively, whether they are for, in a sense, navigational reasons, reasons of expertise, difficult to justify. Now let's just take the question of where the Goldfinch was off Ching Chau. Mr. George Young took a radar distance off the Ching Chau and he recorded this as 1.05 miles. Now clearly that is possible. Is there anything from the manner in which that measurement was made which gives us any assistance as to its potential accuracy?
 A. George Young - could I just recap. - you said he said his distance is ..?
 Q. 1.05 miles.
 A. Yes, 1.05 miles.
 Q. It is a radar distance?
 A. Yes.
 Q. Is that likely to be more or less accurate than a visual appreciation?
 A. More accurate.
 Q. He told us that at about that time he passed, again assume this is right, he passed the Goldfinch on her starboard hand at a distance of ½ mile apart?
 A. Yes.

In the High Court of Hong Kong

Prosecution's Evidence

No.4
 P.W.19
 Allan Charles Pyrke
 Cross-Examination

(continued)

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COURT: ½ mile distance?

MR. STEEL: My Lord, yes, he left effectively the Goldfinch ½ mile to the north.

Q. Now again, if that's right, and again I want you to assume that it is, that puts the Goldfinch something around 1½, 1.55 miles north of Ching Chau or thereabouts?
 A. That is correct.
 Q. It follows that, if that is right, does it not, that at some stage if she is going to make effectively a straight course towards

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- the collision position she must turn to starboard?
- A. That is correct.
- Q. And at that stage she is about, I think, 2miles from the collision position, is that right?
- A. Yes, 2-3/4 miles.
- Q. So at that stage these two vessels, if these assumptions are right, must be about 5 miles apart, or a little bit more? 10
- A. Yes, same speed, therefore it must be double, yes.
- Q. Can we just quickly consider with you the position of the Flamingo. If she obeys the traffic separation scheme, if I may call it that in shorthand, she will emerge somewhere at the mouth of the westbound lane?
- A. That is correct.
- Q. I think she records in her log that she was about 3 cables off Fan Lau? 20
- A. That would be about right.
- Q. Which puts her just about perhaps off the western end of the separation zone itself rather than the lane, but there or thereabouts?
- A. Yes.
- Q. Now let me just come back to the collision position. 30
- COURT: 3 cables?
- MR. STEEL: I am so sorry, three-lengths of a mile which would in fact, I think if one literally measures it to the spot, would put her opposite to the separation zone.
- Q. Let me come back now to the collision. If the collision position recorded in the deck log of the Goldfinch is accurate then on these assumptions as we have seen, we have got a fine angle between the two potential courses? 40
- A. Agree.
- Q. Where did the wreck of the Flamingo finish up?
- A. It finished up off this chart.
- Q. To the north?
- A. Way to the north.
- Q. Way to the north?
- A. Yes.
- Q. It went up onto the banks somewhere of the Pearl River? 50
- A. Right.
- Q. And it went there because of the tide. It was, subject of course to, as you say,

variations and the difficulties of dealing with currents of the muds of a river, it was at the time of the collision about 2 hours before high water?

In the
High Court
of Hong Kong

Prosecution's
Evidence

A. Yes.

Q. And so the tide in theory was flooding?

A. Yes.

10

Q. i.e. the water in theory was moving north?

A. Yes.

Q. And so, as I suggested to you yesterday, if there is an error in the collision position reflecting the fact that it was taken some time after the collision the error is likely to be an error that it is too far north?

No.4

P.W.19

Allan

Charles Pyrke

Cross-
Examination

(continued)

A. This is correct.

20

Q. And again of course it follows, doesn't it, that if the position of the collision is further south than I demonstrated the courses crossed at a greater angle?

A. If it is of assistance, there are four vessels that arrived in the area at about that time, very close to it. They have all given positions. If all these four positions are plotted with the times against them it may assist the court to get some indication of which collision position is the right one because they do give an awful spatter --

30

Q. Well, for the moment I am, in a sense, content with the slight uncertainty about this. If the collision position that I have, in a sense, demonstrated is taken a short, or relatively short period after the collision has happened, the likelihood is that the craft has moved to the north?

40

A. That is correct.

Q. And if the collision in fact happened somewhat to the south of where one has demonstrated it follows that, on the same process that I have been adopting the courses are crossing at a greater angle?

A. That is correct.

50

Q. And this much is undeniable, is it not - in order to make an appreciation of what rule each vessel is supposed to be obeying you must know what the relative approach pattern is?

A. Agree.

Q. Unless you are sure about that you can't be sure which is the appropriate rule?

A. Exactly.

Q. And unless you are sure of what is the appropriate rule you can't be sure who,

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

- if anybody, made a mistake?
- A. Exactly.
- Q. Can I leave aside for the moment that material and I just want to come back to some other versions or variations of the theme. You have been asked to consider the variation of the theme of the Goldfinch having made an alteration off Ching Chau to starboard to head of Fan Lau and thereafter when the vessel was close to a range of about 2 miles had put the other vessel on its port bow? 10
- A. Yes.
- Q. And indeed I think I started my examination, it may seem a long long time ago, with discussing that point and I think that we were at idem, were we not, that the position at that stage, at 2 mile range, would be that the vessels would, if they maintain their courses, thereafter pass port to port at a range of about 2 or 3 cables? 20
- A. Correct, that was on the assumption that the initial passing distance was 500-600 feet starboard to starboard.
- Q. Yes, and if the initial passing distance was 300 feet then equally there is another 300 feet on the other side to be added?
- A. That is correct.
- Q. And whilst 300 feet passing would be unsafe, passing at 2 or 3 cables would be safe? 30
- A. (No audible reply)
- Q. You were then asked to consider an alteration at $\frac{1}{2}$ mile of 7° starboard and observed that that would not make much difference to anything. What if the alteration at that stage was 7° of helm?
- A. Totally different picture. 40
- Q. In what sense it would have a significant impact upon the heading of the Goldfinch?
- A. If you assume $\frac{1}{2}$ mile range we have a closing rate of a mile a minute, roughly. So we are talking about 30 seconds, so we are talking about 2° a second, we are talking about 60° alteration.
- Q. Now again of course accept the premises, you are right to take the premise, the range is $\frac{1}{2}$ mile. But again we have been through discussing the difficulties of being certain about $\frac{1}{2}$ mile, whether it is more or less or whatever, the reason I put it to you that way was, as you may have noted, that Capt. Kong says that he altered course 7° to the starboard side and then "maintain my speed and turning 50

of the helm."
 A. That's right.
 Q. Now of course, as you indicated, this picture does involve some porting by the Flamingo?
 A. Yes.
 Q. Either to a lesser degree at an early stage or to a greater degree at a later stage?
 10 A. Correct.
 Q. I gather that you are unable to assist us to any degree about Mr. Tang's evidence about the position of the flaps of the Flamingo?
 A. No.
 Q. He also told us that he thought and, indeed, preferred the view that the alignments of the damage on the flaps which were at different levels was attributable to a list to port on the Flamingo, it is self-attributable to a port turn. Can you assist us about that?
 20 A. A hydrofoil on rudder alone turning lists a very small amount, 2° to 4°. On flap turns I can't give you, and I haven't measured how much she goes over.
 Q. But is it more or less than with the rudder?
 30 A. I couldn't give you a definite answer.
 COURT: You say it could be less using flap than using rudder?
 A. It's really we have got one flap on, only one, it's not both on, and I couldn't give you an opinion as to whether it would list more. If both flaps are on I know it lists more, but with one flap on, I don't know.
 40 Q. Mr. Ho tells us that he, when he saw the Goldfinch at a late stage, stood up and grab the flap handles. What happens to the wheel in those circumstances - it just stays where it is, does it?
 A. Yes, it stays where it is.
 Q. Now let me deal very briefly with the observation, the 45° observation of Capt. Coull. I hasten to say I see nothing sinister in it myself, but I accept that as a matter of arithmetic it can't work,
 50 so let's leave that aside for the moment. Have you considered the sightings, and I agree they are separated by, I'm afraid, very substantial distance - passage of time, of Mr. HO?
 A. This is in the police statements?
 Q. Yes.

In the
 High Court
 of Hong Kong
 Prosecution's
 Evidence

No.4
 P.W.19
 Allan
 Charles Pyrke
 Cross-
 Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- A. When I looked at the police statements I didn't realise that there was a correction.
- Q. It does make a slight difference?
- A. I thought it was 3 to 4 miles, not 3/4 miles.
- Q. That's right. Yes, I follow that. And so effectively there is only one sighting? 10
- A. Yes, one sighting at 3/4 mile and one very, very close.
- Q. Yes, but those two sightings indicate, do they not, if one made an assumption of a straight course of both vessels, a crossing course? Well, let me put that more plainly. Those two sightings indicate that if the Flamingo is going on a steady course and the Goldfinch is on a steady course between the two positions of sighting, the courses are crossing? 20
- A. I seem to remember from Mr. Ho's statement I couldn't work out, I was working on one word he said, 'safely'. One would assume that a mariner would not say that was a safe passing if they were showing red to green.
- Q. Leave that assumption aside. I just want you to, in a sense, mentally plot the two sightings. They indicate, if one plots them, that the courses if they are steady on both ships are crossing? 30
- A. I'm afraid you have to give me the actual distances. I couldn't recall that sort of point like this.
- MR. CORRIGAN: I think the witness should have, in fairness to Mr. Ho, should have the statement to the police of Mr. Ho. 40
- COURT: Yes.
- Q. I am asking you to assume that one sighting is at 1/2 mile or a little bit more, bearing 20° on the starboard bow and the next sighting is that the vessel has reached a position within the range of 500-600 feet. It must follow from that that if the two vessels are proceeding on steady courses they are crossing? 50
- A. It was 20° at 1/2 mile?
- Q. Yes.
- A. I would have to plot it to answer you for certain.
- Q. So be it.

10 MR. CORRIGAN: I am sorry to interrupt my learned friend, but the witness still has not been given Mr. Ho's statement. There was a correction made, my learned friend is quite right, but the first sighting purported by Mr. Ho was at a distance of 4 to 5 miles the second sighting was, he estimated, slightly more than $\frac{1}{2}$ mile, and then there was a closer sighting. There were three sightings altogether.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

MR. STEEL: Well then that makes the point stronger. I haven't appreciated that. I am sorry I missed, if my learned friend could point out where it is...

(continued)

MR. CORRIGAN: The top of page 3 is the first sighting, middle of page 3 is the second.

20 MR. STEEL: Oh, yes, I am so sorry, that should be right.

COURT: A correction was made. Originally it was 3 to 4?

MR. CORRIGAN: My Lord, that's in paragraph 10, yes.

MR. STEEL: My learned friend is absolutely right. I do apologise. Let me start this point again.

30 MR. CORRIGAN: My Lord, the first sighting is at the top of that page.

MR. STEEL: Yes, quite right.

Q. Let's have three sightings then, and with respect I expect you could mentally plot these fairly readily: 10° on the starboard bow at 4 to 5 miles; 20° at just over $\frac{1}{2}$ mile; and then a range of 500-600 feet. If both vessels were on steady courses they must be crossing. You have actually plotted it, haven't you?

40 A. I think I only plotted - I've plotted the 20° 3 to 4 miles away and that definitely gave a very good crossing course. It left the Goldfinch with an aspect of red.

Q. Yes, that, as we've now discovered, is --

A. -- erroneous.

Q. It's erroneous. And I still say to you that it is again a plain piece of arithmetic

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- that if you sight a vessel at 4 to 5 miles 10° on the bow; $\frac{1}{2}$ mile at 20° , and then it comes within a range of 600 feet, those vessels must be crossing. It's arithmetically impossible to the contrary.
- A. I must say it does seem like this, but I am very wary on trying to guess angles.
- COURT: You are not asked to guess angles.
- A. Well, to guess what the effect is of those angles. It wouldn't take a minute to plot it. 10
- Q. O.K., perhaps you would do that. Would you like some graph paper?
- A. Yes, I would like some graph paper - With those figures, if they keep a steady course they would pass starboard to starboard at 1.2 cables of the nearest approach, and the Flamingo would cross ahead of the Goldfinch when they were just under a mile away. 20
- Q. And the angle at which the courses are crossing is about 15 to 16° ?
- A. I make it 17° . It's a radar plot, my Lord.
- COURT: Mark that as --
- CLERK: Exhibit P.47
- Q. If they were on reciprocal courses they would pass at something approaching $\frac{3}{4}$ mile?
- A. It would be substantial. I don't know the figure. 30
- COURT: And they would pass starboard to starboard?
- A. They would pass starboard to starboard, yes.
- Q. And if, again one has the caution about the precision at any particular bearing or distance; lack of precision on the distances or bearings would have a material effect upon the passing distance? 40
- A. Yes.
- Q. Now one other point before we leave this part of it. Can you help me a bit about times? At the moment I see nothing sinister in these times. I just want to make sure that we are not losing touch with each on this. We recall the ship - the collision at 9.26 and, I think, the Flamingo at 9.25?
- A. Yes. 50
- Q. If on our clock, i.e. at 9.26 collision, it means -- sorry, at 32 knots we would

have passed Ching Chau about 5 minutes earlier, 4-3/4 to be perhaps as precise as possible?

10 A. It would be somewhat in that region. I cannot confirm that.

Q. i.e. about 9.22, 9.21 on our clock?

A. Yes, somewhere in that region.

Q. And again, and this is again on the assumption the collision position, at least, in terms of west/east is about right, the Flamingo would have passed Fan Lau about 8 minutes before the collision if she's travelling at full speed at the time?

A. That sounds about right.

Q. Which on our clock would make it about 0917 hours?

A. Yes.

20 Q. Now subject to the potential error, if it matters, of 0915 being recorded in the log book of the Flamingo, and that may be accounted for either because there was a stoppage for the rubbish there or thereabouts or some mis-recording, the times fit, do they not?

A. On the data there, but not on the data of a jetfoil. It must have been right after the collision.

30 Q. So we are left with the problem that Sao Jorge on his clock passed the Flamingo at a time when the collision had already happened, that's a conundrum?

A. That's one of the conundrums.

Q. Again there are two obvious possible explanations - one is that the Sao Jorge's clock is wrong or that both the hydrofoils' clocks are wrong. Are you able to help us at all?

40 A. Yes, I think, please, my Lord, if I am going too far, there is in evidence or there is in the papers that's put before you recordings in other log books of sighting smoke at 0934. That smoke was caused by a man-overboard signal which was put into the water at the time of the collision. This tends to, with other sort of evidence you are talking about, tends to indicate the collision at a later time. In addition, you have of course the time that Sao Jorge passed the other H.M.H. hydrofoil earlier on which she puts at 50 0913 to 0915, and if you go back further you have got the Macau Channel itself. All these indicate, as I think I have made it quite clear that I am not - the times become very difficult.

In the High Court of Hong Kong

Prosecution's Evidence

No.4
P.W.19
Allan Charles Pyrke
Cross-Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- Q. So those are the difficulties?
A. Yes.
Q. Let me turn now to the Collision Regulations in terms of the steering rules. Now first of all, it is fair to describe the Collision Regulations, is it not, as the rules of conduct for navigators when navigating at sea?
A. For avoidance of collision.
Q. Yes, obviously there are many other rules involving many other things? 10
A. Yes.
Q. And although of course in all walks of life common sense must play its part, I expect that you would agree with me that you have to dream up such rules when navigating at sea. Common sense wouldn't have given birth to the Collision Regulations?
A. I would support your contention. 20
Q. There is no mode of common sense which tells you that in a narrow channel you should keep to the right as opposed to the left; and again there is no mode of common sense which would tell you that in a crossing case one rather than the other should keep out of the way?
A. That's correct.
Q. The obligation that the one that has the other ship on its starboard bow should give way stems from the sailing days, does it not? 30
A. Yes.
Q. Now the Collision Regulations with which we are concerned are dated or, rather, were prepared in 1972 but did not come into force, I think, until some time in 1977 or 1978?
A. 1977, if my memory serves me right.
Q. So far as the steering rules are concerned they, except with one important exception which I will come to in a minute, they by and large are very similar to the rules that had been in force since the turn of the century? 40
A. That is correct.
Q. And as you have already pointed, the underlying theme of the Collision Regulations is to avoid risks of collision, it is not really to avoid collisions, but to avoid risks of collision? 50
A. True.
Q. Now it is also, I think, an underlying theme of the Collision Regulations that where circumstances permit vessels should pass port to port?
A. Yes.

	Q. That is the rule although there no doubt will be exceptions?	In the High Court of Hong Kong
	A. It is the natural way to pass.	
	Q. The natural instinct of the mariner is to pass port to port?	Prosecution's Evidence
	A. That's correct.	
10	Q. Now let's assume for the moment we have an end-on case to which Rule 14 applies and that provides, does it not, that "When two power-driven vessels are meeting on reciprocal or nearly reciprocal courses so as to involve risk of collision each shall alter her course to starboard so that each shall pass on the port side of the other"?	No.4 P.W.19 Allan Charles Pyrke Cross-Examination
	A. That's correct.	(continued)
20	Q. And if we go back to the figure that I stated, I'm afraid, quite a long time ago, if we assume a 300 feet passing on reciprocal courses, that is an end-on case?	
	A. 300 feet, I would treat that definitely as an end-on case.	
	Q. And if that we have been doing our passing at 23 seconds before collision, my recollection - if this one goes to starboard and this one goes to starboard - no collision happens?	
30	A. At 23 seconds, both go to starboard, yes, no collision happens.	
	Q. Now as you rightly explained, the crossing rules have two sides to the equation: if one ship is under an obligation to keep out of the way of the other and, as you rightly say, Rule 15 says that "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"?	
40	A. Yes.	
	Q. So in a crossing case, I take an extreme example, if these vessels are passing very close, albeit starboard to starboard, this vessel must keep out of the way of the other?	
	A. Yes, I would reiterate - I think earlier I was asked about passing distances, I am saying 600 feet.	
50	Q. If their passing distance, as I say, is very close, albeit passing starboard to starboard, this vessel must keep out of the way?	
	A. Yes.	
	Q. And it must avoid going ahead of this ship, it must by and large avoid doing that,	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

it must either stop or slow down or
go there?

A. Yes.

COURT: For the record, it must avoid going
to port, it should turn to starboard.

Q. And as again you have pointed out,
under Rule 16 of the give-way shippers,
if possible, should take early and
substantial action?

A. Yes. 10

Q. Now as you remember, Rule 17 is new?

A. Part of it is new.

Q. Part of it, yes, I am sorry. Rule 17 is
the rule that bites the other ship and
the bit that is not new, the bit that
stood for a long, long time is that the
other ship must keep going straight on
without varying course or speed until the
other ship, the give-way ship, cannot by
itself avoid hitting. That's the rule,
isn't it - the old rule? 20

A. That's the old rule, yes.

Q. And this is always presenting a serious
problem to mariners, is it not?

A. That's correct.

Q. Because what they are being invited to
do in colloquial language is to stand
there biting their fingers going on and
on and on until they realise that the
other ship can't miss them by taking
action itself? 30

A. That's correct.

Q. Now that is a difficult exercise for a
mariner?

A. And it also presupposes that even at that
stage both of you have got to take action.

Q. That is quite true. And would you take
it from me for the moment that the courts
have been very lenient to mariners about
standing on, they are not quick to find
faults with the man who has either done
something too early or done something too
late? 40

A. That is correct.

Q. The reason is, is it not, that in the
calm reflection of a court-room one
can work out arithmetically --

MR. LUCAS: With respect, that is a comment,
not cross-examination. Whether the
courts have or have not found in other
matters in other situations is not a
matter for this court. 50

COURT: That may be a comment, but I think

you are entitled to ask the witness as to the practicalities of those navigations.

In the
High Court
of Hong Kong

- 10 Q. Yes, let's take the practicalities of a situation: again assuming that two hydrofoils are crossing with a risk of collision, of course it is easier in those circumstances for each mariner to have some appreciation of the manoeuvring capabilities of the other ship because they are at least reasonably similar?
- A. That's correct.
- Q. It is not contrasting a super tanker with a tug. But again if we may go back to some points that I was putting to you yesterday. Even these hydrofoils have a striking variation in manoeuvrability and stopping power?
- 20 A. I again make it clear, it is not just the hydrofoil, it's the person flying it as well.
- Q. Right, and as you drew our attention yesterday, one man with one hydrofoil may be able to stop at 150 feet, another man with another hydrofoil may want 400 feet to achieve the same?
- A. That's correct.
- 30 Q. And one may be capable of turning 2° a second and another 3° a second, or another?
- A. Turning is a little bit more, not so much variation.
- Q. So there is a series of problems, is there not, in these sort of circumstances in identifying on the spot at the very time, the very moment when the other ship can't avoid you, physically can't avoid you?
- 40 A. At this speed of approach it is very, very difficult to leave it till - to say, I'll leave it till the last second and just miss to judge.
- Q. But that, at least under the old rules, was what he was obliged to do?
- A. That's correct.
- Q. It was not something which he had an option to disobey. Now the new rule gives a liberty to the stand-on vessel to do something else. It can either wait until the last second, if I may put it that way, or it may take action earlier if it has become apparent that the other ship is not taking appropriate action?
- 50 A. Yes.

Prosecution's Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

- Q. But there is no obligation to take earlier action. The obligation bites, does it not, as it always has done, at what we might call the last second.
- A. That's correct.
- Q. Let me turn away from steering to look-out. These ships are equipped with two navigating officers.
- A. Yes.
- Q. A master and a deck officer. And the standard practice is, to a large extent, to alternate on the helm. 10
- A. Correct.
- Q. And for the purpose of these questions, I am meaning by look-out the visual appreciation of the situation, the assessment of risk of collision and the assessment of the effectiveness of any particular action that has been taken. That is my definition for this purpose. 20
- A. Look-out is -- it has to be done by the most appropriate means, by sight, radar, bearing, the whole lot.
- Q. Yes, I am sorry. I follow that. And to the extent that non-visual appreciation is required, it is the person who has the radar set who is in a position to make use of it.
- A. That's correct.
- Q. The general principle is simply this, that the man on the helm steers and the other man keeps the look-out. 30
- A. Yes.
- Q. It is not like a motor car where the passenger can doze off because the driver will be doing everything. And the reason for it is that the helmsman cannot be expected to keep a complete look-out, is that right?
- A. In my opinion, yes. 40
- Q. I think the way you put it is to say that the person who is not at the control should maintain a proper look-out assisted by the other officer who is actually at the control.
- A. That's correct. Yes.
- Q. And the rationale is, as I understand, this, that the helmsman in so far as his having to concentrate visually on what is going on is going to be having particular regard to the need for sighting debris in the water that could damage his propellers. 50
- A. That's correct.
- Q. And for that purpose -- I mean where does he look?
- A. Not very far ahead of the ship.

	Q. Are we talking about 100 feet, 1,000 feet or what?	In the High Court of Hong Kong
	A. 150, 200 feet in the water in the area just ahead of the ship.	
	Q. Again also, as I understand it, even if he seeks to pursue a more widespread look-out he is not able to do it in a fixed position because of the visibility from the wheelhouse.	<u>Prosecution's Evidence</u>
10	A. He must move around for the pillars but he still can't for the astern....	No.4 P.W.19 Allan Charles Pyrke
	Q. I see. I am thinking more of looking ahead. Do pillars present a problem?	Cross- Examination
	A. He has to move himself a little bit if he wants to look round the pillar.	(continued)
	Q. And this emphasis on the, in a sense, primary look-out responsibility being on the person who is not the helmsman is, as I understand it, in your view the more so because of the speed at which these vessels proceed.	
20	A. The speed, the scantling, the general vessel.	
	Q. And in support of that view, as I understand it, you refer to, I think, you call an M notice 756, is that right?	
	A. Yes.	
	Q. Yes. 756. What is that document?	
30	A. This is a merchant shipping notice which is the Department of Trade giving recommendations based in fact on the IMCO principles of keeping a safe navigational watch and the S.T.C.W.	
	Q. Elaborate just a bit on that. It's recommendations from IMCO. Who are they?	
	A. IMO, I am very sorry. They are the -- I think the new initials means The International Maritime Organization but they keep changing it.	
40	Q. And you say these recommendations are promulgated under what? SOLAS?	
	A. No, it wasn't under SOLAS. It was under a convention that has not been rectified by the U.K. yet, The International Convention on the Standards of Training and Certification and Watch-keeping. I might add that the U.K. will enshrine those sort of recommendations in legislation when the Merchant Shipping Certification and Watching-keeping regulations are commenced. They have already been laid before Parliament.	
50	Q. Am I right in thinking that the IMCO recommendations say in terms that the duties of the person on the look-out and the helmsman are separate and the helmsman should not be considered the person on look-out?	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

A. Yes.

MR. AIKEN: My Lord, can I have a look at it?

MR. STEEL: The provision about look-out reads,

"Every ship shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision, stranding and other hazards to navigation. Additionally, the duties of the look-out shall include the detection of ships or aircraft in distress, shipwrecked persons, wrecks and debris. In applying these principles the following shall be observed:

10

(1) whoever is keeping a look-out must be able to give full attention to that task and no duties shall be assigned or undertaken which would interfere with the keeping of a proper look-out;

20

(2) the duties of the person on look-out and helmsman are separate and the helmsman should not be considered the person on look-out while steering; except in small vessels where an unobstructed all round view is provided at the steering position and there is no impairment of night vision or other impediment to the keeping of a proper look-out."

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MR. AIKEN: That's all I want.

Q. Now, just two more matters on the topics I wanted to discuss with you - three, I think, sorry. You have mentioned the condition of the flap indicators on board the Goldfinch.

40

A. Yes.

Q. Are you able to tell us whether they were in working order or not?

A. Not for me looking at them. I didn't test them.

Q. Were you aware of a request for a repair of those flap indicators before the collision?

A. No.

- Q. I understand that The Marine Department have made some recommendations about the routing of these hydrofoils in poor visibility, am I wrong about that?
- A. I am hesitating because I know over the years, particularly recently there has been a lot of change and it's not done in my section. There are recommendations for routing but I can't tell you what the state of affairs is at the moment.
- 10 Q. Are you able to help us as to whether or not I am right in saying in poor visibility the outward bound hovercraft is expected to go south of Ching Chou?
- A. Yes, I believe this is correct. Yes. Outward bound, did you say?
- Q. I think I said it. I said it, that's right.
- 20 A. No. It's the -- you leave Ching Chou as a middle ground marker, leave it to port. So it would be the one coming to Hong Kong....
- Q. I am so sorry. And they would go round..
- A. Leave it to port.
- Q. Avoid the whole of the Adamasta Channel.
- A. That's correct.
- Q. And Fan Lau. Is that something promulgated by the Marine Department or just something that is a practice that has developed?
- 30 A. It is in agreement with the ferry companies. It doesn't apply to cargo ships and other ships. It is purely for the high speed ferries to Macau. It is a voluntary scheme, if you like.
- Q. And it is intended to ensure non-physical proximity over that stretch of the water in bad visibility.
- 40 A. Perhaps it stems from a lot of marine courts we've had about poor visibility collisions.
- Q. Am I right in thinking again - just say it if you don't know - that the University of Hong Kong has been carrying out some investigations into personnel serving on these hydrofoils and in particular problems of monotony, boredom and so on?
- A. No, they have just done a study into fatigue which again stems from marine court recommendations.
- 50 Q. They haven't gone on to study aspects of--
- A. Their brief was to study fatigue.

MR. STEEL: Thank you very much, Captain Pyrke.

MR. AIKEN: My Lord, in view of the time....

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

A. My Lord, I am rather concerned about the last question about fatigue. Their brief was to study fatigue but they have made certain remarks about boredom, not in their final report but in a preliminary report that they gave.

MR. STEEL: It is one of the inevitable concomitants of this job that it is very routine, very boring, rather monotonous.

10

MR. LUCAS: My Lord, before this has gone into any further, perhaps it's a convenient time for adjournment, and while the jury is retired I will bring something to the court's attention.

COURT: Yes, members of the jury, you may take your break now.

11.20 a.m. jury leaves court

MR. LUCAS: My learned friend has raised the topic of the introduction of the University group. Amongst the preliminary conclusions and comments were that there is a tendency among some crews, as I understand it, to close shave each other, in other words, deliberate as distinct from tiredness or tediousness. My learned friend having raised that subject in cross-examination - I don't want to raise it in the presence of the jury - he having raised in the cross-examination. I might well be seeking to carry on in that particular line after the event. I mention it now so that it can be discussed, either argued or otherwise, because amongst the conclusions - my learned friend has sought the conclusions of this report from this expert and he come to the -- he has indicated quite properly that there are in fact factors of boredom. There are other factors in that report that was raised in cross-examination. I am not sure if my other learned friends know about this and want to use it or not, or whether the court has any views on the matter. I don't want to think it can be raised in the presence of the jury for the first time without some discussion.

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COURT: Well, my view is obviously, I think, that in some ways again it is in evidence that these vessels do 7 trips

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a day. It is quite clear that it is over the same route. I would have thought probably we don't need an expert to tell us that almost inevitably that there's a degree of boredom. In this case we are dealing with the second trip of the day. On this particular occasion, that would have been -- I would have thought quite clearly any suggestion that on other occasions especially involving other ships there has been some suggestion that the vessels go deliberately too close to each other, it is quite clearly -- I think Captain Pyrke can be asked, in his view as a mariner, would a trip like this induce boredom.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

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MR. LUCAS: My Lord, my learned friend has sought obviously for the benefit of this case to take a report and mention that in front of the jury in a situation where it is the first trip or second trip of the day. The fact is the report has been raised. I am not talking about the boredom situation, that has been raised before. That report contains other information which having been raised and the report so having been raised, what I seek to find from your Lordship is whether the Crown in those circumstances can find other recommendations or other suggestions raised in that report.

COURT: I think the position is, Mr. Steel, you can ask the witness his own opinion. You can't ask him to comment on the....

MR. STEEL: My Lord, I am sorry. All I was asking was whether it was a boring thing to do.

MR. AIKEN: If I understand my learned friend Mr. Lucas correctly, is he planning or trying to adduce in re-examination evidence of what is contained in that report? If he is, I shall object. Firstly, it is inadmissible, it's hearsay, it's highly prejudicial and it's not probative. If it is his intention to do that, I'd like a ruling on that because if the jury get even a suggestion of it, the damage is enormous.

COURT: My ruling is that the witness may be

In the
High Court
of Hong Kong

asked his own views on the effect of
this particular trip on that cruise, he
may not refer to any other investigation
which has been made by the other people.

Prosecution's
Evidence

11.25 a.m. Court adjourns

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

11.52 a.m. Court resumes

All accused present. Appearances as before.
Jury present.

P.W.19 - Allan Charles Pyrke o.f.o.
XXN. BY MR. AIKEN:

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(continued)

- Q. Captain Pyrke, you will probably be relieved to hear that I don't intend to have a debate with you about the finer points of navigation. I am sure you know I represent Mr. Ng, he was the deck officer on the Goldfinch, and what I want to do is to explore with you the practicalities of deck officers in Hong Kong, the ordinary deck officers. I'm not so much concerned with the strict interpretation of the regulations. I want to explore with you the reality of deck officers and what they do day in and day out on this, as you have heard, very tedious and repetitive route. So that's the basis on which I start. 20
- A. Yes.
- Q. The first point is this, it's right, isn't it, that in navigational matters there's a very strict line of command on the ship. 30
- A. Yes.
- Q. The captain or the master, that's the same person, is in charge.
- A. When he is on the bridge and he has made it clear that he is in charge, yes.
- Q. But surely when he is on the bridge and awake, he is in charge when he is there.
- A. That doesn't automatically follow.
- Q. In what situation that he's not in charge when he is on the bridge? 40
- A. If the master comes on the bridge, he should indicate to the officer over watch that he is taking over the watch.
- Q. And as soon as he does that, he is in charge.
- A. Yes.
- Q. And a captain has, a master, you call him, a master has a greater training.
- A. Yes.
- Q. The syllabus for his exam is wider. 50
- A. Yes.

	Q.	And I imagine it's.....	In the
	A.	And he has those responsibilities.	High Court
	Q.	Yes, more responsibilities, yes.	<u>of Hong Kong</u>
	A.	And that's right, isn't it, because	Prosecution's
		the ordinance under which you operate,	<u>Evidence</u>
		the Merchant Shipping Ordinance and	
		the Merchant Shipping Safety Ordinances	
		have penalties for masters.	No.4
	A.	That's correct.	P.W.19
10	Q.	There are masters who commit an	Allan
		offence in certain situations, and so	Charles Pyrke
		would be the owner -- the master and	Cross-
		the owner can commit an offence in	Examination
		certain situations.	
	A.	Correct.	(continued)
	Q.	Which a deck officer doesn't commit.	
	A.	Yes.	
	Q.	Now, you will be the expert in your	
20		ordinance but as I understand it, the	
		Merchant Shipping Ordinance in fact	
		legislates in respect of masters and	
		owners, those are the people it's	
		concerned with.	
	A.	I don't feel that I can give expert	
		opinion on law.	
	Q.	And it is a master's responsibility to	
		make sure that the people under him on	
		board do exactly what he tells them.	
	A.	Yes.	
30	Q.	Because he can get into trouble if they	
		don't.	
	A.	Yes.	
	Q.	And when he is on the bridge and in charge,	
		the others don't innovate.	
	A.	No, but they have a duty to draw to the	
		attention of the master anything that they	
		consider -- to draw his attention to	
		something that they think he should be	
		aware of.	
40	Q.	I am sure that's correct but they don't	
		innovate. They don't take decisions and	
		actions without consulting the master.	
	A.	No.	
	Q.	And it is illustrated on the, in lay	
		terms, on the facts of this case - didn't	
		one of the engine officers in fact have	
		to ask the master before he could go down	
		to check the engines, one of them asked	
		permission to do that?	
50	A.	I don't know, but that would be normal	
		practice.	
	Q.	Yes, even in a calling emergency like	
		we had, he still had to ask the master	
		if it was alright to do.	
	A.	Yes.	
	Q.	And this follows, doesn't it, if these	
		subordinate officers do what the master	
		tells the, then they discharge their duties.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

- A. In my opinion they still have a duty to point out to the master anything that they think is relevant to the safety of the ship.
- Q. But isn't that part of doing what they have been told to do? Provided they do what they are told, then they discharge their responsibility.
- A. I am sorry. If I could give you an example. I think what you are asking me is if the master of a ship was driving his boat at a brick wall, then in my opinion it is the duty of the deck officer to point out to the master that he was doing it. 10
- Q. And the duty of the man selling Coca-Cola if he sees it.
- A. Yes, exactly.
- Q. And it is common sense, but that is a very, fortunately, a very unusual situation and it is wholly unexpected. 20
- A. Yes.
- Q. But in a routine situation which is what I am concerned with, provided the subordinate officer does what he is told, then he fulfils his duty.
- A. Yes, with the rider that I have given.
- Q. With your example.
- A. Yes.
- Q. Now, perhaps you can help me with the answer in this because it is not entirely clear in my mind. We've heard how the master and the deck officer alternate in the role of helmsman. 30
- A. Yes.
- Q. You just told me that the deck officer is a junior officer to the master.
- A. That's correct.
- Q. When the deck officer is at the helm, does he consult the master about the route? 40
- A. He does what the master has instructed him to do.
- Q. That doesn't answer my question.
- A. If the master has made it clear at the beginning of their association, because they are in groups, that all right, when you are at the wheel, follow the rough route, keep in the traffic separation scheme etc., then if you like the master is giving to the deck officer within limits his own discretion as exactly the track of water he follows. So does that answer your question? 50
- Q. Yes, I think it does. In other words, the master still has the overall responsibility for the route, is that right?
- A. Yes.

	Q.	But if he goes wrong in the route, the master is the one who gets blamed, and because of that the deck officers discuss the route with the master.	In the High Court of Hong Kong
	A.	Yes. It is not done on a daily basis. It is a routine that they will have established or should have established.	<u>Prosecution's Evidence</u>
10	Q.	But the converse situation doesn't apply when the master is at the helm, then he decides the route.	No.4 P.W.19 Allan Charles Pyrke
	A.	That's correct.	Cross-
	Q.	And the deck officer obviously doesn't start telling him what to do, which route to follow.	Examination
	A.	No.	(continued)
20	Q.	Still dealing really with the functions of these mariners, I think we have heard from a number of sources that the deck officer's duty, and it is his duty alone, is to complete what is known as the fair deck log.	
	A.	For routine matters, yes.	
	Q.	But by routine you mean an ordinary journey when nothing occurs.	
	A.	Correct.	
30	Q.	And those, as we know, go on 7 times a day, 4 days on, 2 days off, right the way through the year with, I think, 15 days' holiday per officer per year.	
	A.	I think that is correct, yes.	
	Q.	Because there is another log, isn't there, the master has his own log, a different log.	
	A.	It is the official log book for the ship.	
	Q.	That's right. That's kept on the ship and the only person who keeps that is the master.	
40	A.	Often countersigned by the....	
	Q.	But he keeps his log.	
	A.	Yes.	
	Q.	And we know that the deck officer gets the times to put in his log from the radio officer.	
	A.	Yes.	
	Q.	Because the radio officer has the clock and he records the time of passing the various points.	
50	A.	Yes, on hydrofoil, yes.	
	Q.	I am only dealing with hydrofoils, Captain Pyrke, otherwise we really will get confused. So he gets the times from the radio officer but the rest of the log - we've seen it a number of times, it's probably not necessary to look at it again - but the other bits of information contained in the deck officer's log, such as the	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- distance and the bearings, he puts those in.
- A. Correct.
- Q. I didn't understand something you said. I think you said that sometimes he will do this at the end of the trip.
- A. I have even seen them doing it a trip after.
- Q. It's a bit silly, isn't it?
- A. It means that you cannot -- that you are trying to recollect 8 or 9 distances from memory well after it has happened. Yes, it is, yes. 10
- Q. That's right. It is silly. Probably it's not a very clever way. It is not very reliable.
- A. Not very accurate.
- Q. So it means the record is not really very useful.
- A. Correct. 20
- Q. A better practice is to record them as you go along.
- A. And measured by radar, yes.
- Q. Yes, but that's a better practice. And that his practice, the deck officers when they are not steering do record this information en route as they are travelling.
- A. That I cannot give you an opinion on. It would be logical that they would. Whether they do, I cannot tell you. 30
- Q. To be perfectly fair to you, Captain Pyrke, you can't give an opinion because as you very properly said you haven't done this route on a regular basis.
- A. No.
- Q. So you don't have the first hand practical experience of what these people do day in day out.
- A. I have done many trips on the bridge. I have even spent four days on these vessels continuously, but you are quite right. 40
- Q. And you can't generalize about what they do.
- A. Different ships will do -- different captain wants different procedures.
- Q. Now, I want to move on to the look-out and again let me remind you what I have already said. I am more interested in the practice than the regulations but I will be dealing with the regulations, but what I am after is the practice. My learned friend has read out at my request an M notice 756. That's right? 50
- A. Yes.

	Q.	And the first question is is that part of the law of Hong Kong, do you know? Yes or no?	In the High Court of Hong Kong
	A.	M notices are not law.	
	Q.	And it was issued, I think, in 1976 in April.	Prosecution's Evidence
	A.	Yes.	
	Q.	Mr. NG, qualified, I think, in 1967?	No.4
10	A.	I wouldn't know without checking his records.	P.W.19 Allan
	Q.	Now, all the regulations we have been dealing with in some details, the collision regulations, the M notices, all of them, and all the other documentary material is really aimed at propeller-driven ships, hull-borne ships.	Charles Pyrke Cross-Examination (continued)
	A.	Yes.	
20	Q.	That's the bulk of the traffic around the world on the sea.	
	A.	Yes.	
	Q.	A hydrofoil is a very, very small part of the traffic.	
	A.	That's correct.	
	Q.	And I think I am right - you will know this - but I think I am right that fairly recently sea planes were brought into the collision regulations, they were added.	
30	A.	If my recollection serves me, they were in and then they were out then they were back in again.	
	Q.	My point is they have recently come back.	
	A.	Yes.	
	Q.	Now, there are significant differences, aren't there, between a ship and a hydrofoil. It's a general question. Let me tell you what I mean. The first thing is that on a big ocean going ship the helmsman, the man who is steering, is back from the front of the wheelhouse.	
40	A.	He can be, yes.	
	Q.	He normally is, isn't he? He's not right by the window.	
	A.	Some ships have control up on the front panel.	
	Q.	Well, isn't it most of the case that the actual steering position is back from the bows?	
50	A.	Perhaps I can shorten this by saying that on a normal ship the steering is done by a rating, not a qualified officer, and the position of it is therefore not that important.	
	Q.	Please answer my question, Captain Pyrke. There is an order in the questions.	
	A.	Sorry.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- Q. Am I right that the position of the wheel or whatever you call it is way back from the bows in a ship?
- A. Yes.
- Q. A long way away. And for that very reason, the regulations require a look-out closest to the bows.
- A. The regulations don't tell you where you should post the look-out.
- Q. Don't they advise you to have a look-out away from the man on the wheel so you've got someone with a better forward view? 10
- A. I can only -- I am only trying to work from memory. I think look-outs being posted -- the recommendations are only to deal with restricted visibility, to getting away from the noise of the bridge. I would have to check the actual -- all the recommendations to answer that question. 20
- Q. Even if he stays on the bridge - and I would suggest that he doesn't normally, he should be somewhere else - even if he stays on the bridge, he would go right up to the front window, he won't stand back next to the man on the wheel.
- A. He will probably go out on the bridge. That is the place for look-out, out in the open air. 30
- Q. And outside means further....
- A. No, can be on the bridge wing.
- Q. And he walks around.
- A. Yes.
- Q. Again it is in the regulations in the cases arising out of them, I think, he is supposed to walk around and so he generally keeps an all round view.
- A. Exactly, he has to keep an all round view.
- Q. The point I am getting at is he doesn't sit in a fixed chair on the portside. 40
- A. Correct.
- Q. Now, you have told us that the man on the wheel is not an officer and he is, isn't he called a quarter-master or?
- A. Sometimes called a quarter-master.
- Q. And he does exactly what he is told to do by the look-out, the man on the watch.
- A. He does exactly what the officer who is over watch tells him to do. Not the look-out, the officer over watch. 50
- Q. He has no look-out function at all, the man on the helm - the wheel.
- A. Not in the normal course of events.
- Q. He is a cog in the machine. He moves to starboard, to port, whatever they say.
- A. Are we talking about big ships?

	Q.	Yes. Well, I am not sure, I think you know, are you saying that in a little ship the helmsman can be a look-out as well?	In the High Court of Hong Kong
	A.	I think the M notice tells you this - I mean do remember a little ship means that you have limited accommodation and you can't have hundreds of people on the ship.	Prosecution's Evidence
10	Q.	I know that, yes. In fact, for whatever reason it doesn't define a little ship for us, does it?	No.4 P.W.19 Allan Charles Pyrke Cross-Examination
	A.	No, no.	
	Q.	Does it?	
	A.	All it says is - it says a small ship where you get an unobstructed view and it also talks about other special circumstances.	(continued)
20	Q.	This is what I asked my learned friend Mr. Steel to read out. It makes the point which everybody has been making in the regulations - "The duties of the person on look-out and helmsman are separate and the helmsman should not be considered the person on look-out while steering." That's the principle, but there is an important exception which reads, "Except in small vessels where an unobstructed all round view is provided	
30		at the steering position and there is no impairment of night vision". I am not worried about that - "or other impairment to the keeping of a proper look-out." There is an exception to small vessels.	
	A.	With provisos.	
	Q.	Well, let's look at the provisos. One is that there is an unobstructed all round view from the steering position.	
40	A.	Yes.	
	Q.	And the other one is night vision but I don't think we are concerned with that, and the other is no other general impediment.	
	A.	It may be particularly relevant to hydrofoils.	
	Q.	But the point is -- you are guessing, are you?	
	A.	No, I am sorry, I am commenting.	
50	Q.	But a small vessel isn't defined.	
	A.	No, it isn't.	
	Q.	You see, you just took up the point with me. You said that my general principles about ships and look-outs only apply to big ones. What is a small vessel in your opinion?	
	A.	I can only give you an opinion on what I	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

consider to be a small vessel. We are talking down from a couple of hundred tons downwards. There's no fine dividing line. You could ask many people the same question and get different answers.

- Q. I have forgotten, what is the weight of a hydrofoil?
- A. When she is fully laid in displacement, I believe it's around 61 tons displacement. 10
- Q. Now you might not be able to answer this but it is only fair that I should give you the opportunity of answering it. I just read out the regulation and the exceptions. The question is this, do you know how operators on a hydrofoil interpret that exception - individuals?
- A. No.
- Q. Would you be surprised if individuals interpret the exception as applying to hydrofoils? 20
- A. Could you repeat the question please so that I can....
- Q. Yes. Would you be surprised if individuals in Hong Kong, people doing this route all the time, would you be surprised if they interpret the exception as applying to their hydrofoils, in other words; if they interpret them as being small vessels? 30
- MR. LUCAS: With respect, my learned friend can't (?) ask the expert what his views are, to comment on other persons, or perhaps produce some sort of authority or some sort of book to suggest that - would you be surprised that other people may take a different view.
- MR. AIKEN: I don't understand my learned friend's objection.
- COURT: We've got an exception in the notice right into small vessels, I think the witness as an expert can be asked if he is surprised if -- 40
- MR. LUCAS: He has not been asked the first question yet, my Lord - did he consider it a small vessel himself.
- MR. AIKEN: I thought I had already asked him that. I asked him to define a small vessel in terms of tonnage and then I put the tonnage of a hydrofoil. That's my recollection. 50

COURT: Do we take it from your last two answers that you would consider a hydrofoil a small vessel?

A. Yes.

Q. I will repeat the question.

A. Masters that I have asked and deck officers that I have asked both in the course of other enquiries, even in the course of examinations for certificates, give me the answer that the person on the lefthand seat has to keep a look-out. That is what they tell me. And certainly sometimes when I am on the bridge I see them doing this. But then of course people - when you get an examiner or a surveyor on the ships, on the bridge, they tend to do things by the book.

Q. That's very fair answer, Captain, if I may say so.

COURT: The exception that is in the notices - that the look-out shall not be the helmsman except in small vessels.

MR. AIKEN: My Lord, yes.

COURT: Does it go on....

MR. AIKEN: My Lord, it reads like this, "The duties of the person on look-out and helmsman are separate and the helmsman should not be considered the person on look-out while steering; except in small vessels where an unobstructed all round view is provided at the steering position". The night vision we are not concerned with, and if I haven't I certainly will establish that the view at the steering position is good in a hydrofoil. I am coming to that.

Q. You have heard the question. The steering position on a hydrofoil, the vision is pretty good, the location of the steersman.

A. In my opinion, it is not particularly good.

Q. Why do you say that? Because he is sitting there, I mean right in the middle of the bridge up by the window, so he's got -- I know he's got a window frame, that is inevitable because it's not one piece of glass, there are lots of window frames and we have seen them in the photographs; he's got a window frame in front of him, but either side of that frame there are two big windows, one port, one starboard.

In the High Court of Hong Kong

Prosecution's Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- A. If I remember correctly, I think there -- they've only got three bridge windows, which means he's got the windows in front of him, not the pillars. It's not only that, it's 360-degree view all round.
- Q. But anyone could have a 360-degree view on the 11th of July when they were standing up and going like that on the Goldfinch. 10
- A. As I say, I haven't actually checked the Goldfinch and I think I gave earlier evidence that I believe that you have to stand up and that on the Goldfinch you've got windows behind but the Flamingo hasn't. So I would tend to agree with you although I haven't personally checked it.
- Q. Let's get the window position right, that there is a window in front of him so he's looking directly out. 20
- A. A general arrangement will tell you very easily.
- Q. We can see it I think on photograph 1. Although that's the Flamingo, the arrangement I think is the same. Let's look at that and help the jury. There are three windows across the front of the bridge, the helmsman is directly behind the centre of the middle window.
- A. That's correct. 30
- Q. So he is looking out through it.
- A. Yes.
- Q. From where he is sitting, he can quite easily look out through the port window and quite easily look out through the starboard window without leaving his seat, all he does is turns his head.
- A. He does also have difficulty because he's got people on either side of him as well.
- Q. But they are sitting either level with him or slightly behind him, they are not in front of him. 40
- A. If there is, he would still have to move about a bit, in other words, you cannot get the clear view without moving around.
- Q. Well, no one can, can they?
- A. No.
- Q. The man on the port seat has got to move probably more.
- A. For visual look-out, yes. 50
- Q. Yes, because if this man in the port seat is looking starboard, he's got two window frames.
- A. And two people.
- Q. And two people, so he will have to do more moving about.
- A. That's correct.

	Q.	Now let's deal very briefly, I hope, with the engineer. He sits on the starboard side in a chair, exactly the same sort of chair as the deck officer.	In the High Court of Hong Kong
	A.	Correct.	Prosecution's Evidence
10	Q.	He has got the starboard window in front of him, he has also got the starboard side window, so if anyone has got a good view of the starboard side of the vessel, it's him.	No.4 P.W.19 Allan Charles Pyrke
	A.	Correct.	Cross- Examination
	Q.	Now in practical terms, the engineer's job is a very straightforward one. The engines are working, he has very little to do.	(continued)
	A.	Yes, that is as it strikes me, yes.	
20	Q.	Because all he has got are two levers which he pushes forward to full throttle which gets the vessel foil-borne, gets the vessel going at 32 and whatever knots and he leaves them there, doesn't have to hold them, they remain in the position as he puts them.	
	A.	Correct.	
	Q.	Once he has done that, provided the engine is working properly, he can sit back.	
30	A.	He has to monitor gauges and he may have to leave occasionally to check the engines, or --	
	Q.	That is very, very occasional, isn't it, in practical terms very rare for him to go and check the engines if they are working properly.	
	A.	I think they certainly go down once a trip, I believe it's the normal practice, but I'm not sure.	
40	Q.	When he is not down there and the gauges are set, so he can just cast an eye on them as they are going along.	
	A.	That's correct.	
	Q.	And in practical terms, he doesn't keep his eyes fixed on the gauges all the way.	
	A.	No.	
	Q.	And when he is not doing that, in practical terms, he looks out of the window.	
	A.	It is up to him what he does.	
50	Q.	Yes, but the window is the obvious place for his eyes to look through. I withdraw the question. It is pointless because we have already dealt with that. Isn't it right that on a number of hydrofoils, the master relies on the engineer to keep some kind of lap sap lookout?	
	A.	Again I can't tell you what masters do. Again under various enquiries I have asked	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

this question of both the engineers
and the masters and I get a variety
of answers.

- Q. Did you ask in this case?
A. I did, yes.
Q. And have you got the answer yes? Did
one of them tell you he keeps a lookout
for lap sap?
A. I cannot recall.
Q. We will check, anyway, it would be
sensible, wouldn't it, they are his
engines. 10
A. I would agree with you, yes.
Q. Yes, and if at - you gave my learned
friend Mr. Steel figures - if at 100 ft.
which is very close at 32 knots, very
close indeed, if at 100 ft. a big tele-
graph pole starts floating across your
bows, the one person who can do anything
about it is the engineer, it goes like that 20
A. Yes, that sort of range.
Q. And as you told us I think yesterday, it's
the logs at close range which are the
most dangerous things.
A. And you'll tend to see the bigger object
obviously further off and the smaller
object - it is very difficult to say
exactly, but it is general rule.
Q. And things like plastic bags are almost
an occupational hazard, aren't they? 30
A. Nothing you can do about this.
Q. You do get these hydrofoils dodging the
plastic bags.
A. You either pick them up or you don't.

COURT: Let's deal with this point: if an
engineer stops the engines or pulls the
engines straight back into neutral like
that, does that have any, you know, does
that have any discomfoting effect on
the passengers? Would it be a practice 40
that the management would --

- A. It's just the same. I mean, they do
this when they come into land. It is not a
sudden sharp jolt.

COURT: Not sudden?

- A. No.
Q. Now the man at the helm is in charge of
the route. I mean, following - if he
is the deck officer, he is following the
route the captain has told him to follow, 50
if he is the master, he is following his
own route.
A. Correct.

	Q.	And to follow a route, you've got to look out towards the horizon to see where you got to.	In the High Court of Hong Kong
	A.	Yes.	
	Q.	All the more so on a hydrofoil because you've got this perennial problem of yawing even on calm seas.	<u>Prosecution's Evidence</u>
	A.	It depends upon the boat.	No.4
10	Q.	They do tend to move about, so you've got to, like driving a lorry, you've got to keep an eye on where you are going.	P.W.19 Allan Charles Pyrke Cross- Examination
	A.	Yes.	
	Q.	I must suggest to you, Captain Pyrke, that the lap sap lookout role of the helmsman is very, very minor.	(continued)
	A.	It is something that they have to do, and if you get propeller damage, it also depends upon the person steering as to how seriously he takes that threat.	
20	Q.	In practical terms, don't they tend to concentrate on their route, obviously keeping a vague eye on logs and things. They're not scrutinising 150 ft. in front of their eyes.	
	MR. LUCAS:	Who is it?	
30	MR. AIKEN:	The helmsman, I'm talking about the helmsman.	
	A.	I can only tell you what I would tend to do under the same circumstances. I do not see how I can say where they are actually looking.	
	Q.	You would follow the route, wouldn't you, to see where you are going?	
	A.	Yes, but I would also keep a lookout for rubbish. I would obviously personally do many things, but that doesn't apply to other people.	
40	Q.	Yes, of course, but you would regard your more important function to keep an eye on the route.	
	A.	The job that you are doing when you are steering is, in effect, pilotage as well as keeping a lookout for ships as well as keeping a lookout for rubbish and anything else untoward. It would be very difficult to say which is the most important function. Obviously, you don't want to hit the land, equally you don't want to hit a ship.	
50	Q.	And the one person who can stop it hitting land and stop it hitting ships is the man on the wheel?	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- A. Obviously, yes.
- Q. Let's not misunderstand each other.
I am not saying that he doesn't have
some task of watching for lap sap. All
I am saying is with the other things he
is doing, it is a very minor part of his
job, keeping a general eye out for lap
sap.
- A. But nevertheless, hydrofoils have hit
logs. You get very little warning, 10
particularly if you have what is known
as a dead head, and by that I mean a
log that is floating vertically. So it
is that sort of thing that you are
watching out for and it is up to the -
I can't answer whether they take that
as a proper threat and how much they look
for it.
- Q. If you are doing your job at the helm
properly, looking out for all these 20
things, it is quite a tiring hour's trip?
- A. Sometimes it is very quiet and you hardly
see a vessel, you hardly see a thing.
The next trip can be busy. It varies
trip to trip.
- Q. I was dealing with watch and I'll return
to it. Now keeping lookout is also a
very tiring function, isn't it?
- A. Keeping an efficient lookout, you've
to stay alert and in that respect, I 30
suppose, it is tiring, that you can't
relax.
- Q. What I am getting at is again regulations
and the law arising out of them. There
are quite definite periods of time for
keeping a lookout. You do a few hours
on and then you have a long break.
- A. There is no law on the amount of time
that I am aware of that you can or 40
cannot perform a function on a ship.
Sorry, I am incorrect. They have
recently brought in the hours of work
regulations I think in the United
Kingdom which gives periods of work --
- Q. -- and periods of rest --
- A. -- periods of rest and says a person
going on watch must be - sorry, I'm
incorrect, but that is general.
- Q. Yes, I would not go to the law, but
let's forget the law, but in practical 50
terms, for a long, long time, many
years, hasn't one of the general things
been four hours on and eight hours off?
- A. This is on a deep-sea ship away from
land.
- Q. It is still one of those schedules for
keeping watch on a ship?

10	<p>A. But on a small coaster you can keep watch and watch. On a ferry boat, going across --</p> <p>Q. Will you answer my question?</p> <p>A. It varies.</p> <p>Q. Does it apply on a big ship?</p> <p>A. On a big ship, yes, big ship.</p> <p>Q. Again I think if you are doing everything that a very careful lookout should be doing, the recommendation suggests that 20 minutes is as much as the most conscientious man can take, 20 minutes on trip.</p>	<p>In the High Court <u>of Hong Kong</u></p> <p><u>Prosecution's Evidence</u></p> <p>No.4 P.W.19 Allan Charles Pyrke Cross- Examination</p>
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COURT: Regulations?

(continued)

MR. AIKEN: Recommendations.

COURT: Whose recommendations?

20	<p>Q. I'm sure you know this far better than I do. It is the Admiralty Manual of Seamanship, Volume 2, dealing with lookouts on page 238. "Lookouts usually do trips of 20 minutes" - and this was what I was putting to you - "It has been found that even with the most conscientious man, results on average cannot be as good if the trips are any longer."</p>
30	<p>A. Two things: merchant ships are different to warships. Warships may be keeping a lookout for totally different things to a merchant ship. The other thing that I would point out is the matter of fatigue and how long a person can operate on a hydrofoil doing a particular task was the very reason why a fatigue study was commissioned by the Marine Department.</p>
40	<p>Q. We are not dealing with hindsight. I am trying to deal, as I have said, with the position on the 11th of July last year and, as a general principle, would you agree with me that if you are doing your job of a lookout as well as the regulations require, then 20 minutes is quite tiring. I know we are not dealing with warships but 20 minutes is quite tiring if you are doing everything you should.</p>
50	<p>A. Personally I don't think so. I have kept lookouts for much longer. Certainly, I have kept radar lookouts on hydrofoils for, without going into the reasons why, trip after trip after trip.</p> <p>Q. Without getting tired or --</p> <p>A. One tends to get a very sore forehead from the radar hood hitting you all the time,</p>

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- but I mean this is what you are paid for.
- Q. To do a trip over on the helm, have a short break of 15 minutes and come straight back with your head in the radar, 7 times a day?
- A. Yes.
- Q. 10 hours. You are not saying, in practice, that happens, are you?
- A. We have a fatigue study. I mean, this is what does happen. 10
- Q. I'm not interested in regulations, studies or academics. I'm interested in ordinary deck officers. You are not saying that happens?
- A. With the person looking at the radar trip after trip?
- Q. Yes.
- A. No generally, I have seen that although the radar is on, they haven't got their head stuck into it. They may glance a bit from time to time. 20
- Q. You may not have seen this because you've already pointed to us that when you go onboard, everybody brushes up on the regulations, but I suggest to you that on a lot of trips, in clear weather, the radar isn't even switched on.
- A. It is possible. 30
- COURT: The trips you have been on, it hasn't?
- A. I can't recall every trip I have done, my Lord. I have certainly seen hydrofoils going along on their route without a radar going round, but equally I have seen them going in clear weather, hydrofoils with the radar on.
- COURT: You have seen them with the radar not rotating?
- A. Oh yes. 40
- Q. Might I deal with this quickly? There are standing instructions issued by the company which control the Goldfinch and the Flamingo.
- A. Yes, I do know the company issue standing instructions.
- Q. And I'm sure you've seen them?
- A. I have seen some of them, yes.
- Q. And one of them deals with radar, it is No.3, standing instructions 3 and it is addressed to all masters. It starts with the principle: 50

"The masters and deck officers are to be conversant with and proficient in the use of the radar equipment on board the vessels."

In the
High Court
of Hong Kong

Prosecution's
Evidence

That's the syllabus. Sorry, they have go to be proficient in their use. The next paragraph interests me. The standing instructions say this:

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

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"Advantage is to be taken of good weather conditions to maintain the proficiency of the deck officers, and ensure communication is of a satisfactory standard. Also route familiarization can be checked."

(continued)

The third paragraph is the most important:

20

"When these exercises are carried out they are to be recorded in the 'Log Book'"

Now when they are carried out, they are regarded as exercises. This is testing the deck officer's ability.

30

A. If I recall, this instruction was issued on the recommendation of marine court into the Flying Skimmer where it was found in the court that the deck officer, or there was a suspicion that he did not know where Chung Chau was and tried to go through the middle of Chung Chau because it appeared they are two separate islands, and that particular instruction, if I recall correctly, was issued on the direct recommendation and the reason that it had to be logged was to show that they were complying with that regulation. That is as I recall it.

40

Q. It's the same point. You see, in practical terms, the radar isn't used by deck officers, on a clear day.

A. This was to ensure route familiarization: that they knew what the radar picture looked like any place on that run, so that when they get into fog, they didn't possibly make the mistake of trying to go through the middle of Chung Chau.

50

Q. It makes my point for me, doesn't it, because if you've got a deck officer who didn't even know where things were in the radar, he can't ever use it.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- A. This was in 1974, I believe, this accident.
- Q. It is right, isn't it, that radar isn't infallible?
- A. It has to be intelligently used, otherwise it becomes very dangerous.
- Q. That's right, because you've had in the past, have you not, collisions in the open sea on a perfectly clear day when both ships have been using radar - relying on radar and they have gone into each other, perfect conditions? 10
- A. Yes.
- Q. And because of that, aren't mariners advised to keep a visual lookout as well?
- A. Oh yes, you can't rely purely on a radar lookout. You'd be very foolish if you do.
- Q. Now you were telling my learned friend, Mr. Steel, yesterday, that these radars on hydrofoils aren't gyro-fixed. 20
- A. They aren't gyro-stabilized.
- Q. And so that makes the use of them more difficult?
- A. More difficult. You have to take more precautions to make sure that the information you are getting is correct.
- Q. Now the use of the radar when it's being used, is to assist the man on the helm.
- A. We are talking about - specifically about hydrofoils? 30
- Q. Yes.
- A. It enables you to check that you are passing distances off, that you are on route, that you are keeping to the track; it also assists in keeping a visual lookout, or helps - it complements keeping a visual lookout.
- Q. Again the instructions, company instructions addressed to masters, it is the master's responsibility to tell his deck officer what requirements he wants of the radar and when to use it, up to the masters. 40
- A. It is up to the master to set up his own bridge keeping routine.
- Q. And so if a master doesn't, in the matter of practice, use radar on a clear day, you wouldn't expect the deck officer to switch it on?
- A. Not unless he wanted to stop guessing distances off and actually get real ones. 50
- Q. If it is not gyro-stabilised, the operator needs to know the course, isn't it?
- A. He has to check that you are on the same heading, when he last looked, if you want to compare movement of bearing, shall we say.

	Q.	And if it is not gyro-stabilised, for him to check that he has got to keep asking the man at the helm.	In the High Court of Hong Kong
	A.	Yes, or he can himself glance up to see that the boat is still on the same heading. Of course, it leads to inaccuracies. There's no doubt about that.	<u>Prosecution's Evidence</u>
			No.4
10	Q.	And those inaccuracies are exaggerated by the fact of yawing, or can it?	P.W.19 Allan
	A.	Because of the yawing that you will get the inaccuracies.	Charles Pyrke
	Q.	But even without yawing, if your radar isn't gyro-stabilised, you can get inaccuracies just because there is a communication between the two. That is why radars are gyro-stabilised to get rid of this problem of inaccuracies.	Cross-Examination
			(continued)
20	A.	No, there's other reasons as well.	
	Q.	But that is one of the reasons.	
	A.	Yes, to stop inaccuracies in bearings, yes.	
	Q.	My attention has been drawn to what the instruction says in case anyone wants it. It's standing instruction 4 to all masters again:	
30		"The Master is to give the Deck Officers manning the radar precise orders as to the radar information he requires and the intervals at which such information is to be given. The Deck Officers are to be informed of the course being steered and alterations as they are made."	
		This is a point we've just been dealing with.	
40	A.	Yes.	
	Q.	But it is in the standing instructions.	
	A.	I cannot recall reading that one. What date is it?	
	Q.	The stamp on my book is not clear. I will point it out for you. Now the hazards of this route, the anticipated hazards vary. I mean, there's more danger in the harbour, isn't there?	
50	A.	The density of the traffic tends to be at maybe three or four points, the harbour, Adamaster, Fan Lau, entrance to Macau.	
	Q.	And if you are going to generalize about it, the least traffic is normally in the open sea.	
	A.	It depends where the fishing fleet is.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- Q. But if you are in the open sea, you've obviously got greater room for manoeuvrability?
- A. Correct.
- Q. Now the regulations say that for lookouts, there is an element of discretion because it depends on the conditions and the circumstances. That is in the notice that has been read out a number of times.
- A. Yes, do remember this note is - that 10
- Q. Arising out of that, I am right, am I not, that there is a justification for relaxing the lookout when you are in a less congested area, in the open sea?
- A. It is specifically - the person has got to make sure that it is safe to do so and there is an onus on him to make sure that it is safe to relax any lookout. 20
- Q. Yes, but if it appears safe, there would be justification for relaxing it in the open sea?
- A. We are talking about deep sea ships when they are well away from the land and the master considers it safe, then you can allow the officer of the watch during the day to be on the bridge by himself.
- Q. And converse to that point is when you are in crowded seas, then it would be foolish to mention everything you see because that just leads to confusion. 30
- A. You only mention what is significant, material; as I have pointed out you don't mention a ship miles and miles away.
- Q. And have there been casualties in congested areas because the helmsman has been driven mad by a host of irrelevant information for lookout, he keeps saying something here, something there, something there. All you are supposed to do is report important things, the significant things. 40
- A. Yes, I would agree this is what you should do.
- Q. And the same applies, doesn't it, once you've reported it and once you are satisfied that the helmsman has got it in mind and in sight, that you don't pester him all the time by saying it's still there, still there? 50
- A. This is entirely up to the way the master wants to run it. If I could perhaps - the routine used which is Marine Department instigated on my jetfoils is that the radar operator will report targets, the master will say "Roger" until he is

satisfied and then tell him,
"Disregard it." This is the set
routine.

In the
High Court
of Hong Kong

Q. Can we not deal with night.

A. I am just telling you what the bridge
routine is or what should be --

Prosecution's
Evidence

Q. Yes, I know it's an example. Yes,
I want to keep away from the night
time because entirely different
considerations apply and I think we
will go on a lot longer if we enter
into this. In the day time, in
clear visibility, in excellent
conditions, if the lookout is satis-
fied that the helmsman has the other
vessel both in sight and in mind, he
is not required to mention it every
minute, still there, still there.

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

A. No.

Q. We have heard a lot about bearings,
am I right about this: probably the
most satisfactory place to take it
from is the centre of the bow of your
vessel?

A. Visually eye-balling of bearings?

Q. Yes, eye-balling bearings.

A. Oh yes, you are in the centre line.

Q. That's right, because you can line it
up almost exactly on your --

A. You've got a reference point.

Q. Yes, and from the layout, we have dealt
with this, but from the layout the
person best placed to do that is the
helmsman because he is sitting directly
in line with the front point of the bow.

A. Yes, that's true.

Q. The deck officer, to achieve that, is
looking at an angle. He has got to
compensate or he has got to use a different
point in his bearings.

A. If he is sitting in the same seat or that
is the same position, he just uses a
different point.

Q. But it won't be the point in the middle
of the bow?

A. Won't be the bow.

COURT: That might be a convenient time.

12.55 p.m. Court adjourns

2.35 p.m. Court resumes

Appearances as before. Jury present. Accused
present.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

P.W.19 - Allan Charles PYRKE o.f.o.
XXN. BY MR. AIKEN (continues)

- Q. Captain Pyrke, I just want to clear one thing up if it needs clearing up. I wasn't suggesting to you that Mr. NG was tired on the 11th of July. He never complained that he was tired in any of the times you saw him, did he?
- A. No, never.
- Q. What I was suggesting to you was that given the nature of his continuous work, 10 hours going backwards and forwards in short breaks, given the nature of it, in practice, the crew don't follow the absolute letter of the regulations. If they did they would be exhausted. That is what I was suggesting. 10
- A. I'm sorry. I wouldn't agree.
- Q. You've already answered it because you said you haven't done -- 20
- MR. LUCAS: No, he said he wouldn't agree.
- A. Yes, I did say I wouldn't agree.
- COURT: Could we take it in two parts: the first part was the crew sometimes do not obey the letter of the regulations?
- A. That's correct.
- COURT: And do you think that is because they are tired?
- A. No.
- Q. I'm not saying because they are tired. I am saying it is because they would become tired if they did everything the regulations require of them. That's the point. If he helms across, that is a vital task, in itself it is quite tiring, if he did it properly. 30
- A. Could I perhaps say that I am not an expert in judging whether a person is fatigued. All I can say is myself, from what little I have done, do remember that I have not been in command. Command does fatigue when you are actually carrying the responsibility. So really I can't be of any assistance because I am not expert in that matter. 40
- Q. That is very fair. I think you said that this morning. What I was doing was clearing up any doubts. I am not saying that Mr. NG was tired because he wasn't and he did not complain of tiredness. It's a different point. 50

	A. I see.	In the
	Q. Am I right about this: on an ordinary ship, cargo ship or whatever, the officer of the watch to look out also has various duties, other duties, to fulfil. He has to keep a log in the record as he is going along.	<u>High Court of Hong Kong</u>
	A. Deep sea, if it's safe, you've cleared the land, etc., then by day the officer on the watch would keep the lookout. There would be nobody up there with him at all.	<u>Prosecution's Evidence</u>
10	Q. He also has administrative job. He fills in logs, he goes to the chart on occasions --	No.4 P.W.19 Allan Charles Pyrke Cross- Examination
	A. Yes, that is up to him to decide to make sure that he is still maintaining efficient lookout, in that particular case, deep sea, good visibility and all the rest.	(continued)
20	Q. So the fact that deck officers on hydrofoils fill in the log when they go across to Macau isn't exceptional. It happens on big ships too.	
	A. I can see that something like that - I mean you can glance up at any time, I mean it is perfectly all right, in my opinion.	
30	Q. Yes, thank you. Now if I understand you rightly, you are saying that in an ideal situation, the radar would be on and the deck officer would be watching it the whole time.	
	A. No, he would use it to assist in a visual lookout. It is very useful to aid - gives you 360° vision, and let's face it, a ship is overtaking you at that speed, you've got a long time, so you don't have to keep a really second by second watch observation. It helps you to complement the visual lookout that is being kept, as well as to enable you to, in effect, properly to check distances.	
40	Q. And you are prepared to agree in practice you have seen them going backwards and forwards to Macau without switching on the radar.	
	A. Yes, I have.	
50	Q. You mentoned a ship overtaking. Am I right about this: under the collision regulations and the other regulations, it is the ship, the vessel which is doing the overtaking. It has got to keep out of the other one's way.	
	A. Oh yes.	
	Q. So although people do look round to see if there is anything behind, the duty is on the vessel behind if you are overtaking it.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- A. Yes, I did also point out a very practical reason, particularly when you are making a lot of course alterations, if you don't know who is coming up astern of you and you suddenly alter across its bows, that is dangerous.
- Q. But so far as regulations are concerned, it is like driving a car. You stop suddenly and someone runs into you, the man behind is at fault. 10
- A. I'm sorry. I couldn't give that parallel on ships.
- Q. Yes, fair enough. Now I want to ask you if I may: do you know that hydrofoils are used in Sydney Harbour? They are ex-Hong Kong hydrofoils?
- A. I believe they had PT-50s down there. Yes, I haven't seen - whether they are 50s or 20s, I wouldn't be sure.
- Q. Answer this if you can. I suggest to you that in Sydney Harbour, they have a master on the wheel steering and they have a deck hand assisting as lookout. 20
- A. It would depend - if it is a PT-50 I could understand - sorry, PT-20, if it's a PT-20 I could understand that.
- Q. I am talking about the ones that come from Hong Kong, the ex-
- A. We have had ex-50s because PT-20s --
- Q. But it is all right in a PT-20? 30
- A. The PT-20s when they were operated here, you do get a better all round view. You also have a gangway going down the middle. There's only two seats, the engineer's on this side, the master on this side, but when they are operating the PT-20s we are only talking about four or five boats. We are not talking about the high speed traffic that there is today.
- Q. But in Sydney Harbour, where these things are operated, you have a master who we know is a qualified officer and a deck hand. 40
- A. If it is PT20 it wouldn't surprise me.
- Q. And a deck hand is, so to speak, similar to the sailors who have come in here. He is an unqualified seaman.
- A. I have no specific knowledge of this.
- Q. But deck hands do not study radar.
- A. Oh no. 50
- Q. So he would be a man who is doing the lookout job with no radar experience.
- A. Yes.
- Q. What about the sailors in England? Do you know if the same happens there?
- A. In fact, I was a passenger on a shear water not more than five weeks ago.

I specifically noted that the - just for professional interest - that the master was steering, he had a radar available and I certainly - I couldn't see who was in this seat, but I think they are PT-20s, I've got an idea it's the engineer, but I couldn't be sure.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrkè
Cross-
Examination

(continued)

- 10 Q. So you can't tell me if the same applies, whether they have a deck hand keeping lookout.
- A. All I can say is it didn't look like it.
- Q. Who did you see - you saw an engineer and the master?
- A. I was sitting on the starboard side and I could see the master. I specifically stopped there to watch the master to be honest and there
- 20 definitely was somebody on this side and by his, you know, what he was doing, what I saw, I tend to think he was engineer.
- Q. But you didn't see a third person who was lookout?
- A. No.
- Q. The third question in the series: hovercraft up to Canton. Occasionally on that route, they have one person on the helm?
- 30 A. With the pilot sitting in the left-hand seat.
- Q. Just two of them on the bridge.
- A. Yes, the pilot and the - that is all there is room for.
- Q. That's right. I am going to suggest that, in practice, that pilot or lookout does other functions which occasionally take him away from the bridge, away from the
- 40 lookout position.
- A. When I said pilot, I meant pilot. I meant a Chinese river pilot. They pick up the pilot at - once they get round by Deep Bay and it's the Chinese pilot who is in the left-hand seat with the master, or the coxwain driving it. Before that, there are two coxwains on and I'm not sure whether - I couldn't be sure whether they leave the bridge or - I haven't made a
- 50 study of that particular boat.
- Q. Leaving that for a moment, we go on to another matter altogether. After a casualty, the Ordinance requires a master to fill in the log after collision.
- A. Yes, and to submit to the Director a letter advising of the casualty.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Cross-
Examination

(continued)

- Q. The point is this: there's a statutory duty upon a master to fill in the log.
- A. The official log, yes.
- Q. Help me with this, please, if you can. On what day did you seize the logs from the Goldfinch and the Flamingo?
- A. I don't think I got them until the middle of the week because I was starting off - I was mainly inspecting the vessel itself and I said to the company, "Send along the books as soon as you are ready," because obviously they want to have a look at them. 10
- Q. So it could have been three or four days.
- A. It could have been three or four days.
- Q. Now you are highly experienced in investigations, you've told us about that to my learned friend, Mr. Lucas. It is right, isn't it, that when collision occurs, it is quite, whatever reason, it is quite common for people to alter log books and alter records. 20
- A. Yes.
- Q. It happens all the time?
- A. It happens all the time.
- Q. I would like you to look at the two log books, please? Now you will remember earlier in your evidence telling us in the Goldfinch the record of times on the carbon copy is marginally out of alignment with the top copy. 30
- A. That is correct, yes.
- Q. Now I stopped you at the time. You are not qualified to give an opinion on that. You are not an expert.
- A. I would accept that, yes.
- Q. It is right that, isn't it, if you look at the Flamingo log, you will find a similar thing has happened. Look at the bottom entry. There's something about picking up the lap sap written in the manuscript, do you see that? 40
- A. Oh yes, I certainly haven't noticed that before.
- Q. And the alignment of that is greater - it's more out of line than the other one.
- A. That particular line is well out of alignment, yes.
- Q. I imagine you've seen this before?
- A. I haven't seen that particular mis-alignment. 50
- Q. The Flamingo mis-alignment?
- A. I have not seen the Flamingo mis-alignment.
- Q. The Goldfinch mis-alignment: you've got two pages and a bit of carbon between and you are writing on your lap and you pull down slightly, there's got to be a

millimetre or whatever, with your arm, then there is going to be a difference in alignment, if the top sheet comes up.

In the
High Court
of Hong Kong

10 A. I can't - I'm not an expert on that.
Q. I am only raising it because Mr. Lucas raises it. It is fair that I should as well. One thing I do need a little bit of help on. You told us that the Goldfinch log is now in a tattier condition than when you received it.

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

A. The loose pages have got more creased edges; there's a bit of difference, yes.

Q. Why is that?

(continued)

A. I presume because it's been through so many hands; it's been handled so many times.

20 Q. And yet you can't tell us whether that has happened to the Flamingo?

A. Whether the Flamingo's log book is tattier? Oh yes, I would say so. They both had --

Q. You see, Mr. Lucas asked you and you said, "The Flamingo - I can't remember what condition it was in when it was handed to me." This was your answer to Mr. Lucas.

30 A. Yes, it is - I think this is quite correct. I particularly noticed the Goldfinch but - so possibly, my previous answer is correct.

Q. You have got no record.

A. I'm not sure.

Q. There's no written record or anything like that?

A. No, no.

Q. It's just that you think that is --

40 A. Shall we say logically it tells me, it's been through so many hands, that it must be more that.

Q. But one thing is for sure: it's not in the condition it was when it came to you.

A. The Flamingo log book?

Q. The Goldfinch, first of all.

50 A. The Goldfinch - because I paid particular attention to it, you know, with matching the pages, and I know now that they are creased over, yes I can definitely say it is not in the same - it is more battered.

Q. Thank you very much. Now you've told us how your colleague Mr. Owen took the radar on your instructions, you were present when it was, as the photographs show, in position.

A. No, when I had a look at the boat - it is very difficult to remember - I think I

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- saw it at that time.
- Q. Yes.
- A. I came back to the office and later on, and I seem to think that there was a fair gap of time, 10 days, something like this, because I was obviously pressed to finish this, my report. I asked Paul Owen to go and get it for me, and take the photographs and all the rest of it. 10
- Q. Now we have heard that Mr. Owen is not an expert in metals and stress, you agree with that.
- A. Yes.
- Q. And he has given an inexpert opinion which you have read.
- A. Yes.
- Q. The opinion is, it is not conclusive, he says it could have happened by an object banging to the side and then he says another possibility is someone was holding it and creased it, so that's a second possibility. Do you agree with that? 20
- A. Well I am in the same position. I am not an expert on metallurgy.
- Q. I am not either, so the opinion really shouldn't really be before this court but it is and I must deal with it. The metal of the hood is - it's quite solid and strong, you felt it. 30
- A. Yes.
- Q. We have all seen Mr. NG. He doesn't have to stand up. He is - you won't mind me saying this, a small - not insignificant - not a very hefty man. Perhaps we better have it. Can we have the exhibit. Now you align it up for us the other day, so the crease is on the starboard side. Assume the bow is where the jury are. We have got a large crease on the starboard side and a small dent on the other side. 40
- A. Yes, somewhere down here.
- Q. Now if I understand Mr. Owen's inexpert opinion, he is saying that someone would have put their hands on it and caused that big starboard dent.
- A. That is as I would read it too, as a possibility. 50
- Q. Wouldn't there be a great deal of force in his right hand going forward?
Looking at the metal?
- A. Well again, I mean --
- Q. I mean you are not an expert.
- A. I would imagine, to put it in the vernacular, it requires a fairly hefty bump.

Q. And we know Mr. NG wasn't injured.
A. Yes.
Q. I don't think I need pursue that.

In the
High Court
of Hong Kong

XXN. BY MR. CORRIGAN:

Prosecution's
Evidence

Q. Capt. Pyrke, you told us that you were appointed on the 12th July, the very next day after this accident at sea, by the Director of Marine to commence hold a preliminary enquiry?

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

10 A. That is correct.

Q. And you told members of the jury how you interviewed quite a number of people under oath and so on and so forth, and conducted the usual investigations, and you told us that the purpose, which is a statutory one, is to make a preliminary report to the Director, I think formally to the Governor, but in fact to the Director of Marine, in the first instance as to whether or not to recommend upon your findings, your preliminary findings, as to whether or not to recommend the holding of a full formal court of inquiry. May I ask you this, had you got to the stage in this case of making your recommendation or were matters taken out of your hands before that point?

(continued)

20 A. I don't think -- I don't mind making a statement, but not in front of the jury.

Q. Well, I am not asking you what the recommendation was?

30 A. No, I know. Even to answer the question, I am not pleased, I am not trying to be awkward, but I feel I have to be careful.

COURT: Is this relevant?

40 MR. CORRIGAN: My Lord, as a matter of history I am not asking what the recommendation was, I am not interested in what the recommendation was.

COURT: In that case is it relevant whether there was --

50 MR. CORRIGAN: My Lord, I hope it might be. I am proposing to ask Capt. Pyrke what is the usual course of dealing with the question of causation and various investigations into a collision at sea such as this in Hongkong waters or neighbouring waters, or involving British ship.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

COURT: Couldn't you do that without him
telling us whether or not he had made
the recommendation?

MR. CORRIGAN: I would have thought it is
a rather neutral question. I am not
asking what the recommendation was.

COURT: Well.

MR. CORRIGAN: Had he actually made the
recommendation one way or the other.
How would that be of any prejudice to
any party? 10

COURT: Mr. Lucas, have you any objection?

MR. LUCAS: My Lord, there is no answer
from the captain that it doesn't
involve other matters, as I understand
it. So it is not as straight-forward
as my learned friend would seem to
think. It calls for an explanation,
and I think in all fairness to all
concerned, it shouldn't be called for. 20

COURT: Yes, very well. Members of the jury,
I wonder if you mind leaving the court.

(Jury leaves court)

COURT: Yes, had you made that recommendation?

A. I was in the position that I couldn't
tell whether the stories I have been
given were true or false and that if you
try to find out what happened on a false
story you could come up with a false
conclusion and therefore I in effect 30
recommended that somebody who was more
adroit, used to this type of investiga-
tion where you cannot tell who is telling
the truth and who is not should take over.
I am a marine person, not a person who
has to try and decide whether somebody
- or whether a particular piece of
evidence is false or true.

Q. No, of course. Inquiries after they are
set up are frequently dealing with 40
situations where one or more or, indeed,
all of the parties in some cases may be
telling lies of one sort or another?

A. Yes, but if you build up a picture, and
let's face it you could make many
different pictures if you start discarding
this bit of evidence and putting this
bit in, it becomes exceptionally biased.

I mean I have done many - or you got the danger of being biased. I have done many inquiries and I have never found myself in this situation. I mean I would be perfectly frank, one expects people not to be telling - or exaggerating, or that there is inaccuracy. But also, of course, during the course of these inquiries it was said to me, never mind by whom, on oath that there had been a meeting and it tended to indicate that there was a conspiracy.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

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COURT: The answer to the question really is simply you had not reached the stage of recommending a court of inquiry?

(continued)

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A. I recommended that a marine court should be held, but whether this matter perhaps should be gone into before -- I mean to be honest, there was no doubt that a marine court would be held. My brief was, do a quick preliminary inquiry.

30

Q. All I wanted the jury to know was that had there been a marine court of inquiry in the normal way nobody would have been in the dock, there would have been an objective and searching inquiry by a judge with two nautical assessors to go intimately into the whole picture as an inquisition and to reach conclusions on causation, which could have led to - rather like an inquest or other similar inquiry, could have led to, or might have led to prosecution of one or more of the actors in due course?

COURT: How is that relevant to the matters before us?

40

MR. CORRIGAN: This is a case where this simply wasn't done, the normal type of objective marine inquiry with assessors and so on wasn't held. The Attorney General stepped in and a prosecution was ordered. I would have thought that the matter of background as to the history of what happened might be of some interest to members of the jury.

COURT: It might be of some interest, Mr. Corrigan. I don't think it is relevant.

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MR. LUCAS: My Lord, I am sorry to interrupt this witness. Are we discussing the decision to

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Cross-
Examination

(continued)

prosecute which is a matter for me and the Attorney, with respect, and if my learned friend wants to be critical, by all means. It has nothing to do with this witness or anyone else. The decision is taken by the Attorney General, more particularly in this case by members of my chamber.

A. My Lord, if there is any help, perhaps to complete the historical picture, the police were already conducting inquiries. They started off at the same time as I did.

10

COURT: I cannot see how it can be relevant, Mr. Corrigan.

MR. CORRIGAN: May I have your Lordship's indulgence?

COURT: Would you like 5 minutes?

MR. CORRIGAN: Yes.

3.10 p.m. Court adjourns

20

3.15 p.m. Court resumes

Accused present. Appearances as before.
Jury present.

MR. CORRIGAN: My Lord, I bow to your Lordship's ruling on this particular matter. I don't seek to take this particular matter any further.

(Mr. Corrigan not feeling well and asked for an adjournment)

3.25 p.m. Court adjourns

30

18th March, 1983

(Case adjourned on 21st March 1983 because one juror is sick)

22nd March, 1983

10.06 a.m. Court resumes

Accused present. Appearances as before,
Jury present.

P.W.19 - Allan C.Pyrke o.f.o.
XXN. BY MR. CORRIGAN: (continues)

Q. May it please you my Lord.
Captain Pyrke, I hope not to be very long but there are one or two matters - a few matters that I want to ask your assistance about in connection with the cases for Mr. Ho and Captain Coull, the officers from the Flamingo. Now, the first matter is this. You will remember a few days ago, it was either Friday or Thursday, I can't remember which, Mr. Steel on behalf of Captain Kong put to you certain assumed courses of the respective vessels to show, as I understood what he was putting to you, a possible degree of convergence between the courses of the two vessels as they approached each other on the morning of this collision.

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A. Yes, I remember it well.
Q. And indeed, certain figures, bearings and courses were given on certain assumptions. Now as I understood the matters he was putting to you, they were put in order to show a possible head-on or crossing situation, the one or the other between those two vessels as they approached each other; and indeed, Mr. Steel drew with a blue pencil on that board a sort of crossing situation similar to what I scribbled up there this morning.
A. It is correct.
Q. Now everything of course turns on the assumptions that were made about the relative courses and we can only make any assumptions in this court on the basis of what evidence there is, however much or however little, as to the courses and, therefore, as to the relative approaches of those two boats.
A. Correct.
Q. I think you will agree with Mr. Steel when he put that matter to you.
A. Yes.
Q. But I would like to test those assumptions by asking you now to consider again the collision point and these assumed courses. First of all, the ones he put to you and then the course of Flamingo that I will put to you. May I hand to you in that respect a clean copy of the chart or the extract of a chart on which we have all been working. I think it is exhibit 27. This is an entirely clean copy, fresh copy. Now the obvious starting point which I would like you to mark yet once again is the

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

presumed collision point for the morning of the 11th of July. I think we took it - we have been working on the fix that was made by the vessel Flores which was 120 degrees, 1.5 miles from the island of Niu Tou. We have probably all got that marked in one way or another already.

A. Yes, I have marked it.

Q. I am much obliged.

10

COURT: That is bearing of? There was a bearing of?

MR. CORRIGAN: My Lord, it is 120 degrees, 1.5 miles off or from Niu Tou. That was the observation made by the witness from the vessel Flores.

Q. Incidentally he recorded having made that position which he described as approximate at 9.40 a.m.

A. Correct.

20

Q. At any rate, that is the point on which, I think, we have all been working.

Now the second matters is the assumed course of the Goldfinch, west to east, from Macau to Hong Kong. We are taking it from that position, 1.5 miles north of the island of Ching Chau, when Captain Kong reports that he then made a slight starboard alignment to go on a straight course from there to the island of Siu Ah Chau. Now when a mariner in those circumstances makes a navigational correction or turning to that extent, is the position this that from that position north of - north of Ching Chau he would have been able to see the island of Siu Ah Chau which is the island to the south of the traffic separation scheme, the two fairways, and he would fix that point by looking forward to the nearest point of land on that island ahead and simply point his bows - the front of his vessel to that point.

30

A. Yes, usually a mariner will alter course when they are abeam of something rather than due north and will line up visually on another land.

Q. Well, I mean, to be fair to Captain Kong, he says, I think, that he was abeam of Ching Chau. We have taken it that the position was 1.5 miles north Ching Chau when he made that alignment. And you marked the course or at least you will agree, I think, you took an observation on the chart when Mr. Steel was questioning

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	you and that course was fixed to be 093 degrees.	In the High Court of Hong Kong
	A. Yes, I believe that is correct.	
	Q. Could I ask you to mark that course in again, the straight course?	Prosecution's Evidence
	A. You want the 1.5 position due north from Ching Chau?	
	Q. Yes, from a position due north. All right, 1.55 miles north of Ching Chau.	No.4
10	A. I seem to recall that I took it off the northwestern bump of the island.	P.W.19
	Q. And it was, I think; 093 degrees.	Allan Charles Pyrke
	A. Yes, it is - that is a fraction over 093.	Cross-Examination
	Q. Of course that....	(continued)
	A. I will draw that course on, shall I?	
	Q. If you please but would you like to use a red... It might help if I furnish you with a red one and also	
20	- sorry - a blue one for the later Goldfinch courses. Red one for Goldfinch.	
	A. Yes.	
	Q. Now neither Mr. Ho nor Captain Coull quarrelled with the possibility or probability, if you like, since we are dealing with assumptions, that that was the course taken by Goldfinch on the morning in question because that	
30	position, north of Ching Chau, 1.55 miles coincides with, amongst other things, Captain Coull's recollection of having seen that vessel at about that point.	
	A. You expect me to comment on that?	
	Q. Well, it is one of the matters I think Mr Steel put to you - there were a number of matters - that that point was fixed as a probable point or possible	
40	point in relation to all these assumptions that it accorded with the evidence from the Sao Jorge - Mr. George Young.	
	A. If I recall, the Sao Jorge - and in evidence I think George Young said he passed an HMH PT50 between 0913 and 0915 and at that time the vessel was - I think he said a quarter of a mile or two cables north of him.	
	Q. Yes.	
50	A. If that is in evidence, it does make a difference. Half a mile then.	
	Q. Captain Kong himself of course in his statement to the police -- First of all, in the log book he said he was 1.3 miles off Ching Chau and in his statement to the police he likewise, I think, said...	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- MR. LUCAS: I am sorry, with respect, in his statement to the police he said between 1 and 2 miles.
- MR. CORRIGAN: I haven't come to that yet. In his statement to the police he said...
- MR. LUCAS: We are talking about Coull?
- MR. CORRIGAN: No, no, Captain Kong.
- MR. LUCAS: Well, in Captain Kong's statement he said between 1.3 - 1.4. 10
- Q. 1.3 - 1.4. Anyhow we have been working on that little distance further north so far as I understood it of 1.55 but these are all approximations. But having drawn that course, the next part of the exercise the other day was to draw in or consider certain assumed courses of the Flamingo going east to west, Hong Kong to Macau.
- A. Yes. 20
- Q. Now on what my learned friend Mr. Steel was putting to you, two things were assumed. First of all, do you remember, that Flamingo had emerged from the northern corridor of the traffic separation scheme at the position off the Fan Lau light at about the middle - I think you took the very middle.
- A. Yes.
- Q. Of that channel. 30
- A. That is correct.
- Q. Of course that channel isn't in any way delineated or marked out on the sea, is it?
- A. Only the buoys mark the centre line.
- Q. Yes, that is the buoy further east at Siu Ah Chau?
- A. That is correct.
- Q. That is the only marker along the whole length of that traffic separation scheme? 40
- A. That is correct.
- Q. Otherwise than that it is simply corridors marked on mariners' charts?
- A. That is correct.
- Q. At any rate, the assumption was made that the Flamingo came out in the middle of that northern-westerly-bearing corridor. The second assumption made by Mr. Steel in what he put to you, of course, was that having exited at that point, Flamingo 50 then herself went somewhat north or somewhat to starboard on a straight course,

	in a straight line towards the presumed collision point.	In the High Court of Hong Kong
	A. I seemed to recall it was a straight course from the end direct to the collision point. I can't remember anything north about it.	<u>Prosecution's Evidence</u>
10	Q. Yes, exactly. From the course, I think, that you were asked to consider and which you did consider was that course from the middle of the separation scheme and its exit to the presumed collision point.	No.4 P.W.19 Allan Charles Pyrke Cross- Examination
	A. Yes.	
	Q. And you marked that course and told us it was between 267 and 270 degrees.	(continued)
	A. No, I seem to think there was a half a degree.	
20	Q. I beg your pardon. 269 to 270 degrees. Could I ask you please to mark that in from the mid line of the exit to the presumed collision point with a blue marker? First of all, to the collision point.	
	A. Yes, still 269 and a half.	
	Q. Much obliged. Have you brought it over to the presumed collision point?	
	A. Yes, I have.	
	Q. May I ask you to carry the exercise one stage further?	
30	A. Yes.	
	Q. Assuming again a straight course.	
	A. Yes.	
	Q. To that point.	
	A. Yes.	
	Q. On the assumption that that had been Flamingo's point, there had been no collision, if you carry that course in a straight line west to Macau, where does that course end up? Could you please mark it straight line first, all the way west towards the Macau beacons, towards Macau itself?	
40	A. Yes, he would end up 1.3 miles due north of beacon 22 which is the normal land form position.	
	Q. Have you marked	
	A. I have marked it right through to Macau. In actual fact, it goes almost to the hydrofoil jetty in Macau itself in a direct line, over the breakwater and over everything.	
50	Q. It is too far north, is it not?	
	A. Too far north.	
	Q. Because a hydrofoil entering has to enter to the west - southwest of the - southeast of the line of beacons going into the	

In the
High Court
of Hong Kong
Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

Macau harbour in order to get up
through the channel.

- A. That is correct.
Q. May I see -- Perhaps members of the jury
could see it.

COURT: Would you like that marked as a
separate exhibit, Mr. Corrigan?

MR. CORRIGAN: Yes, I am much obliged, my
Lord.

CLERK: 48.

10

Q. Could that be passed to members of the
jury first. Those are the assumptions
that were being made when Mr. Steel was
asking you those questions the other day.
And we can see from those two courses -
assumed courses the very narrow angle,
the very narrow angle that would have
been between the two vessels had they
been on those two respective courses.

A. That is correct.

20

Q. And on that basis, it is true looking
at the presumed collision point that at
that point they would have passed very
close together.

A. That is correct.

Q. And indeed Flamingo's course there is
somewhat to the north of the course of
Goldfinch. In other words, should have
been on the port side if they had been
passing on that basis, port to port.

30

A. I am sorry, I don't follow you because
there hadn't been a collision, they were
in that position, they don't pass at all,
they collide - it depends upon the timing.

Q. We are looking simply at the line of
approach. Nothing else.

A. Depends entirely upon timing.

Q. On the line of approach, nothing else.
Anyhow what we can see is, as Mr. Steel
was demonstrating, on those two courses
being so close together there are the
elements of a head-on or crossing
situation between those two vessels.

40

A. Yes.

Q. On those two lines as they are drawn.

A. Correct.

Q. Even a layman can see that.

COURT: The elements of a - either a crossing
or a head-on situation?

MR. CORRIGAN: Oh yes.

50

- | | | | |
|----|----|---|---|
| | Q. | For the purposes of argument on these assumptions, I can see on these assumptions that from the point of view of a vessel on the red course - that is Goldfinch coming from west to east with Flamingo coming on a straight course from east to west - there would have been developing something of a head-on and if there was no action, a crossing situation, is that not correct? | In the
High Court
of Hong Kong |
| | | | <u>Prosecution's
Evidence</u> |
| 10 | A. | No, I think Mr. Steel made it quite clear that when you get to it - 3 to 4, 5, round that area, you are in the grey areas as to whether you take it the head-on or crossing. | No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination |
| | Q. | Yes, one or the other. | (continued) |
| | A. | One or the other. | |
| 20 | Q. | Looking at it very broadly. | |
| | A. | One or the other, not both. | |
| | Q. | I must confess I am asking you to look at these matters very broadly as we see matters drawn in relation to straight lines and these assumptions on this chart. But as I say, even a layman can see that there is here a close situation between those two vessels. | |
| 30 | A. | That is correct. | |
| | Q. | Now this course of Flamingo, however, would not have been so far as going across to Macau is concerned a likely course, is that not correct? | |
| | A. | Agreed. | |
| | Q. | And why do you say that? | |
| 40 | A. | Because he is too far north and he would have been able to see - the visibility that day - he would have been able to see certainly the hills - Taipa to the south stands out well - and he would have been shaping his course by that. He should have hit beacon 22..... | |
| | Q. | That is what I am next coming to. A much more likely assumption to make about the course of Flamingo on this brilliant clear day if she was to make a straight passage to Macau is much further south, is it not? | |
| 50 | A. | Yes. | |
| | Q. | Now we have also in evidence, it may or may not be accurate, in the Flamingo's radio log that she was abeam of Fan Lau light going west and leaving Lantao behind at a distance of some 3 cables or 600 yards south of the light. | |
| | A. | That is correct. | |

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- Q. Is that what you would expect?
A. That is a reasonable position.
Q. Whether she came precisely from that point or slightly north, as Mr. Steel put to you, from the middle of the traffic separation scheme, the normal practice of a mariner on a clear fine day when you could see all the way to Macau virtually such as the morning of the 11th of July would be simply, would it not, to point his bows for a straight course from that point all the way to the entry to the Macau harbour, namely, Taipa Island? 10
A. He could do.
Q. The nearest land form is Taipa Island.
A. He could do unless he was intending to do a dogleg.
Q. Yes, indeed. Mr. Ho in his statement to the police which are before members of the jury says that on this particular day he was sailing with his bows directed at Taipa. That is not at all unlikely? 20
A. No.
Q. Since we are making these assumptions. I am much obliged. Could I ask you then in this exercise now, having had that copy of the plan back, to draw a course for Goldfinch - for Flamingo, I beg your pardon, again in blue from a point 300 cables - 3 cables, 600 yards due south abeam from Fan Lau light to Taipa directed towards the island of Taipa which is immediately to the south of the entrance to the Macau channel. I make it 263 degrees. I don't know. 30
A. Directly to Taipa?
Q. Yes, captain.
A. I will take the hill Taipa Grande. That is the peak you normally see. 40
Q. Yes, that is the mountain or the peak which is marked on Taipa Island. At the easterly extremity of Taipa Island there is a peak marked there, Taipa Grande - Portuguese. Now is that 263 degrees?
A. Yes, I am just a fraction south of the peak I am afraid. The rules weren't lined up exactly but it shouldn't make much difference. Yes, it will be 263. This line is - slips to the south, a little bit south. A little bit south. 50
Q. Have you marked that all the way across to the entrance to Macau?
A. Just about. It's just at beacon 20.
Q. It actually passes, does it not, between those beacons, I think, 21 and 20.
A. Well.....

	Q.	Which are the first or the last beacons, the first beacons as you approach Macau.	In the High Court of Hong Kong
	A.	My line is a little bit inaccurate because of the surface up here and it is heading for beacon 20.	Prosecution's Evidence
10	Q.	Yes, I am much obliged. Perhaps members of the jury would kindly see this second course for Flamingo, a straight course from - a straight course from leaving Lantao all the way to the Macau harbour entrance. Now we see at once - again a layman can see - that comparing that southerly course, the direct course of Flamingo with the assumed course of Goldfinch, the picture is radically different, is it not?	No.4 P.W.19 Allan Charles Pyrke Cross-Examination (continued)
20	A.	I would have to have a look to see whether the courses cross. I don't even know whether they do cross. If they don't cross you will never have a collision.	
	Q.	Well, I think they do cross here. We see, I think, that they cross well to the east of the collision - presumed collision point. Of course always assuming that both vessels would have kept on a straight course.	
30	A.	Yes, it literally crosses no more than about a mile from the exit - well, from the position south of Lantao.	
	Q.	Yes, I am much obliged. And the distance north to south between the two courses at the presumed or south of the presumed collision point is what distance?	
	A.	I make it 6½ cables.	
	Q.	Six and a half cables. That is a theoretical passing distance.	
40	MR. LUCAS:	May I have a look at it?	
	Q.	Now of course.....	
	COURT:	I am sorry, this course would cross with Flying Goldfinch's presumed.....	
	A.	Goldfinch's course about a mile to the westward of the abeam position of Fan Lau light. Should I perhaps draw this red line non-dotted to show where they will cross?	
	Q.	You haven't drawn it across?	
50	A.	No, I have only taken it to the collision position with a red line.	
	Q.	Yes, please. I am much obliged. If you could carry that presumed course of	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

Goldfinch across east to the point where they cross and indeed all the way to the island of Siu Ah Chau, to the tip of Siu Ah Chau. That, I think, would complete the picture.

A. I will put it in a dotted line.

Q. Much obliged. So those - much obliged.

MR. LUCAS: May I look at that?

MR. CORRIGAN: Members of the jury can see that.

10

Q. Now had the two vessels been following those respective courses, that's the assumed course of Goldfinch and the southerly or second course we look at of Flamingo, they would not have been, of course, at or about the collision point, viewed as east to west, in a head-on or crossing situation or anything like that?

A. Correct.

20

Q. Quite clearly. There had been a wide gap between them. But of course we know that the collision did occur, viewed as east to west, either at the presumed collision point or somewhere south of that point.

A. You have four vessels in the area very shortly after the collision. They have all recorded collision positions. If you plot those collision positions and run an assumed tide back, you will get a variety which is random.

30

Q. Yes. Well, let us take the Flores' position which I understood to be the one that you principally rely upon.

A. As an average of all the positions, yes.

Q. First of all, that was an approximation and it was made at 9.40.

A. That is correct.

Q. We are proceeding on assumption. We are proceeding in all this exercise whatever its end worth on assumption.

40

A. Correct.

Q. If she arrived as she says at 9.40 and if the collision took place - if the collision had taken place at 9.25 or 9.26....

A. Yes.

Q. ...then she arrived and made that fix, that presumed collision point some 14 or 15 minutes after the collision.

50

A. On those assumptions?

Q. On those assumptions.

A. Yes.

<p>10</p> <p>20</p> <p>30</p> <p>40</p> <p>50</p>	<p>Q. Now Flamingo sank, I am instructed, at 12.52 p.m. at a place called Bluff Point which is nearly 6 miles to the north - nearly 5 miles to the north of the presumed collision point. I am instructed that you can work back mathematically in relation to the flood-tide flow north which carried - obviously carried Flamingo all the way up to where she sank.</p> <p>A. That is correct.</p> <p>Q. That you can work back mathematically to show that the rate of flow, average rate of flow of Flamingo north of the chart to where she sank was something in the order of 1.6 knots.</p> <p>A. I did the same exercise and made it 1.5.</p> <p>Q. 1.5 knots. One and a half knots. So again on the assumption, Captain Pyrke, that the presumed collision point was fixed by Flores a quarter of an hour after the collision and on the high probability, is it, that the collision point so far as the east to west picture is concerned is correct?</p> <p>A. Yes.</p> <p>Q. That therefore the collision point could have been on that basis to the south of that presumed point by how much? Take a quarter of an hour.</p> <p>A. A quarter of an hour at one and a half.</p> <p>Q. One and a half knots.</p> <p>A. I need a calculator. My mind has gone blank. It is about two, two and a half cables. One and a half in quarter of an hour, of course it is point 25 cables - sorry, point 25 cables, point 25 miles.</p> <p>Q. Point 25 miles. I am much obliged. Could you mark on that chart a point on a north-south access south of the presumed collision point 2.5 miles?</p> <p>A. Just to save confusion I will mark this in green.</p> <p>Q. I am much obliged.</p> <p>A. I have marked it in green with "C.P" in green written against it.</p> <p>Q. I am much obliged. May I see it? I will pass it. Thank you. Yes, "C P" marked in green. You see - members of the jury will see that. Of course it might have been a bit further south than that. It might have been a bit further north.</p> <p>A. (Witness shakes head) (Counsel confer)</p> <p>Q. I don't know whether it is even a possible</p>	<p>In the High Court of Hong Kong</p> <p><u>Prosecution's Evidence</u></p> <p>No.4</p> <p>P.W.19</p> <p>Allan Charles Pyrke Cross- Examination</p> <p>(continued)</p>
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In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

- exercise on all these assumptions but looking at the Goldfinch course, looking at the collision point on the further assumption that Flamingo's course was further north than the southerly course marked, 263 degrees, at or near the collision point on that assumption which is a possible course, is it not, from Fan Lau light to the Macau harbour? 10
- A. If you are questioning the assumptions, I would point out that in evidence, I think, from Mr. Marriott, you have that Flamingo stopped to the west of Fan Lau. If that is the case, she would be carried north by the tide which even puts in doubt the courses you are drawing.
- Q. All we have out of this exercise is a likely course, namely, the southerly course, perhaps a more likely course for the Flamingo than the northern one, that is the 263? 20
- A. That is not for me to comment.
- Q. No, but on a straight course on this particular day....
- A. Yes.
- Q. Etc., etc., And a likelihood that the collision point may have been somewhat to the south. Perhaps the point you marked "C P" in green being about the limit of any possible southerly point. 30
- A. Again I would reiterate there were so many boats that had taken positions. If you run back you will get a big area and I am afraid you could almost take a statistical probability as to where it was.
- Q. I am much obliged. Now you agree with my learned friend Mr. Steel in relation to all these assumptions that you need to know what the respective courses of the vessels had been before the collision in order to consider what rules they should have obeyed or what rules one or more of them might have broken. 40
- A. That is correct, and the relationship of one vessel to the other.
- Q. Aspect.
- A. Aspect, bearings....
- Q. You need to know over all the relative approach patterns? 50
- A. Exactly.
- Q. We don't know - we have got these various assumptions, some more likely than others.
- A. Correct.

	Q. They are speculations on that basis.	In the
	A. Yes.	High Court
	Q. But we do know that the 1st accused	<u>of Hong Kong</u>
	Captain Kong has given an account	Prosecution's
	of what he says he actually did with	<u>Evidence</u>
	his vessel Goldfinch before the	
	collision.	
	A. Yes.	No.4
10	Q. That is not an assumption. That is	P.W.19
	in evidence. It is either true or	Allan
	false or inaccurate but it is before	Charles Pyrke
	members of the jury. Now his	Cross-
	explanation and his account has	Examination
	already been discussed in one way or	(continued)
	another. I want to ask you broadly	
	upon it, looking at it from the	
	point of view of likelihood so far	
	as the vessel Flamingo was concerned	
20	before this collision. Look at it	
	broadly, so to speak, from Flamingo's	
	point of view. Now according to	
	Captain Kong he made that alteration	
	towards the starboard which you have	
	already drawn from that point north	
	of Ching Chau towards Siu Ah Chau. And	
	he says he found a hydrofoil from the	
	opposite direction - he must mean the	
	Flamingo - to be travelling towards him	
30	in a straight line. I presume by that	
	he means that Flamingo was on a head-on	
	or apparently a near head-on course.	
	A. A reciprocal or near reciprocal course.	
	Q. Reciprocal or near reciprocal, as he	
	recalled it. Like this.	
	A. Correct.	
	Q. If they were both on straight courses.	
	He says coming up to about four miles	
40	he noticed that. When they were two	
	miles away he altered course to starboard	
	slowly towards Niu Tou and then later he	
	altered course again because he found no	
	great change in the relative position	
	between the boats - 7 degrees to starboard	
	by turning the helm so on and so forth.	
	Then he gives this full account in his	
	statement - whether it is true or false	
	he gives an account. Now I am not going	
	to attempt to demonstrate all the nuances	
50	of what he says happened but what he says	
	in essence is this, is it not, initially	
	that he saw a head-on situation and that	
	he did a starboard turn?	
	A. That is correct.	
	Q. First of all, would you have expected a	
	mariner in Captain Kong's position faced	
	with a head-on situation at two miles to	
	have made the turn to starboard in the degree	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

- and in the ways that he says occurred ?
- A. I get the picture that he is saying he altered 15 degrees to starboard for a head-on situation at two miles which in my opinion is quite ample for this sort of situation.
- Q. It is ample?
- A. It is ample, 15 degrees at two miles.
- Q. All right, be that as it may, this is what I am really coming to. Looking at it from Flamingo's point of view, assuming that this happened on this plan, he makes these starboard alterations. 10
- A. Correct.
- Q. He says that this vessel made starboard alterations until immediately before the collision she was passing in front of his...
- A. Port alterations.
- Q. Port alterations. The Flamingo coming along having seen as she must have done on this clear, brilliant day this vessel goes to starboard, that Flamingo went to port until - never mind all the ins and outs - until at the last minute before the collision Captain Kong says Flamingo was, to use his words, attempting to pass him, Goldfinch, from the port bow and a collision occurred. 20
- A. That is as I understand his evidence.
- Q. That is the picture that Captain Kong clearly states in his statement to the police, is that not right?
- A. Correct.
- Q. Now looking at those movements from Flamingo's point of view, let's consider the likelihood of Flamingo with Mr. Ho to help having done a port turn of that degree in that situation in response to Goldfinch's having gone to starboard. Now I think you said when you were asked about it earlier that had that happened, Flamingo's port turn or turns, to use your words, would have to have mirrored Goldfinch's turning to starboard, and to have been on the path of Flamingo, at least as substantial as the starboard turns made by Goldfinch. 40
- A. Broadly, yes.
- Q. Broadly, yes. Now first of all, had Flamingo made those port movements it would have been against all rules?
- A. Yes.
- Q. Quite clearly.
- A. Yes.

	Q.	Because in a head-on situation, seeing another vessel go to starboard she herself should have gone to starboard according to the rules?	In the High Court of Hong Kong
	A.	Yes.	Prosecution's Evidence
10	Q.	Had it been a crossing situation, namely, as was suggested that Goldfinch went to starboard later on because she saw there was a crossing situation, equally Flamingo would have broken the rules as she should have kept out of the way?	No.4 P.W.19 Allan Charles Pyrke Cross- Examination
	A.	She should have gone to starboard.	
	Q.	Gone to starboard, kept out of the way, kept clear.	(continued)
	A.	Correct.	
20	Q.	Now these rules which would have been so flagrantly broken by Flamingo by making those port turns on this occasion on either of those instances, they are rules both of law and of practice?	
	A.	Yes.	
	Q.	The practice of a mariner?	
	A.	Yes.	
30	Q.	Now you say in answer to my learned friend Mr. Steel that some of those rules were artificial - some of those rules were artificial, meaning, I suppose, that they are complex and in some situations mariners might find it difficult to obey to the strict letter of the rules because they were so complex. Is that what I understood you to mean when you agreed with Mr. Steel that some of these rules were artificial?	
40	A.	No. Artificial in the sense that you have to make a decision like driving on the left-hand side of the road. He could equally have been made to drive on the right-hand side of the road but having made that decision that is the rules and have been for years. They are artificial in that sense. There is no logic behind which side of the road to drive. They are artificial in that sense.	
50	Q.	But I suppose these rules or most of the rules, just as in the way, I suppose, of the major rules of the highway code for the car driver, they become matters which mariners almost instinctively feel they should follow?	
	A.	They also have to show in a very gruelling oral examination that they understand and obey the rules.	
	Q.	Oh yes, indeed. But one of the rules that	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- they would instinctively be likely to follow, not to disobey, is the simple rule, is it not, that if one vessel goes to starboard in front the other does likewise?
- A. Correct.
- Q. It is not only a rule a mariner would instinctively obey but it is obvious, common sense and all the rest of it. 10
- A. Agreed.
- Q. I see one goes to starboard, I must therefore go to starboard. So what it comes to is this, is it not, that if Flamingo on this story of Captain Kong had gone to port in this situation, in these circumstances, in the degree and manner in which it is said - alleged that she went to port, the helmsman on board would have been acting against all instinct and common sense, not just against the rules? 20
- A. Yes. You must also consider his navigational position - where islands were, if there were other traffic, where did it point against, so on and so forth.
- Q. But the main point is on the likelihood from a matter of experience of a mariner doing something as, not only just against the rules but as stupid as is suggested Flamingo did on this occasion. As a matter of likelihood you wouldn't expect it? 30
- A. I would not expect it.
- Q. You would not expect it. Now at one stage you said in answer to my learned friend Mr. Steel that to go to port was a natural instinct on the part of a mariner. I am not sure about the context in which that was said but I took a note of what you did say. A natural instinct of a mariner was to pass port to port. 40
- A. To pass port to port, yes.
- Q. Well, let there be no mistake about it. Let there be no mistake about it. That instinct of passing port to port could have no relationship whatsoever to that type of situation alleged in this case from Flamingo's point of view?
- A. Only that if it is a starboard passing a mariner will tend to be a little bit more careful. 50
- Q. Now there are two other matters on which we can consider from the evidence the likelihood of a helmsman of Flamingo having done as Captain Kong seeks to allege in the statement he made to the

police. First of all, the evidence that we have heard from the passengers and other members of the crew on board the Flamingo. They all spoke insofar as they were able to of Flamingo having remained at all times before the collision more or less on a straight course.

In the
High Court
of Hong Kong

Prosecutions's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Cross-
Examination

(continued)

- 10 A. That is correct.
Q. Now Captain Pyrke, on a clear day such calm, flat sea, particularly on such a day, would you expect in the normal way passengers or other crew, people behind the bridge towards the back of the boat in particular, to have noticed whether or not the vessel on which they were travelling had been going to any significant degree to port before the collision? Would you expect to note - given the day?
- 20 A. The weight of a hydrofoil -- If you know what you are looking at you could detect a port alteration as long as it wasn't so very slow that the bend was so long in the wake that you couldn't notice it. If it is a reasonable sort of alteration I think an average, even fairly non-technical observer could see it because the wake is so - you see a stream astern of you. It is so apparent.
- 30 Q. The wake is one thing but in a hydrofoil..
A. I am talking about a hydrofoil.
Q. Yes, in a hydrofoil, perhaps rather differently from an ordinary ship, there is a question of also, isn't there, what you feel by way of the movements of the boat?
- 40 A. If the boat is being steered by rudder the amount of list into the turn is very small, two to three degrees. It is only when you use flaps that you begin to feel it.
Q. Given the alleged situation, circumstances again, Flamingo having to have made the matching port turn in order for this to have happened on Captain Kong's account, could she have done that by rudder alone?
- 50 A. Oh yes.
Q. I see. Now the only other evidence which might assist in relation to Flamingo having done any port turn is the evidence of what was found after the collision about Flamingo's steerage mechanism.
A. The flap mechanism.
Q. And indeed the rudder as well. We heard

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

from Mr. Tang how he found, first of all, the engines had been destroyed, put out of action by the collision and therefore everything froze - the hydraulics went.

- A. That is correct.
- Q. Everything froze. And he found that the starboard flap was down, the port flap was up (slightly negative, I think) and that the wheel - the rudder was amidships. 10
- A. That is correct.
- Q. So he agreed with me when I put it to him that therefore there was only one out of three possible indications of a navigational port turn before the collision.
- A. At the instant before the collision, yes.
- Q. Yes, indeed. And in particular the wheel having been found amidships, that also, I think you told Mr. Steel, would have been frozen in its position after the collision. 20
- A. Correct.
- Q. And the wheel being amidships in itself is of course consistent with the vessel having been going straight ahead before the collision.
- A. At the instant before collision, yes.
- Q. Consistent?
- A. Yes. 30
- Q. Now so that evidence of the one out of three indicators as I will call it and, in particular, the wheel is consistent with Flamingo having gone straight ahead and not having made a navigational port turn or a series of port turns immediately before the collision, is it not?
- A. In the instant before the collision, yes.
- Q. Consistent with somebody having altered that one starboard flap for some reason other than navigational turn to port - consistent? 40
- A. It could have happened in various ways. It could have happened in various ways.
- Q. And there is before members of the jury an alternative explanation of how that port flap may have been put in that starboard positive?
- A. Yes.
- Q. And that is the explanation given by Mr. Ho, 50 the 3rd defendant, in his statement to the police, the essence of which is that at the last instant when he found Goldfinch about to crash into his ship, he instinctively stood up and he grabbed those flap handles/controls which are immediately in

front of the helms. Do you agree - there is a photograph, I won't trouble you with it, members of the jury have seen it - that those two handles which operate the flaps are at or about the position where somebody standing up, doing that, would easily come into contact with?

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Cross-
Examination

(continued)

- 10 A. Yes.
Q. I'm much obliged. Now in particular, if his attention was, as we know it, was on his account, directed towards seeing Goldfinch crashing into his vessel and being a right-handed person, he might, I suppose, be thought more easily to have grabbed at the or moved the right-hand handle.
- 20 A. I think it depends how people are thrown in the vessel. This is what is important. If he is thrown backwards, then he would tend to bring it back.
Q. Tend to grab. I'm much obliged. Tend to grab at the starboard being a right-handed man with his attention perhaps directed towards this Goldfinch coming at him, yes. And do you agree that that is a very simple mechanism? There is no clutch or gate or anything hindering the operator? It is a very easy motion, just simply to pull back that one handle.
- 30 A. That is correct.
Q. Which would affect the complete dropping of the starboard flap.
A. That is correct.
Q. I'm much obliged. NOW I just want to ask you one or two matters about look-out. Now the rules about look-out. I think Rule 5 has been looked at. This rule, like so many of the rules, deals in generalities. It talks about keeping a proper look-out by sight and other means, appropriate and prevailing circumstances and conditions.
- 40 A. Yes.
Q. I suppose by conditions the greatest emphasis there is on weather conditions or traffic conditions or both?
A. Traffic, weather, the speed you are going at.
- 50 Q. All these things are matters of degree. It is not a hard and fast rule. That is the point.
A. No.
Q. Now here you had, of course, on this morning, July 11th last year, ideal weather conditions visibility wise. I think the distance from Fan Lau Point to

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- the entrance to Macau harbour can be measured at 15 miles?
- A. It is about that, yes.
- Q. I'm much obliged. And we had evidence from one witness who was a passenger, I forget which one, who was standing on the right-hand side astern towards the back of Flamingo, standing on the starboard side and he was able to see - actually see the buildings in Macau. 10
- A. That is correct.
- Q. That is not unusual on a day as perfect as this one?
- A. No.
- Q. So this was a day where you had ideal weather conditions. Now another matter which is relevant to the topic of look-out, I suppose, is the familiarity of the knack of the mariners with the particular passage they are on? 20
- A. Yes, but look-out is not just for navigation in the strict sense of getting from A to B. It includes other vessels.
- Q. Familiarity, however, with the passage and with the vessels, so to speak, you are likely to be meeting or the vessel which you actually see coming your way which is a similar vessel from your own company.
- A. That is true. 30
- Q. And another factor must be the station or post which is provided to the officers to keep the lookout, the adequacy or otherwise of that particular station or post.
- A. Yes.
- Q. And of course the bridge layout is vastly different from big ships to small ships. Bridge layouts on hydrofoils also differ from most other vessels. 40
- A. That is correct.
- Q. Now in the one sense matters in relation to the geography of the bridge or the ability to look out, that of course would tend to make one say, "Well, in those circumstances, an officer must be even more vigilant."
- A. Yes.
- Q. But on the other hand, the other side of the coin, to some extent of course it naturally affects his ability to do that. They are both sides of the coin, matters of degree, are they not? 50
- A. Yes, but in the general contents of navigational safety, people have got to take the safest course possible under the situations of their vessel.

	Q.	Yes. Under the situations of their vessel. Now the bridge layout on Goldfinch, do you not agree, was of an extremely cramped nature, crowded?	In the High Court of Hong Kong
	A.	All the PT 50s are.	Prosecution's <u>Evidence</u>
10	Q.	I meant Flamingo. You say all the PT 50s are. I think if one even compares the plans, scale plans of the two vessels in this case, Flamingo and Goldfinch, you will see at once that Goldfinch had a much roomier bridge, it's all a question of opinion, but a roomier bridge than Flamingo.	No.4 P.W.19 Allan Charles Pyrke Cross- Examination
	A.	I haven't actually checked areas, so I can't comment.	(continued)
20	Q.	I think Flamingo was known to have one of the most crowded cramped bridges of all the vessels of the company, was it not? It wouldn't surprise you.	
	A.	I can't comment on that.	
	Q.	Now at any rate you did mention to members of the jury that compared with the jetfoil, the windows of the lookout on the bridge of the hydrofoils were more cluttered.	
	A.	That is correct.	
	Q.	And they of course are an essential part of the matter, looking out of that window.	
30	A.	Yes.	
	Q.	The other matter is that on the Flamingo there was no rear view.	
	A.	That's correct.	
	Q.	The belvedere cabin with passengers is immediately aft of the bridge. Now that is got over, is it not, by Flamingo having been provided with wing mirrors, rather like car mirrors for a driver of a motor-car, on each side of the bridge?	
40	A.	I cannot say whether that was the provision to keep a lookout astern as it may well be connected with berthing and unberthing, particularly in Hong Kong where they have to back out into a busy harbour, you get small boats directly behind you. I really don't know why they were fitted. There are two possibilities.	
50	Q.	Well, if they were there, that was the obvious way for somebody in the position of Mr. Ho, the helmsman on this trip, to look in those mirrors in order to see whether these jetfoils were passing on one side or the other from behind, these jetfoils which are ten knots an hour faster, to overtake.	
	A.	If I could just explain it. If the mirrors that I haven't viewed reveal the view of the mirrors -- if they are just there to see you haven't got a sampan under your stern	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

when they are backing out, they would be a narrow view, just show that the sampan is not on the movement. If you are keeping a general lookout, they will have a much bigger curve on them and you can see much further round. I really don't know what they are like.

- Q. You didn't know.
A. So I cannot comment.
Q. You didn't take any particular note... 10
A. I didn't.
Q. ..of the type of mirrors.
A. No, I didn't.
Q. I'm much obliged. At any rate, the posts provided for the navigating officers, or the three officers on the bridge, are those three fixed chairs, fixed seats?
A. Two fixed seats - centre, port. The starboard seat is the engineer.
Q. Starboard seat is the engineer. But they 20
are three in a row.
A. Correct.
Q. The helmsman is in the middle primarily steering the vessel. Now the engineer sits on the starboard side.
A. Correct.
Q. And his duties, as you explained, are involved with the engines, control instruments, levers, going off to look at the engines and so on during the voyage.30
A. Correct.
Q. He is not a lookout man.
A. No.
Q. He has no strict rule as a lookout man.
A. No.
Q. So it's all left to the helmsman and to the deck officer, the other officer, which on this occasion was Captain Coull, the master, who was sitting in that port or left-hand chair. 40
A. They are the navigationally qualified officers, yes.
Q. Now the officer in Captain Coull's position sitting on the portside, unfortunately because of the geography of the bridge and other things, has, does he not, a rather restricted view towards the starboard side?
A. Once it gets broad round to the starboard side, yes - and I haven't actually measured50 angles, but I would think once it gets to about five, six points or something like that, it begins to get awkward.
Q. Now you've got the cluttering of the window, you've got the bridge support pillars which members of the jury can see in the photograph, in the first photograph.

	A.	They are substantial on the Flamingo.	In the
	A.	That's correct.	High Court
	Q.	You've got the fact that he has on	<u>of Hong Kong</u>
		his right not one officer who is	
		driving the vessel, but he has also	Prosecution's
		got the engineer sitting on his right.	<u>Evidence</u>
	A.	That's correct.	
	Q.	So he has got two men to his right.	No.4
	A.	Correct.	P.W.19
10	Q.	And if one or more of those men is	Allan
		moving about, that's a further matter	Charles Pyrke
		which obstructs physically and perhaps	Cross-
		even psychologically his view to the	Examination
		starboard side.	
	A.	That is correct.	(continued)
	Q.	What it really comes to is that	
		somebody sitting on that port seat on	
		the left-hand side is not in the best	
20		position, I put it no higher, to watch	
		approaching vessels on the starboard	
		bow at close quarters or passing	
		situations. Isn't that what it really	
		comes to?	
	A.	Visually he cannot see them when they	
		get broad on the bow.	
	Q.	Right.	
	A.	He can certainly see them within three to	
		four points. I put it no higher than that.	
		After four points, it begins to get awkward.	
30		At six, it would tend to disappear.	
	Q.	I am not suggesting for a moment that he	
		doesn't have an adequate view provided for	
		him of vessels as they are approaching	
		from a distance and coming towards his	
		vessel. He is in a position to see whether	
		or not the approaching vessel, hydrofoil	
		whatever, is on a head-on, reciprocal or	
		passing course.	
	A.	Yes.	
40	Q.	But he may have some difficulty later on	
	A.	Yes.	
	Q.	And of course the helmsman, Mr. Ho being	
		on the helm at the time of the collision	
		on board Flamingo, he is steering the	
		vessel, he is doing all the things he has	
		to do to keep it on track.	
	A.	Yes.	
	Q.	To watch the rubbish and so on and so forth.	
	A.	Yes.	
50	Q.	He has only got one pair of eyes.	
	A.	Yes.	
	Q.	You see, this isn't like a vessel in which	
		there are provided extra pairs of eyes in	
		order to look out. I think you mentioned	
		with big ships and so on you have men who	
		are stationed outside. There is no such	
		provision on hydrofoils.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- A. It would be dangerous to put a man outside a boat at speed.
- Q. I see, yes. Well, now Mr. Pyrke, I want to ask you what may appear to you to be very obvious. These questions may appear to be really rather stupid, but again they are on a certain assumption. They are on the assumptions, however, that what Mr. Ho and Captain Coull say in their statements about the broad picture of what happened before this collision may be true, on that assumption. Now you have a situation, do you not, where one vessel approaching another, the duty, according to the rules, is for the officers on board Flamingo, take Flamingo, to determine whether or not the risk of collision occurs? 10
- A. That is correct.
- Q. And there are rules for this sort of thing. 20
- A. Yes.
- Q. And it's done in the normal way when it's done by what you called "eye-balling", by taking their bearing with one's eyes from a convenient point on the rail on the starboard side in a starboard to starboard situation and judging the distance and making an estimation.
- A. Yes, the important clue is the aspect. In other words, what the other vessel looks like. Is she showing green to green, red to green, red to red? 30
- Q. Yes. And if her bows do not appear to be inclined towards you and you are not seeing a red or port aspect, you make up a judgment "She is passing clear."
- A. Yes, you would look - specifically the tell-tale you are looking for is aspect.
- Q. But the mariner in that situation is flying - I think you used the phrase "sailor is flying by the seat of his pants" - by his experience of every-day events, that is passing hydrofoils. 40
- A. I think "flying by the seat of your pants" refers to actually controlling the craft, the feel of the craft rather than what you are seeing outside.
- Q. Also in much the same way by what you are seeing outside in relation to passing approaching hydrofoils from your own company with whom you are totally familiar. You see them day in day out and you pass them day in day out on one aspect or another. You make the same sort of judgment, do you not? 50
- A. Yes, but I wouldn't like to use the phrase "flying by the seat of your pants" in

	relation to other vessels.	In the
Q.	All right, but it's a matter largely	High Court
	of instinctive reaction.	<u>of Hong Kong</u>
A.	Yes.	
Q.	Having taken the necessary look with	Prosecution's
	the eyes, as you have described.	<u>Evidence</u>
A.	Yes.	
Q.	I mean, the mariner in that situation	No.4
	isn't making a record.	P.W.19
10 A.	No.	Allan
Q.	He is not taking a bearing and	Charles Pyrke
	recording it on that occasion at	Cross-
	that moment: "This vessel was coming	Examination
	on at 45° and so far away and I had	(continued)
	judged we were going to pass at five	
	hundred feet." Those are not the	
	mental processes that the officer,	
	the navigating officer, actually	
20	indulges in at the moment that he	
	makes his assessment of whether or	
	not this is a passing risk. Is that	
	not the position?	
A.	He will look, and I will reiterate, at	
	the aspect. That is an important thing.	
	As long as that aspect is green and it	
	looks reasonable, that is what he is	
	watching.	
Q.	Yes. But when after a collision, such	
	as this fatal one, the mariner concerned	
30	is asked several weeks later about, so	
	far as he can recollect at all, the	
	bearing and the distance and so on of	
	his various sightings of an approaching	
	vessel, he is liable, as you have	
	already explained, for various reasons	
	to be in error, to be inaccurate in	
	his recollection.	
A.	I would have thought a mariner with any	
	sense would have worked it out on paper	
40	himself first and he would tend to give	
	you the answer that he has worked out on	
	paper because he cannot give you that	
	degree of accuracy by memory or vision.	
Q.	I am not quite with you as to what you	
	mean by 'he has worked it out on paper'.	
A.	Well, he can do these Vectors the same	
	as anybody else can and he knows that	
	if he felt it was starboard to starboard	
	six hundred feet passing, he can work out	
50	that at two miles range you will have a	
	bearing of three degrees on the starboard	
	bow - not twenty degrees.	
Q.	Mariners are on the bridge of these vessels	
	on their daily work and not inclined	
	to get to diagrams or anything like that.	
A.	They are taught to plot by radar and that	
	is all I had been doing, radar plotting.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

- Q. I'll come to radar at a moment. But essentially on a day like this, excellent visibility and calm sea, the mariner makes the assessment on the basis that you have already talked about: this approaching vessel is going to pass clear starboard to starboard, there is no reasonably foreseeable risk of collision.
- A. That is correct. 10
- Q. And then the natural tendency, having made that estimation, because he may have something else to do, is to take his eyes off that boat, having assessed the risk.
- A. We have talked about M notices. There is an M notice - I can't remember the number, although I have it with me - which talks about the causes of casualties and the need to watch vessels because they may suddenly alter course. Even though you assume that the vessel is going clear, two things you will have to watch for: aspect is not perfect, she may be yawing. You can't tell as to how much she yaws. It depends if she is showing only red. If you got a starboard to starboard passing and it looks, from my boarding, that 's close but safe, you will watch it. 20
- Q. The rule says, as a counsel, ultimate counsel, counsel of perfection, you should watch that vessel until it is leaving and past you. 30
- A. Not only the rules. Recommendations, M notices bring this out very clearly.
- Q. Yes.
- A. Watch the other vessel.
- Q. Yes. All I am saying is in the circumstances of these vessels, known to each other, passing and re-passing everyday, a navigator, a helmsman, having made an assumption that there is no risk, tends to take his eyes elsewhere because he has got other things to do and he assumes that it's not reasonably foreseeable or likely that that vessel is going to do something completely unexpected and completely stupid and to make a starboard turn, does he not? 40
- A. I would say there is a tendency on hydrofoils for the people to have what I call "tunnel vision". 50
- Q. Tunnel vision.
- A. They will tend to look concentrate on the bows because an average displacement

vessel -- if you get it to about three points, there is no way that they can hit you because you are going so fast. People tend to concentrate like this rather than...

In the
High Court
of Hong Kong

Prosecution's
Evidence

Q. Yes.

A. That is what I tend to see.

Q. Well, I see that. I am much obliged.

No.4

P.W.19

Allan

Charles Pyrke

Cross-

Examination

(continued)

10

That may not be in the ultimate course with the ultimate rules of perfection that you shall or should watch until it's gone all the way past you, but it accords with what you say the normal experience of how people generally behave on board these vessels. They tend to concentrate, as you say, on this tunnel because they are going so fast, they have got so many things to do and they have assessed the risk that vessel is going past as they do a thousand and one times day in and day out.

20

A. I am not saying this practice is correct and when I say the counsel of perfection, again I would reiterate, there is a specific M notice that warns you on navigational matters that states many many casualties are caused and we are giving you guidance, and certainly I can produce that M notice and quote from it to show you this is not the counsel of perfection.

30

Q. No. Well, I have no doubt that notice exists.

A. Yes.

Q. And I have no doubt the mariner in this situation who does take his eyes off can be criticized. The question is to what degree.

40

A. It's not for me to say.

Q. But is there not an analogy here with situation on a highway, motor-cars. You are travelling south-north in a fast motor-car correctly on a straight course your side of your carriage-way, you see a fast motor-car north-south. You watch it. It passes you. You've assessed if the driver of that vehicle is behaving as one would expect, that he is not going to behave like a maniac driver and go out of control, there is no risk. It's a passing situation. If, however, it goes across and hits you, it might be said, "Well, had you watched it like an eagle until it's gone flashing down the motor-way on the other side, there might not have

50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

been a collision." It's the same
situation, is it not?

A. No, the difficulty with the analogy
with the car is that there is a road,
on the sea there is no road. They
can go in any direction for navigational
reasons or any other reasons.

Q. On the road there might be a central
reservation between the two ways. But
you don't expect that car to cross the
central reservation unless the driver
of that car coming down the other side
has lost control of his senses or his
car. The central reservation there,
if you like, is the barrier of good
seamanship, good navigation, call it
what you will, common sense, reasonable
expectation.

A. Yes.

Q. There is an analogy, isn't there,
although you can't press it?

A. There is an analogy, I agree.

Q. I am much obliged.

MR. CORRIGAN: My Lord, I wonder if that
is a convenient moment. I have not
much else.

COURT: Yes.

MR. CORRIGAN: I am much obliged.

11.25 a.m. Court adjourns

11.47 a.m. Court resumes

All accused present. Appearances as before.
Jury present.

MR. CORRIGAN: May it please you, my Lord.

P.W.19 - Allan Charles PYRKE o.f.o.

XXN. BY MR. CORRIGAN (Continues)

Q. Captain Pyrke, still on the matter of
lookout, finally on that topic, the
question of radar used. Now we know
that on Flamingo before the collision
the radar was switched on but it was
not being used, not being employed.

A. So I understand.

Q. I think they said they employed it whilst
they were in Hong Kong harbour, but not
when they got to the open sea on this
particular day.

	A. That's right.	In the
	Q. Now you described radar as being complementary, or auxiliary, to the visual lookout.	High Court of Hong Kong
	A. That is correct.	Prosecution's Evidence
	Q. Yes. Because it's no good just glancing at the radar. It has got to be thoroughly watched, has it not, to be of any real assistance?	No.4
10	A. It is very dangerous to use scanty information from the radar. Without getting into technicalities, when you are visually watching, it does help you. You can make an assessment of nearest approach, for instance. But again I would reiterate that I am talking now about combining it with visual lookout. To use radar solely on these vessels just by glancing at it is exceptionally dangerous. I did mention time and time again, use intelligence.	P.W.19 Allan Charles Pyrke Cross- Examination
20	Q. Yes, all right. So the man on the helm, the man who has got the radar in front of him is the man on the portside.	(continued)
	A. That's correct.	
	Q. On this particular occasion it's Captain Coull.	
30	A. That's correct, yes.	
	Q. There is no dispute about that. On these brilliant conditions on this particular morning the man in that position looks forward.	
	A. Yes.	
	Q. Now you said it's no good just glancing at the radar.	
40	A. No, you will need to just do a little bit more than glancing. Do remember this, it's just my opinion, Mr. Corrigan, about using radar.	
	Q. Yes. It has got to be read, hasn't it? That's the whole point.	
	A. Oh yes.	
	Q. And interpreted.	
	A. And interpreted.	
	Q. Mistakes could be made.	
	A. Oh yes.	
50	Q. I think - was it you or somebody who mentioned the famous tragic case, that the two liners, I think, coming out from New York Harbour both on the radar, the Andrea Gloria (?) and another one, and they both collided.	
	A. I don't think this was mentioned, but perhaps I could give you another parallel.	
	Q. Give us an example.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- A. A man who looked on the radar saw two echoes looked out visually and saw a tug-and-tow and then watched very carefully on the radar when it won't even give him two echoes. This is a fact. This is a case that happened.
- Q. Captain Pyrke, what it really comes down to is this, does it not, that radar really comes into its own and becomes not just useful but a necessity in conditions of poor visibility, or perhaps with a rough sea? 10
- A. That is when people rely on it most.
- Q. Yes, where obviously eye-sight is not so effective, depending on how bad the visibility is. That's one aspect.
- A. I would reiterate though I am talking about D.S.C. I have mentioned my previous experience with other D.S.C. using radar twenty-four hours a day irrespective of weather for collision avoidance in navigation. The danger is parallel to a big ship. 20
- Q. What's "D.S.C."?
- A. Dynamically supported craft.
- Q. Jet...
- A. Yes.
- Q. Because the jetfoil is being that much faster, I think, they are always on, as a rule of practice, day and night. They are supposed to be used. 30
- A. In a jetfoil it's only at night that certainly Marine Department has said anything about the use of radar; by day it is up to the masters.
- Q. It's up to the master.
- A. By day, yes.
- Q. But again very broadly it comes into its own in poor visibility, at night then, and perhaps by day particularly at long range dealing with approaches and crossing vessels. 40
- A. Yes, it enables you to get a better idea of nearest approach. Certainly I think you cannot use radar to detect a sudden alteration of course at short range.
- Q. I am much obliged. That's what I want to ask you. Where you have a passing situation between two hydrofoils, on that assumption, at about half a mile distance one hydrofoil approaching you makes a turn to the starboard unexpectedly. Now to have the radar on and being watching it in that situation might not have helped at all. It might have been just the reverse. 50

	A.	I would think it would be difficult to get an immediate appreciation. You would get a far better visual appreciation.	In the High Court of Hong Kong
	Q.	Because with a radar, it has got to, however instantaneously, be-- to come up on a screen. There is a turning of the screen. And then you've got to read what comes up. All of which takes time.	<u>Prosecution's Evidence</u>
10	A.	Yes, and to appreciate what you are seeing, which takes even more time.	No.4 P.W.19 Allan Charles Pyrke
	Q.	I am much obliged. In other words, radar requires to be accurately read and, to be of any great use at any range in relation to an approaching vessel, requires some history to be there to be interpreted by the navigator.	Cross-Examination (continued)
20	A.	Yes, I did reiterate, it's only -- it is complementary to visual lookout.	
	Q.	Yes, I am much obliged. Now there are just one or two matters in relation to this official log of Goldfinch, the extract of which we have, exhibit 22. My learned friend Mr. Lucas has already asked you about. Now the evidence is, from Captain Kong, that he wrote this extract in the official log at the company's office the next day on the afternoon, I think, after two o'clock on the 12th of July at his own company's office.	
30	A.	I believe so.	
	Q.	That's in his statement. Now I just want to ask you about the reality of that procedure. Now after a collision such as this a mariner, a ship's master, is given the opportunity to write in the official deck log his account of what occurred before the collision.	
40	A.	Yes.	
	Q.	Quite obviously.	
	A.	Yes.	
	Q.	And it's a matter which he would anticipate would be of some importance, is this right, because apart from anything else his ticket might well depend on the account that he gives, that first account.	
50	A.	Yes.	
	Q.	And so the official log is a matter of some importance. Now you must have seen many official log entries by masters after collision in which they sought in one way or another to blame the navigation of another vessel.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

A. I have seen it on occasions, yes.

Q. Yes. Now look at this document.

MR. CORRIGAN: May he have exhibit 22, please, the extract from the official log? It is a typescript of what is written by Captain Kong in the original document. I think members of the jury have a typed extract.

Q. Now in that account there is nothing there recorded by Captain Kong, is there, which speaks of any deliberate alteration, to start with, for any reason having been made by him on the Goldfinch before the collision?

10

A. Before answering that question, can I just clear something up?

Q. Yes.

A. You did say this is an extract of the official log. This is an extract you give me of the deck log.

20

Q. I beg your pardon. Yes, that's right.

A. Sorry, could you repeat the question?

Q. There is nothing in this account of Captain Kong as to what happened before the collision, is there, which to your reading of it says anything about any deliberate alteration or alterations of course to starboard made by his vessel before the collision?

A. No, nothing.

30

Q. There is nothing in this account, is there, to suggest that any other vessel, namely, Flamingo, was passing him on the port bow or was in any measure to blame for the collision, correct?

A. No.

Q. Now what is said is that at nine-twenty-six vessel sheered to starboard at a rate of five degrees per second approximately. Now you have already dealt with this in your earlier evidence.

40

A. Yes.

Q. To you this bore the meaning, you said, of an uncontrollable movement.

A. Correct.

Q. Of the Goldfinch.

A. Yes.

Q. Can you give any opinion as to the likelihood or otherwise of a hydrofoil such as Goldfinch developing an uncontrollable sheer to one side or the other?

50

A. If I am to assume that there is nothing mechanically wrong with the vessel inside.

	Q.	As was found ,I think, after this collision, on examination of Goldfinch, on that assumption, yes.	In the High Court of Hong Kong
	A.	If I am only to assume that it is something external to the vessel...	<u>Prosecution's Evidence</u>
	Q.	Yes.	
10	A.	...causing the sheer, it would appear only to be something catching on the foils on one side. As I have said before, these foils are like, to put it crudely, like razor blades. They have cut through six-inch-diameter logs.	No.4 P.W.19 Allan Charles Pyrke Cross- Examination
	Q.	Yes.	(continued)
	A.	I cannot see how they could have picked something up big enough to cause that without cutting it through and without leaving any mark on the foil.	
20	Q.	Yes. In any case, had it happened, an uncontrollable sheer of this dimension, five degrees, had it happened, what would have been the way to stop it?	
	A.	Well, I think if they got something big enough on the foils to cause this, the boat would have come down anyway.	
30	Q.	Yes. Had it not done so, the master of the vessel at the helm would simply, would he not, in those circumstances, have given the order to shut the engine?	
	A.	Yes.	
	Q.	And the vessel would have come down on the hull.	
	A.	If she hadn't done it herself, he would give the order.	
40	Q.	Yes. You have already said that the next sentence about the deck officer having had to tell the master who is at the helm about this incident and that he thereafter tries to put the vessel on course but gets no response is something which is meaningless to you.	
	A.	Yes.	
50	Q.	Now it says here that the order was given to stop engine and then the vessel collided with Flying Flamingo. Now that account is repeated in the statement of Captain Kong made to the police.	
	A.	I don't think it says the order is given to stop engines. It just records two	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- words "Stop engine."
- Q. I am much obliged. But in the account Captain Kong gave to the police he said when he saw Flamingo two hundred to three hundred feet away about three to four points on the portside, he at once ordered to shut engines and saw the first engineer go to the control handle to do so. That's what he said. 10
- A. Yes.
- Q. Now had that happened, would you have expected Flamingo to still have been flying foilborne, or substantially so, or perhaps just coming down on the hull at the time of the collision?
- A. I would expect Goldfinch to be....
- Q. Goldfinch.
- A.well on its way down, if not, most of the forward momentum destroyed. 20
- Q. Which is quite contrary to the picture on the examination of the damage, those considerations about the levels and so on between the two vessels of what was actually found after the collision.
- A. That is correct.
- Q. I am much obliged.
- COURT: Sorry, this is supposing that the distance was....?
- MR. CORRIGAN: Two to three hundred feet when the order was given on board Goldfinch to shut the engines and the first engineer obeyed that order. 30
- A. I assume, my Lord, that the engineer obeyed instantly, that's if the engineer was doing something else.
- Q. Yes. If she hadn't actually stopped before the impact of collision, in other words, no collision, she would have substantially come down off her foils into the water and lost a great deal of way before any impact. 40
- A. Correct.
- Q. On a broad picture.
- A. Yes.
- Q. And it is apparent, is it not, from all the collision damage examination that Goldfinch was, to all intents and purposes, still flying at or about the maximum of constant speed at the time of the collision? 50
- A. Broadly speaking, yes.

	Q.	In forward motion.	In the
	A.	Yes.	High Court
	Q.	Although she may have been a little	<u>of Hong Kong</u>
		bit coming down...	
	A.	A little bit.	Prosecution's
	Q.	May have been coming down off the	<u>Evidence</u>
		foils.	
	A.	That is correct.	No.4
10	Q.	You were unable to help us precisely	P.W.19
		Captain Pyrke, as to the stopping	Allan
		distance on an emergency stop	Charles Pyrke
		basis of this particular hydrofoil	Cross-
		Goldfinch.	Examination
	A.	I think I have said that I have	(continued)
		done an emergency stop, been on	
		board Goldfinch after the accident	
		when I asked them to do an emergency	
		stop.	
20	Q.	That's what I want to ask you about.	
		I thought you were giving an average	
		at one time in relation to reports	
		from masters of hydrofoils over a	
		certain period.	
	A.	Yes.	
	Q.	And of course you said, well, these	
		vessels have variations in many ways	
		as to their - not just specifications	
		but as to their performance and so on.	
30	A.	Just to set the record straight, I	
		have said I did it or had a captain	
		do an emergency stop on board the	
		Goldfinch after the accident. She was	
		a light ship, i.e., empty. And eye-	
		balling the distance, it was about	
		two hundred and fifty feet. It was in	
		answer to his Lordship.	
40	Q.	I am much obliged to hear that. I	
		thought you were operating on some sort	
		of theoretical average. So you actually	
		conducted a test, a deliberate test, on	
		the trials of Goldfinch after she had	
		been repaired.	
	A.	Yes.	
	Q.	In July last year.	
	A.	Yes. It was in December by the time of	
		the repair.	
	Q.	And was that a straight-line stop?	
	A.	Yes, straight-line stop.	
50	Q.	On one occasion.	
	A.	On one occasion.	
	Q.	You didn't repeat it.	
	A.	Because as I pointed out there were so many	
		variables. It's not so much the boat,	
		it's the man.	
	Q.	Did you use a stop-watch?	
	A.	We didn't time it.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Cross-
Examination

(continued)

- Q. You didn't.
- A. I just eye-balled the distance.
- Q. And she was empty, apart from the observers and...
- A. A couple of observers.
- Q. Yes. And of course we know that on this day from Macau she was pretty lightly loaded. I think there were twenty-eight passengers altogether.
- A. She was fairly light. 10
- Q. Well, this is similar, again broadly, similar....
- A. I didn't check on fuel loading either.
- Q. I see?
- A. It makes a lot of difference.
- Q. So she ought to have been able to stop in something like two hundred and fifty to three hundred feet.
- A. My estimation, yes.
- Q. Stop dead. 20
- A. In the water, yes.
- Q. Of course these vessels, hydrofoils, compare with conventional crafts, conventional high speed crafts, they have a really dramatic ability to stop, do they not?
- A. Yes.
- Q. I mean, it is something that we laymen perhaps don't appreciate.
- A. Anybody would appreciate it when they come into the Macau Terminal. They fly right in and drop down. 30
- Q. Suddenly drop down, yes, indeed. And you were asked a question by my friend Mr. Lucas, I think, at one stage, about reversing in that situation which we all know happens with conventional crafts, engines are run back and go into reverse. None of that applies. It is completely unnecessary with a hydrofoil, is it? 40
- A. You will destroy most of your forward momentum. You will get it down on the hull. To stop it drifting through the water, that's when you have to go astern.
- Q. A fine tuning.
- A. Yes.
- Q. But that's no part of the emergency stop situation. You come down on the hull, there is then a maximum water resistance on this hull and she stops in this dramatic way from flying at thirty-five miles per hour to a dead halt in two hundred and fifty to three hundred feet. That's it. 50

A.	It's the last fifty feet on the hull that you need to go astern. She has destroyed most of her forward momentum when she gets into the water.	In the High Court of Hong Kong
Q.	Yes. Now you have just mentioned a moment ago, and we have heard it in evidence the description of at least one witness of a turn made by Goldfinch on this occasion before this collision as if it was a turn into the wharf, that is Macau Ferry Terminal, Central District, on the Waterfront, and you have just mentioned it again. Now some of us may have seen these vessels come in. It's when you see it rather than when you are on the vessel perhaps that you will appreciate it. They appear to be going at full speed almost past the wharf when they suddenly make this turn in and, as you have just said, come down and proceed into their berth.	Prosecution's Evidence <hr/> No.4 P.W.19 Allan Charles Pyrke Cross- Examination (continued)
10	A.	
20	A.	
30	A.	
40	A.	
50	A.	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Cross-
Examination

(continued)

- collision: the Goldfinch having come in and hit Flamingo midship on the starboard side, only a matter of a second or two later she would have passed astern off Flamingo and given what one might describe as a close or passing shave to Flamingo, is that not the position?
- A. Perfectly correct.
- Q. Finally one matter. I must ask you to look again at that chart we looked at at the beginning. I am told there was a slight error of mathematics in relation to your fixing that point of the possible alternative collision point which I think you marked. You marked it as "CP". 10
- A. In green, yes.
- Q. And you marked it on that north-south axis as ".25 mile south". 20
- A. Yes.
- Q. And I am told that on the mathematical calculation it should be something like .375.
- A. Yes, I must admit my mind did go aberrant.
- Q. You were assuming it drifted at one and a half knots.
- A. Yes.
- Q. For a quarter of an hour. 30
- A. Yes.
- Q. It is .375.
- A. Yes, you are quite correct.
- Q. I would ask you just to mark that again.
- A. Yes.
- Q. Perhaps "CP 2". It brings that possible collision point again further south somewhat towards the southerly assumed course of Flamingo.
- A. My apologies. 40
- Q. It brings it a little further south.
- MR. CORRIGAN: Perhaps members of the jury would like to see it.
- Q. Thank you very much.
- COURT: Sorry, it drifted 1.5 knots in fifteen minutes?
- A. The rate is 1.5 knots and she drifted for fifteen minutes. That's a quarter of 1.5, my Lord.
- Q. Just one further matter. Captain Kong 50 in his story to the police in that statement made some mention of a portside

flap indicator being defective on his vessel Goldfinch. That would have no significant effect on the ability to navigate that vessel.

In the High Court of Hong Kong

A. No, I have mentioned that it is fairly common that some people fly by the seat of their pants.

Prosecution's Evidence

Q. By the feel.

No.4

A. By the feel.

P.W.19

10 Q. No further questions.

MR. LUCAS: May it please you, my Lord.

Allan Charles Pyrke
Cross-
Examination

(continued)

REXN. BY MR. LUCAS:

Q. Mr. Pyrke, forgive me, we have to go through this backwards very briefly. Mr. Pyrke, you have been asked to make a number of assumptions by both of my learned friends in order to draw these various lines across the plan.

Re-examination

20 A. Correct.

Q. Now my learned friend Mr. Steel put it to you and you agreed that distances are notoriously difficult to assess.

A. Yes.

Q. Right. The Sao Jorge pilot Mr. Young put the hydrofoil north of him when he came out of Macau at about half a mile, is that right?

30 A. I seem to recall he said in evidence he passed it between 9.13 and 9.15 and I can't remember the distance he said it was north. And I think he was referring at that time.

Q. Yes. You see, he said that it was .5 of a mile at that time.

A. Yes.

40 Q. My learned friend Mr. Steel then takes you to the Island of Ching Chau and asks you to mark a spot 1.55 north of that.

A. That is correct.

Q. Right. We know that Mr. Young says that he was 1.05 north of Ching Chau when he went past.

A. Yes.

Q. So you add half a mile making it 1.55.

A. No, because he went past Ching Chau at 09.21.

50 Q. Yes.

A. I understood the half mile was between 13 and 15 - 09.13 and 09.15.

Q. Yes, that's right. Yes, that's the first

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

- point. That assumes, does it not,
first of all, that Mr. Young was
accurate in this half mile?
- A. Yes.
- Q. It also assumes that Mr. Young drove
in a straight line to that point.
- A. Yes.
- Q. And secondly that the Goldfinch went
in a straight line from then on, from
when he saw it. 10
- A. No.
- Q. Sorry, does it?
- A. I wonder, my Lord, if I could perhaps
explain the significance of this on
the board. Perhaps we could cut
the time then.
- Q. If you would, I am grateful, yes.
- A. Thank you. (Witness goes to the board at
the back of the well in court.)
One assumes that is the normal position 20
that you alter course from the Macau
Channel to these routes to Hong Kong.
If one assumes that Young was doing a
straight line, taking radar distances,
etc., in other words, reasonably accurate,
if he was here at 09.13 and here at
09.21 and this distance was 1.05 and if
he passed Goldfinch somewhere in this
time, and one assumes that Goldfinch
was doing a straight course, and you 30
take half a mile, then the course goes
like this and this will be middle-half.
Well, it depends entirely where that
position is that they overtook each other
and that north -- and it assumes that he
keeps a straight course, both keep a
straight course...
- Q. You see, you just can't -- what I am
saying is you can't add 1.05 and half 40
a mile simply because of a previous
sighting.
- A. Correct.
- Q. Because it doesn't necessarily follow it
would go straight. If it does, it will
be wider.
- A. That's correct.
- Q. So to make it clear, the line that you
drew for my learned friend, if the Gold-
finch continued in a straight line, would
it be different, on that, rather than 50
going 1.55, would it be different?
- A. If you make this 1.05 here and she went
straight, it would make it much further
north.
- Q. Right, And any lower line rather than
that would be different from the one

which you draw.
 A. From here on?
 Q. Yes.
 A. If the collision position is here,
 the line perhaps Mr. Steel means
 would be like this. This line would
 be like that.
 Q. My learned friend Mr. Corrigan said,
 he asked you to draw a line from the
 centre of the separation to the hill
 of Taipa.
 A. Yes.
 Q. Now instead of drawing it from
 there, you drew it as a line for...
 Where is the usual land-point? Is
 it there or...?
 A. You aim to about beacon 20 and beacon
 21. In other words, Taipa is the
 island behind that. In long distance
 you normally aim at Taipa, if you want
 a straighter course.
 Q. If you aim further on, you aim for
 beacon 22, does that make a difference?
 A. You couldn't see beacon 22 from that
 range. It's below the horizon.
 Q. You told us that most pilots when making
 a statement would work out the figures
 before they gave a statement. You
 told my learned friend.
 A. I would tend to do it.
 Q. Now a statement - if the distance north
 of that island was 1.3 miles, would
 that make a difference to the lines
 that you drew?
 A. Yes, the line would start from about
 here, taking that as 1.5.
 Q. Yes, and 1.4, which is another - between
 1.3 and 1.4, the same thing.
 A. It would be here.
 Q. All right, thank you. Captain Pyrke, you
 also told us, as I understand it, that
 the time you described in relation to
 the time of the collision....
 A. Yes.
 Q. Captain Pyrke, you have also told us -
 as I understand it - the times you
 disagree with in relation to the time of
 the collision?
 A. Yes.
 Q. One of the reasons you give is that the
 times on previous trips have the Flamingo
 at about that same point and it does not
 take into consideration going down on
 the foils, getting rid of the rubbish and
 coming up again.
 A. That's quite correct.

In the
 High Court
 of Hong Kong

Prosecution's
 Evidence

No.4
 P.W.19
 Allan
 Charles Pyrke
 Re-examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan
Charles Pyrke
Re-examination

(continued)

- Q. So that in order to get there at the usual speed, there couldn't have been a two or three minutes' stop?
- A. That's correct.
- Q. Right, if there was a two or three minutes' stop, then the time would have been of impact later for the "Flamingo", right?
- A. Yes.
- Q. It therefore follows that it'd be later for the "Goldfinch". 10
- A. Yes.
- Q. Now, all these routes that you have been given are based on the time it takes from Macau to the approximate point of collision.
- A. Yes.
- Q. If you have, Captain Pyrke, two or three minutes up your sleeves, as it were, then things change dramatically, is that right? 20
- A. That's correct.
- Q. The "Goldfinch" could have gone all sorts of places before it got there.
- A. Yes, the "Goldfinch" times could be different and do remember "beam position" - when we talk about "beam position", everybody is assuming that a "beam" means north. If "Goldfinch" is going on a more north-easterly course, the "beam position" becomes relevant. She could have left later, all sorts of variations. 30
- Q. You see, you have also been asked to assume that the times are right.
- A. Yes.
- Q. In questions from my learned friend, Mr. Corrigan. You do not agree that that is so.
- A. No. 40
- Q. So there are series of assumptions that have been put to you which you cannot comment on but some of which may be inaccurate, is that correct?
- A. That's correct.
- Q. As an expert, Captain Pyrke, do you find this exercise at all helpful?
- A. Perhaps I could give an analogy. Somebody was talking about jigsaw puzzles. If you shape the jigsaw puzzles differently by chucking some out or saying they are inaccurate, you could produce different pictures. It is a dangerous exercise because one doesn't know which pieces you should throw out and which pieces you can logically shape. 50

Q. And you see, you have told us the Collision Regulations, as I understand it, are not navigational matters at all.

A. In the sense of navigating past land, no.

Q. Could you explain what you mean by that? What you have been asked to do, as I understand it, is draw a series of lines using everyone else's assumption in order to find which direction both were going when and draw conclusions from that in the context of the Collision Regulations.

A. Yes, the navigational positions on the chart and courses are for getting from A to B, collision - and I am speaking broadly - collision regulations, you are talking about visual contact. You don't look at the chart and say, "I am going from Hong Kong to Macao, therefore I am on a collision crossing course," when-- you can see the vessel out there, you look at the vessel. It is an exercise that is often done to try and link the navigational data that you have to test it against visual appreciation.

Q. You see, what if -- in any of these exercises that you have been asked to do on the map, is there any provision made for a five to six hundred yards run-up of the "Goldfinch" into the side of the "Flamingo"?

A. No.

Q. You see, just on this point, by the way, you have told my learned friend, Mr. Corrigan, that Captain Coull, sitting as he does in this specific context of the "Flamingo", has a range of vision of, you have said, about three/four/five points.

A. I said he could most probably see to six points. I was guessing it would begin to get difficult once he gets round to about four to five...

Q. Four to five points...

A. It's about 50 degrees.

Q. I mean it's around there.

A. Yes.

Q. If, in fact, the situation was that there was a sharp turn and a run-in of four or five hundred yards before collision, either at a very broad angle of 45 or a 60 degrees angle, would that be clearly visible from where Captain Coull was

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

- sitting or not?
- A. Yes, in my opinion.
- Q. And would that run-up take some time or not?
- A. Yes, you can work it out yourself from 54 feet a second to about five hundred feet that it has to cover and here you have to be careful about distance....
- Q. We are talking about yards.
- A. Yards, again, 10/12/15 seconds. 10
- Q. So where you have a jigsaw puzzle situation that you talk about, unless all the assumptions are correct, then is it a safe exercise or a dangerous exercise or...
- A. I think this is an exercise for a court. I think I have made it quite clear that I played these jigsaw puzzles in the preliminary enquiry and it is not for me to discard or modify pieces to get different pictures. 20
- Q. But different pictures do emerge.
- A. They do emerge.
- Q. In the context of this, by the way, I am sorry, but I put to you in your evidence in chief a situation where we had two boats head on.
- A. Yes.
- Q. Remember I put, first, Captain Kong initially.... 30
- A. Yes.
- Q. Then I said, "assume straight ahead" means -- "reciprocal course" rather than "straight ahead"
- A. Yes.
- Q. And you made a comment to me that you said it would be bad navigation, if I recall, to turn 15 degrees. However, to my learned friend, you see, one of the first questions asked by Mr. Steel was this: "If there are two boats two miles apart on a reciprocal course and one turns 15 degrees towards starboard what is dangerous about that?" Do you remember that? 40
- A. I think the question was he said where the passing distance was five to six hundred feet to starboard.
- Q. Exactly.
- A. And it was very slightly on the bow and I pointed out that they would pass well port to port.... 50
- Q. Right, you see he remembers me saying five to six hundred yards and I'll accept it if he says that I did say so. Let's ignore the five or six hundred

yards and to back to the position where you have boats on a reciprocal course, about two miles apart and one does a 10/15 degree turn starboard across the front of the on-coming boat.

In the
High Court
of Hong Kong

Prosecution's
Evidence

10 A. When you say reciprocal course, you are giving me, in my mind, a perfect end-on situation. Then, of course, you go to starboard. When that end-on, reciprocal course....

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

Q. If they are passing.
A. If they are over this side.

Q. Yes and the one on your righthand did a 15 degree turn...

(continued)

20 A. It makes a lot of difference if I can show you the distance I mean if it's very fine on the bow, then it is all right. If we are talking about that it's well out on here, then it becomes a totally different matter. It depends entirely how close it is to the bow and this is one of the confusions about this, unless you give me the precise figures that I can put in my mind, it is very easy just to pick up one figure and say, "Ah, that's wrong." You must have the whole picture so that you can visualize what is happening.

30 Q. If you have what would otherwise be a passing situation.

A. Starboard to starboard.

Q. Starboard to starboard and a perfectly safe starboard to starboard passing situation, in those circumstances, should one do a turn across....

40 MR. STEEL: I object to the question because the witness has actually just said he's got to have the material to answer it. A safe passing distance starboard to starboard would be in this witness' view anything between 600 feet and 300 miles. You must have all the material to answer the question, in my respectful submission, and if you are going to ask the witness, suppose vessels on a reciprocal course are shaping to pass 600 feet apart and one of them alters its course 15° starboard when they are two miles apart, then there is sufficient material to work on.

50 Q. Did you answer the question saying it was a dangerous practice at one stage to my learned friend in the context of this?

A. I think this was the very first question Mr. Steel asked me about.

Q. Yes.

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

- A. And I agreed that the figure that he gave me that he has just quoted again, this is perfectly safe and he did question me in something that I'd said to you and I said I thought you had left out a vital bit of information and without that vital bit of information, I would give you a different answer. When we are talking about the passing distances and I'd have to have it read back because I have been given so many..... 10
- Q. You gave an answer to my learned friend that's bad seamanship to cut across. Do you remember saying that?
- MR. STEEL: With respect, this must depend on the relative position of the vessel. With respect, I can't see how this witness can be expected to answer this question. 20
- MR. LUCAS: My Lord, with respect to my learned friend, there was an answer given by this witness that it would be bad seamanship to cut across. I would like him to explain that answer.
- COURT: Bad seamanship to cut across under what circumstances?
- MR. LUCAS: That's what I am asking him. Under what circumstances would it be bad seamanship to cut across? 30
- A. I can answer this. At the sort of ranges that Mr. Steel was talking about, you make an ample alteration in ample time, no problem about it. If you start leaving it late until they really start coming around like that, then you do it, then that's bad seamanship. It is all a matter of time but do remember the whole object is ample time, substantially you are letting the other bloke know what you are doing and you are not putting yourselves into a risk of collision situation. 40
- Q. Now, you say you feel that the times were not correct.
- A. Correct.
- Q. I think you have indicated on three basis, one was the "Sao Jorge" passing by. Could you explain that?
- A. One was the "Sao Jorge" passing assumably Goldfinch between 0913 and 0915, that gives us the distance of Macao that the 50

	Goldfinch was at that particular time.	In the
Q.	Right.	High Court
A.	Additionally, the evidence that he	<u>of Hong Kong</u>
	passed another PT 50 going the other	Prosecution's
	way at 0927 and that again can fix	<u>Evidence</u>
	roughly where Flamingo was at that	
	time and the third bit of evidence	No.4
	was certainly in front of this court	P.W.19
10	in the log book form - I don't know	Allan
	whether it had been put in - I gather	Charles Pyrke
	the documents are with you - that	Re-examination
	Corvo or Flores sighted orange smoke	
	at 0934. That smoke marker was thrown	(continued)
	into sea at the time of the collision	
	and, of course, immediately activates.	
Q.	Where was the Sao Jorge at about 0926?	
A.	She was right alongside the collision	
	position.	
Q.	Am I right that that is the depicted	
20	situation, that had the collision	
	taken place at 0926, then the Sao Jorge	
	would have been at the point that	
	everyone seems to agree was the point?	
A.	Well, 0925/0926 she would have just gone	
	past it. 0925 she would have had a	
	grand-stand view.	
Q.	You have been asked about the noise	
	level inside these hydrofoils.	
A.	Yes.	
30	Q. And you have told my learned friend	
	that the noise is such that unless a	
	signal is given closely, it is difficult	
	to hear a signal from another hydrofoil.	
A.	Yes.	
Q.	What sort of signal is it?	
A.	There are a variety of signals under the	
	col.regs. either to indicate that your	
	vessel is altering course or to indicate	
40	that you have doubt that another vessel	
	is taking action. There are sound signals	
	that you make.	
Q.	What does the sound come through?	
A.	Whistle.	
Q.	How closeby, or if you can't answer, would	
	you need to be to hear that?	
A.	To hear another vessel's? I could not	
	answer. All I know is that it would be	
	very close.	
Q.	What about other means of communication	
50	or sign signals of dangers, are there any	
	others?	
A.	You can only use VHF for they are all	
	fitted with WT, that is, Morse but that	
	would take ages.	
Q.	So there is a radio Morse.	
A.	Two radios - 2 VHF's and one Morse radio.	
Q.	What about any other signals, any other way	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

- of communication?
- A. These vessels don't carry signalling lamps as far as I can remember.
- Q. Any other types of signals?
- A. Not as practical.
- Q. In the course of your giving answers to my learned friend, Mr. Steel, you told him that it was extremely difficult to judge distances, degrees, angles and speeds, is that right? 10
- A. I think I did say that the broader it comes, the more difficult it is to come on bearings and the further away it is, the more difficult, i.e. if it becomes closer to you, it becomes progressively easier and the closer it is to the bow the more progressively easier - or more accurate it becomes.
- Q. In two matters, however, you said that they are relatively - is that aspect? 20
- A. Aspect. It's easier.
- Q. Easier and also the red and green.
- A. Same thing.
- Q. Can you just explain that in a little bit more detail to me?
- A. Aspect really means your bearing from the other vessel, it tells you how much of his bow he is showing you or how much of his red light or which side he - it is purely the visual look of how much he is showing you so, in other words, if he is beam on to you, he has a broad aspect, an aspect of 90°, then he gets round finer as he comes closer and closer. 30
- Q. And to a mariner?
- A. That is one of the most important tell-tales he is looking for, particularly on fine cases, when he is close to the bow. 40
- Q. I think you were asked something about braking distance by my learned friend, Mr. Corrigan, and you told him you actually tested the "Goldfinch" at 250 feet.
- A. At an eye-ball distance of 250, it was not measured.
- Q. After the event?
- A. After the event.
- Q. And without any knowledge as to the amount of fuel, etc. 50
- A. That's correct.
- Q. These boats, these hydrofoils, as we all know, and you have already given evidence on, come in each time into Macao Wharf doing sharp turns...

A. In Macao Wharf they do a sharp turn, in Macao itself - Macao Wharf/Hong Kong - Macao itself it is a straight run...

In the
High Court
of Hong Kong

Q. There are no variations in between. I mean once a captain on board a boat, helming that boat, would know or should know what its approximate braking distance is.

Prosecution's
Evidence

No.4
P.W.19

10

A. Yes, he is doing it everyday.

Allan
Charles Pyrke
Re-examination

Q. You have also been asked, Captain Pyrke, to say 7°, a turn of 7° may have been 7° helm. That was the statement read to you which is the statement of Captain Kong where he talks in terms of 10 to 15° turn and 7° turn. What does 7° helm mean?

(continued)

20

A. 7° means that you turn the rudder or turn the wheel until the rudder has altered 7° and you keep that rudder on and keep the vessel in a constant turn, that is 7° helm. A 7° alteration course tells me nothing about what he done with the rudder, all it tells me is he has altered the compass heading of the boat 7° and then stopped, stopped the turn.

30

Q. If you say a 7° turn, a mariner says 7° turn, it could mean either one or the other or more normally means one another.

MR. STEEL: My Lord, I object to that question. My learned friend is distorting the question I put to the witness which was: "Did you see what Captain Kong has said in his statement was: 'I altered course 7° starboard and then maintained my speed and turning of the helm.'" It may be, as I recognize it, there are two quite different material aspects of that statement. My learned friend ought to put the whole of it.

40

MR. LUCAS: With respect, my Lord, that statement is in two parts. "I maintained my helm" it is quite a different thing from turning 7°. I do not accept that point made by my learned friend. I asked the question. He said, "I turned 7° and maintained my helm". This is the statement. The question I am putting to this witness is: in mariner's terms does "I turned 7° to starboard" normally mean 7° helm or 7° simpliciter. Either way, you can maintain your helm, with respect, and I don't see that I have divided the question at all. The question purely simply is: you have read the statement as 7° meaning

50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination
(continued)

a 7° turn notwithstanding the use of the word 'helm', you read it in the first instance as simply a 7° turn.

MR. STEEL: My learned friend is doing it again. This is not in the statement: "I maintained my helm" that is not what he says. That's completely English. "So I altered course 7° to starboard, then maintained my speed and turning on the helm." He can go on for ever misquoting it. So perhaps he could just quote it correctly.

10

MR. LUCAS: I will quote the first line, my Lord, and put the question again.

Q. Captain Pyrke, you read the statement...

COURT: You object to putting the first part of the....

MR. STEEL: No objection at all. If my learned friend wants to put the point and he says, 'What Mr. Steel said to you was this,' that I object to but if he wants to ask a question, "If a mariner says, 'I alter course 7° starboard,' what does that usually mean," that is a perfectly proper question.

20

MR. LUCAS: I am very grateful. That's all I have been trying to do.

A. If he used the term, I altered course 7°, it means referring to the compass.

30

Q. And that's how you read the statement.

A. With respect, there are so many loose nautical terms in that statement, it is very difficult to decipher.

Q. In layman's terms, does that make a difference to the turn? What difference does it make as a turn, 7° or 7° helm?

A. In layman's terms, "Alter course 7°," is a small alteration. Alter course by putting 7° rudder on and leaving it on becomes more and more substantial the longer it carries on because he is carrying on in a curve.

40

Q. You have already told us that if there was an end on situation and one of these boats turned, the other one would have to turn the same amount.

A. Broadly speaking, yes.

Q. It has been put to you a number of times that this - working on these boats is

50

	boring, dull, tedious and so on.	In the
A.	Yes.	High Court
Q.	Tell me, Captain Pyrke, is it a compulsory part of one's training to work on hydrofoils at this stage?	<u>of Hong Kong</u>
A.	No.	<u>Prosecution's Evidence</u>
Q.	You don't need it to get a master's mariner's certificate or something of that nature. I mean I had to do a run in law which was tedious and dull. That was a pre-condition to a degree. Is it in any way obligatory on people to take this job in order to get qualifications?	No.4 P.W.19 Allan Charles Pyrke Re-examination
10		(continued)
A.	No.	
Q.	Now, these M notices that you have discussed for some time, you have told my learned friend, are given out, as I understand it, for good and sufficient reason.	
20		
A.	Yes.	
Q.	And he talks in terms of a lookout as being the optimum situation as you should follow them but it really is a concept that most people do not. Do you accept that?	
A.	No, the question of lookout is a lesson that time and time and time again has been brought out in casualty work that you must maintain lookout. That is the cause of many many casualties and as I did mention to Mr. Corrigan, there is another M notice which specifies on giving this type of advice.	
30		
Q.	And when we talk in terms of lookout, you see my learned friend, Mr. Aiken put to you a book which said 20 minutes of lookout can be....	
MR. AIKEN:	20 minute trip.	
40		
Q.	20 minute trip of lookout can be termed tiring. If you are near the Falkland Island looking for..(inaudible) that might be accurate but are you talking about that sort of lookout when you are talking about lookout?	
A.	No, that book is the admiralty manual of seamanship, I think.	
Q.	What sort of lookout, when you talk about lookout, do you have to look at everything or just things that affect you or what?	
50		
A.	In pilotage waters or in close waters like this, the lookout is only for things that are significant. In other words, you look for things that are reasonably close. You do not look for a little boat 15 miles	

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

away. That is not significant. Deep sea, that is different, when we are talking about big ships.

Q. You have also told my learned friend, when you go on board a boat, people do all the things that they're supposed to do, is that right?

A. Of course.

Q. You have defined for my learned friend, Mr. Aiken, a small vessel as including a hydrofoil.

10

A. I gave my opinion that it did include it, yes.

Q. Does it have the other condition because in that M notice it says that a small vessel need not have a lookout provided that it has an all round 360° vision.

A. There is another proviso as well if you read that particular notice.

Q. What is that?

20

A. If you could give it to me, I could quote from it. "The helmsman should not be considered to be a lookout while steering except where an unobstructed all-round view is provided at the steering position and there is no impairment of night vision or other impediment to the keeping of a proper lookout." and it is that other impediment to the keeping of a proper lookout which I think is more important. It is equally important with the all-round view.

30

COURT: Can I have that again?

A. Yes, "The helmsman should not be considered to be a lookout while steering except where an unobstructed all-round view is provided at the steering position and there is no impairment of night vision or other impediment to the keeping of a proper look-out" and I might add that on lookouts this type of thing will be enshrined very shortly in the United Kingdom in the merchantship and certification on watch keeping regulations that are before parliament but have not been commenced yet. There is slightly different wording but that is the intentional legislation.

40

Q. Writing -- transferring some figures from a rough log to a

50

A. ...fair deck log.

Q. ...fair deck log, is one able to do that and, in your view, I think you have told my learned friend, and to keep a look-out or not?

10 A. Yes, you have got to be practical. Certainly, you can glance down and fill a couple of figures in and look up again, that is quite adequate. It all depends on how long you are looking away. Obviously, if you spend 20 minutes doing copper-plate writing in -- filling it and not looking up, that is not a look-out. You have got to be sensible and realistic about it.

Q. But if you have, in the context of our particular case -- do you remember how many numbers there were?

A. I don't know. 10 minutes, 12 numbers.

20 Q. I am sorry - perhaps there's a misunderstanding - I am talking about the number of figures written into the deck log of the Goldfinch on this journey.

A. Yes.

Q. Which are...

A. One column.

Q. Could one, in your view, do that and keep an adequate look-out?

A. Yes.

30 MR. AIKEN: My Lord, with respect, it is one and half columns. That's what I was trying to tell my learned friend. There is no evidence about as to when they were written, there's the column from Hong Kong to Macao and there are four entries from Macao to collision point, so it's one and a half.

MR. LUCAS: One and two figures, I think. My learned friend cross-examined him, as I understand it, that the better practice was to do it as you go along...

40 Q. My learned friend, Mr. Corrigan, said to you during his questions that Mr. Ho, the helmsman, looked up, saw another boat in the other direction and looked away because he had so many things to do. Can you tell me what these many things to do a helmsman may have?

50 A. The person driving a hydrofoil, he keeps a watch for "lap sap". It depends on him how diligent he is in that and how much he takes the threat of rubbish ahead of him. He is looking to see where he is steering and he is looking for other vessels. Certainly, you have got plenty of time to have a good look around, particularly

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

- somebody who's experienced. When you start off, it is like driving a very fast car on a motorway. It takes a little bit of time to get used to it. After a time, it comes naturally.
- Q. In relation to the man sitting in the left-hand seat, apart from keeping a look-out, does he have any other duties? 10
- A. I would refer you again to a navigational safety M notice. It shows quite clearly that one person should check on the other to make sure -- and I would have to read the actual words because I think it puts it more succinctly than I do, to make sure that you are not making a mess of it and this does not say that the master shall not be checked by the deck officer because the master can never make a mistake. It says 20
that you check each other because the effect of casualties in that somebody makes a mistake. If somebody is monitoring him, you will catch that mistake. Perhaps if you want me to read the particular words....
- Q. Just leave it for the moment. Mr. Pyrke, you drew for one of my learned friends you noticed that Mr. Ho amended his statement from three to four miles 30
to....
- A. Three quarters.
- Q. Yes, something like just over a half a mile and you drew for my learned friend a diagram setting out that position.
- A. Yes, I seem to remember I did.
- Q. Exhibit P47.
- MR. LUCAS: There is, unless your Lordship has - I have some questions to ask but 40
I am not sure quite how long but the reality is there are to be arguments as to matters of law which will take, my learned friend and I, certainly this afternoon and I will take tomorrow morning. It may well be, if your Lordship does not have any other arrangements, that I could finish now, let the jury be released to come back either Thursday morning where I think 50
they will be needed next and I could complete this at a reasonable period now.

COURT: Yes.

Q. Exhibit P47.
A. I seem to recall that it showed that Goldfinch would have to be showing a red aspect. Yes, this is the one. I was asked to assume - no, this graph is that the initial position was 4½ miles, 10° on the bow and the second position I was given was six cables, I think, by the look of it, 20° on the bow. No, it does not look like 20° on the bow. It looks like 10 or 11°. Yes. That started off at 4½ miles. That's right. I remember it was the bearing of - 4½ miles and passing 600 feet off, that was the other thing I was given, I was given an intermediate bearing.
Q. The boat was going straight up, seeing another boat coming at that angle.

In the
High Court
of Hong Kong
Prosecution's
Evidence
No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

MR. CORRIGAN: That's not correct. That's not the information. You were given two bearings and asked how far apart they would pass. You said ample...

MR. STEEL: The exercise I invited the witness to do was to take the two observations in the statement and tell us whether the courses were intercepted. The material I asked him to work on was the two sites, one corrected and one uncorrected, in Mr. Ho's statement.

COURT: Yes, I think that's right.

Q. In so far as the helmsman of this particular boat going straight ahead, would he in those circumstances need to take any action or not?

A. The one that is here...

Q. We can talk in terms....

A. This diagram here, it means that this vessel is showing -- the Goldfinch is showing red, under those situations to try and judge a 600 feet passing, passing ahead of it, in my opinion, is very dangerous and you go to starboard. When I said 600 foot passing, I meant they are on dead parallel courses and he showed you a green aspect all the time. Once you put it on to red, you don't stay going straight, you alter course to starboard.

MR. CORRIGAN: Where is the basis? Mr. HO has

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

never said he saw red. Why should Mr. Ho's observations in his statement be distorted on vital matters? Mr. Ho's evidence in his statement is it was always green to green and he assumed a safe passing situation.

Q. As I understood it, my learned friend put two bearings from the statements. Those two bearings cannot be a green to green situation by definition. 10

A. No.

Q. So although Mr. Ho may well say it is green to green, the reality of it is it's red to green and those are the bearings taken from the statement put by Mr. Steel to this witness. One of those statements must be incorrect. Frankly, in so far as I am concerned, for re-examination purposes, I am simply asking, having been given those two bearings by my learned friend, Mr. Steel, which is the story put by Mr. Ho, would that be a safe thing to do, the answer is no. 20

MR. CORRIGAN: It is not the story put by Mr. Ho. It is not the story put by Mr. Ho. I object.

COURT: You did not object at the time.

MR. CORRIGAN: As an assumption, as a possibility, if Mr. Ho was precisely accurate in the distances and the angles that he then observed and was able to give a precisely accurate estimation when being questioned by the police 6 weeks later, a matter on which Captain Pyrke has already very fairly dealt with, that might be true. To seek to draw an inference that, therefore, this was not a passing situation on the basis of all these assumptions at this stage, in re-examination, is, in my respectful submission, entirely wrong, it must be grossly unfair and inaccurate. 30 40

COURT: If we are going on the basis of what Mr. Ho said, now, on the basis of what Mr. Ho says in his statement, inaccurate or not - it is a matter for comment - the witness was asked to draw a diagram from which Mr. Lucas is now seeking, I think, to clarify as to what the implications are. 50

Certainly, you can say, I have no doubt you will, what Mr. Ho said may well not be accurate as to distances.

In the
High Court
of Hong Kong

MR. CORRIGAN: So long as the Crown concedes that, I thought he was being rather flippant, this is some sort of cast-down position.

Prosecution's
Evidence

COURT: I don't think anybody is saying that.

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

10 MR. CORRIGAN: I am obliged, so long it is clear.

(continued)

MR. LUCAS: With respect, this was a statement made over a spread of three days by Captain Ho.

MR. CORRIGAN: Not captain.

20 MR. LUCAS: Sorry, Mr. Ho, the first officer, helmsman, Mr. Ho, in the presence of someone who, we understand, has some nautical experience which took so long to put down because it had to be discussed, each point. I'm not conceding that he saw it. In that statement, as it was prepared, there were - over three days there was twice the statement, three quarters of a mile.

COURT: I think it's quite clearly a matter for comment and representation as to whether these distances and bearings are so given.

30 MR. LUCAS: That is a matter for comment but I am certainly entitled at that stage to say, given that situation, those being the bearings, is it a green to green or a red to green and should the "Flamingo" have taken some sort of action, the answer to that is....

40 A. If I may perhaps add something, the statements are contradictory. The ranges and bearings, as I recall, he says safely at the end of it. If you add those bearings, i.e., that to the word safely, it is contradictory. So his statement, like many of the statements is, shall we say, not technically correct.

Q. All right, let's leave that. You have told us about -- told my learned friend, Mr. Steel, about the old rules for stand-on vessel. In other words, the agony

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

of the moment, a situation where you sit and bite your fingernails, waiting to see what the other chap is going to do.

- A. The meaning of agony of collision is slightly different. What I was bringing out was that under the old rules you had to keep on until the last moment and that both vessels must alter course. 10
- Q. Nowadays, that no longer applies?
- A. You have a discretionary power that at a much earlier stage, you may but you are still left with the obligation that you shall when it really gets closer.
- Q. Given the situation we are talking about, even under the old rules, on a hydrofoil as distinct from a ship, what you would do, given a situation where you see another boat, and you are not sure what it is going to do, and it may get on a collision course. 20
- MR. STEEL: I object to that question. Again, the witness isn't given enough material. If the question is put on the basis, if you are the stand-on vessel to another hydrofoil, what is the range at which you must take action, then I can understand and the question is a proper one. I object to the question as formulated. 30
- MR. LUCAS: I'll formulate it in the way my learned friend has put it.
- A. This again is very difficult to do without the visual appreciation but at this sort of speed and particularly if the other boat is yawing about, I am going to take comparatively earlier action. I would not like to hang on much to within half a mile, I would tend to alter early and the court would not blame me, be safe and if you are in doubt, even if you are in doubt about this, you can stop your vessel. It tells you later on. You can stop, your vessel and assess the situation in an entirely different rule, that is, if stopping, of course, is the right thing to do. It is a very difficult question to answer. 40
- Q. You have mentioned side mirrors, side mirrors. What use are they put to mainly? 50

A. I think I have already answered that I am not sure. I thought they may be connected with backing of the berth.

In the
High Court
of Hong Kong

MR. LUCAS: I have no further questions.

Prosecution's
Evidence

10 MR. CORRIGAN: My Lord, I would like to clarify in relation to the last document, whether it records in any sense the observation of Mr. Ho in this statement. It was produced in cross-examination, my learned friend Mr. Steel's questions that the observations of Mr. Ho are in this statement.

No.4
P.W.19
Allan
Charles Pyrke
Re-examination

(continued)

COURT: Yes, paragraph 10

FURTHER XXN. BY MR. CORRIGAN:

Further Cross-
Examination

Q. First of all, paragraph 8. "The other hydrofoil was about 10° on the starboard side about 4 to 5 miles."

20 COURT: Your diagram, the straight line - just get this quite clear because the jury will be looking at this now and have probably as much difficulty in following it as I do. There is a straight line. That is the course of the "Flying Flamingo"?

30 A. Yes, this straight line and this is a radar...(inaudible). In other words, the "Flying Flamingo" stays at this spot all the time and this is the way she is heading. I have stopped the "Flying Flamingo", and given both motions to the "Flying Goldfinch". This means that the "Flying Goldfinch" is 10 or 20 - I will just check the bearings - hold on, I will check what I actually plotted and then you can see if that relates to....

COURT: I think the first one was 10.

40 A. Yes, the first one is 10. That is the position of the "Flying Flamingo" at 4 and a half miles range 10° on the starboard bow of "Flamingo". That is the "Goldfinch".

COURT: Paragraph 8.

Q. And the second?

A. The second bearing is, it was, I think,

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Further Cross-
Examination

(continued)

6 cables 20° on the starboard bow
and then I was asked what aspect
to be shown how close.

- Q. Yes.
- A. And I pointed out that it would pass,
if they both kept their courses,
they would pass starboard to starboard
at 1.2 cables nearest to brake.
- Q. That would have been - a safe passing
distance would have been. 10
- A. I did say that here she is showing
a red aspect and you would cross
ahead of - Flamingo would cross ahead
of Goldfinch at under a mile about
20° on the bow. I was not asked to
comment whether I thought that was
safe or not. I was just asked to
comment on the figures.
- Q. Yes. It is nonetheless a safe passing
distance.... 20
- A. I think I have tried -- this safe
passing distance, I think I have tried
to make it quite clear. If you are on
parallel courses and you are green to
green all the time, 600 feet in my
opinion, is safe. You are judging it
fine. Once you start angling in and
you get any red out of this distance
where you are cutting ahead, to me that
is unsafe. The effect that you cross
ahead of another vessel and allow him
to -- so they are sort of going like
this and you get 600 feet off at my
right, that's dangerous, in my opinion.
They are slightly converging courses. 30
- Q. What slight...
- A. How slight is slight. The big thing
I will come back to again is the aspect
that she is showing on the way in. If
she is showing green aspect all the time
to green, that is fine. 40
- Q. If, in fact, he saw green to green, he
is giving an inaccurate recollection of
the distances or the angles or both.
- A. Yes.
- Q. Very well.

BY COURT:

- Q. Captain Pyrke, in Captain Kong's
statement, it says this:

"I put the position of the boat from 50
the opposite direction at 10° - 15°
portside of our boat and (my boat) kept
on sailing. However I noticed that
there was no significant change in the

relative position between my boat and the boat from the opposite (direction). At that time (we) were about half a mile away."

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4

P.W.19

Allan

Charles Pyrke
Further Cross-
Examination

(continued)

- 10
- A. Assuming that's right, would you say that that was a dangerous situation?
It is a clear indication that "Flamingo" has altered course to port in contravention to Collision Regulations.
- Q. "So I altered the course 7° to starboard side and then maintained my speed and turning of the helm until the relative position of the opposite ship was 0.2 - 0.3 miles to about 30° to the portside of my boat."
- 20
- A. Even that, if you take the full statement, it shows that the 7° alteration course does not make sense, the 7° helm angle makes more sense in the context of a rather loose statement because he has changed it from 10 to 15 to 30 must mean he is swinging quite a bit.
- Q. Would you regard that then at that stage as being a particularly dangerous situation?
- 30
- A. Yes, he has got somebody that is altering to port contrary to the Collision Regulations and he is going a comparatively shallow turning 7° to that they can do to starboard. That is compounding it. Really, he should have come down on the hull or taken some emergency action. He certainly shouldn't have gone to port but he should have done something a little bit more than a very moderate starboard turn.
- 40
- Q. It then says, "At that stage I then checked the radar indicator, the revolutionary indicator and the flap indicator on the switch board in front of me."
- A. I would be watching the other vessel like a hawk. I would not take my eyes off it. I can feel what the boat is doing.
- Q. Captain Coull in his statement says, "Shortly prior to the collision, the last time I caught sight of the other approaching vessel was when it was approximately 45° starboard and two to three cables from our vessel. I did not do anything special but keeping a look-out. At that moment, I was sure that both vessels will pass on a reciprocal course about 500 to 600 feet apart. As I understand your evidence, what you are saying is, if in fact that was
- 50

In the
High Court
of Hong Kong

Prosecution's
Evidence

No.4
P.W.19
Allan
Charles Pyrke
Further Cross-
Examination

(continued)

right, 45° starboard and two to three
cables, in fact the vessel could not
have collided.

A. That's correct, on a reciprocal course,
45°.

Q. Well, he says, 'Would pass on a
reciprocal course....'

A. Yes, they can't hit.

COURT: Yes, thank you. Members of the jury,
any questions - I am sorry we are going 10
into all that but we can then let you go
for the afternoon -- any questions you
would like to ask Captain Pyrke?

JUROR: There is a difference of 21 minutes
between the site Mr. Young made on
the map and the time of collision.

A. 21 minutes between - ?

JUROR: The site that Mr. Young made....

A. 21 minutes. We have not established the
time of collision. He saw the "Goldfinch" 20
between 9.13 and 9.15.

JUROR: But you said it was 9.34...

A. No, I said that somebody saw orange smoke
at 9.34 and this was indicating to me
that the collision was later than 0925/26.
I have never said what time the collision
was, in my opinion.

JUROR: Mr. Young passed the "Flamingo" at
9.31 off Fan Lou.

A. At 9.27 off Fan Lou. 30

COURT: I'm sorry. You have to be a lot
slower and a lot louder please.

JUROR: Can Mr. Pyrke give us a more correct
time between 9.31 and....

COURT: I think he said it was before 9.34.

A. If you have no objection, I can give you
what my opinion of the collision time
is but maybe people might object. I can
certainly give it.

COURT: Is there any objection to his giving 40
it? This will be based on the....

MR. STEEL: One of the difficulties of course is knowing what time scale you're working on... (inaudible). You see the point that the members of the jury is making and logically it must be right.

In the
High Court
of Hong Kong

Prosecution's
Evidence

COURT: What is your estimate?

A. I estimate the collision took place at 9.30, give or take a minute.

10

MR. STEEL: Can I just ask whose clock?

A. Both clocks, Mr. Steel. They got to be in the same position at the same time assuming....

MR. STEEL: That's just the local time?

A. Local time, yes.

JUROR: Can I just try to establish how far the "Goldfinch" would have travelled when sighted by Mr. Young - it was 17 minutes therefore between sighting by Mr. Young and the time of the collision.

20

A. It's between 15 and 17 minutes, yes.

JUROR: It seems to me that he did travel a further straight distance between the time he saw it and the collision.

A. On a straight distance, yes. First of all, you have to establish whether it was 9.13 or 9.15 and certainly for 9.30 there's got to be a fairly large northerly dog-legging.

30

COURT: Yes, any other questions? (Pause)
Yes, thank you very much indeed. Very well, members of the jury, would you come back at 2 o'clock tomorrow, and I think we'll now adjourn to 2.30.

1.25 p.m. Court adjourns

No.4
P.W.19
Allan
Charles Pyrke
Further Cross-
Examination

(continued)

O N A P P E A L
FROM THE COURT OF APPEAL IN HONG KONG

B E T W E E N :

KONG CHEUK KWAN

Appellant

- and -

THE QUEEN

Respondent

RECORD OF PROCEEDINGS - PART I
VOLUME I - Pages 1 to 591

CAMERON MARKBY,
Moor House,
London Wall,
London, EC2Y 5HE

Solicitors for the
Appellant

MACFARLANES,
10 Norwich House,
London,
EC4A 1BD

Solicitors for the
Respondent