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## Interpreting Taxing Statutes # 76 – General and specific provisions (*generalibus specialia derogant*)

**It is a principle of construction that, in the absence of any contrary intention, the general gives way to the specific.<sup>^1</sup>**

### SYNOPSIS

Where the literal meaning of a general enactment covers a situation for which specific provisions is made by some other enactment within the Act or instruments, it is presumed that the situation was intended to be dealt with by the specific provision.<sup>^2</sup>

The principle was articulated thus:

‘The general rules which are applicable to particular and general enactments in statutes are very clear, the only difficulty is in their application. The rule is, the wherever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.’<sup>^3</sup>

This principle is sometimes expressed in the maxim *generalibus specialia derogant* (special provisions override general ones)<sup>^4</sup>, or the converse, *generalia specialibus non derogant* (general provisions do not override special ones)<sup>^5</sup>.

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<sup>1</sup> Bennion 2020 p 21.4

<sup>2</sup> *Vinos v Marks & Spencer plc* [2001] 3 All ER 784 cited in Bennion 2020 p 640

<sup>3</sup> *Pretty v Solly* (1859) 26 Beav 606 cited in Bennion 2020 p 640

<sup>4</sup> Halkerston’s Latin Maxims, p 51 cited in Bennion 2020 p 641

<sup>5</sup> *Jenk Cent* 120 cited in Bennion 2020 p 641

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The principle, ‘... is not a technical rule peculiar to English statutory interpretation. Rather it represents simple common sense and ordinary usage.’<sup>6</sup>

Acts often contain general provisions which, when read literally, cover a situation for which specific provision is made elsewhere in the Act. The principle mentioned above gives a rule of thumb for dealing with such a situation: it is presumed that the general words are intended to give way to the particular. This is because the more detailed a provision is, the more likely is it to have been tailored to fit the precise circumstances of a case falling within it.<sup>7</sup>

Pearce says:

‘It is common sense that the draftsman will have intended the general provisions to give way should they be applicable to the same subject matter as is dealt with specifically ... The draftsman often indicates his intention that his should be so by the inclusion of such words as “subject to this Act” in a general provision. But these words are included more by way of abundant caution as the overriding idea that an Act should be read as a whole has the effect of making all provisions subject to one another.’<sup>8</sup>

### Overlapping provisions

The principle set out above does not apply where, instead of a specific provision and a more general provision, there are simply provisions with overlapping aims and overlapping applications.

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<sup>6</sup> Effort Shipping Co Ltd v Linden Management SA, The Giannis NK [1998] 1 All ER 495 cited in Bennion 2020 p 641

<sup>7</sup> Lofft’s King’s Bench Rep (1772-74) 351 (98 ER) cited in Bennion 2020 p 641

<sup>8</sup> Pearce Statutory Interpretation in Australia (2nd edn, 1981) p 47 cited in Bennion 2020 p 641

## General and specific enactments in different Acts

Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. Accordingly, the earlier specific provision is not treated as impliedly repealed.<sup>9</sup>

Said as follows:

‘... where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.’<sup>10</sup>

The principle may also apply where the special provision is contained in a later Act.<sup>11</sup>

Note that the principle is unlikely to apply in cases where the general enactment forms part of a constitutional settlement. In such cases, the intention is likely to be that general enactment should apply generally.<sup>12</sup>

### General power

A particular application of the principle that the general gives way to the specific is that a general power cannot usually be relied on to circumvent a specific set of statutory provisions. For example, in an English case the court said that:

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<sup>9</sup> Lofft’s KB Rep (1772-74) 351 cited in Bennion 2020 p 641

<sup>10</sup> Seward v The Vera Cruz (owners), The Vera Cruz (1884) 10 App Cas 59 cited in Bennion 2020 p 642

<sup>11</sup> Richards v Richards [1984] AC 174 cited in Bennion 2020 p 642

<sup>12</sup> Bennion 2020 p 642

‘... power conferred in very general terms plainly cannot be relied on to defeat the intention of clear and particular statutory provision.’<sup>13</sup>

### Effect of specific on general

A specific provision within an Act is not usually of much relevance in construing one of the Act’s general provisions on other aspects. This is because specific provisions may be inserted out of an abundance of caution, or otherwise without regard for the wider application of the general provision.<sup>14</sup>

Drafters will sometimes include express provision to make it clear that a specific provision is not intended to modify the meaning of a wider general provision. A traditional formula is ‘without prejudice to the generality of [the general provision] ...’ [Sometimes the words ‘the generality of’ are omitted, but the intended effect is the same] Nowadays drafters will usually seek to avoid this legal archaism, for example by providing that the specific provision does not ‘affect’ or ‘limit’ the operation of the general one. Alternatively, the specific provision may be expressed as a particularization or example of the general provision. Whatever form of words is used, the courts may in an appropriate case take account of the specific provision when construing the wider general provision.<sup>15</sup>

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<sup>13</sup> R v Liverpool City Council, Ex p Baby Products Association Times, 1 Dec 1999, cited in Bennion 2020 p 642

<sup>14</sup> Bennion 2020 p 643

<sup>15</sup> Bennion 2020 p 643