

## Interpreting Taxing Statutes # 90 – Nature of genus in *ejusdem generis* principle

For the *ejusdem generis* principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore, the genus must be narrower than the general words it is said to regulate. The nature of the genus is gathered by implication from the express words which suggest it. Usually these consists of a list or string of substantives or adjectives. [Ben 23.3]

### SYNOPSIS

#### *Need to identify the class*

If a genus cannot be found, the *ejusdem generis* principle does not apply. It is necessary to be able to formulate the genus; for if it cannot be formulated it does not exist. ‘Unless you can find a category there is no room for the application of the *ejusdem generis* doctrine.’ [Tillmanns & Co v SS Knutsford Ltd [1908] 2 KB 385]

#### EXAMPLE

The Children Act 1989, s 38(6), empowers the court to give directions ‘with regard to the medical or psychiatric examination or other assessment of the child’. In *Re C (a minor) (interim care order: residential assessment)* [(1996) 4 All ER 871] it was held that the words ‘medical or psychiatric examination’ did not establish a genus so as to enable the *ejusdem generis* principle to apply.

#### *How to identify the class*

It is necessary to ask first, what common quality the specified things possess which constitutes them a genus and second, whether the (unspecified) thing at issue in the instant case possesses that quality.

‘So far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common category. By this I understand that the specified things must possess some common and dominant feature.’ [Magnhild (Owners) v McIntyre Bros & Co [1920] 3 KB 321]

#### EXAMPLE

The Customs Consolidation Act 1876, s 43, read: ‘The importation of arms, ammunition, gunpowder, or any goods may be prohibited by proclamation or Order in Council.’ (emphasis added) Although the

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italicised words are completely general, it is obvious that some limitation is intended. Otherwise why did not the drafter simply say “The importation of any goods may be prohibited ...”?

The ejusdem generis principle has been applied to strings of adjectives.

Stockport Ragged, Industrial and Reformatory School [(1898) 2 Ch 687] the phrase ‘cathedral, collegiate, chapter or other schools,’ the residuary words ‘or other schools’ needed to be given a restricted meaning.

‘I cannot conceive why the legislature should have taken the trouble to specify in this section such special schools as cathedral, collegiate and chapter, except to show the type of school which they were referring to, and in my opinion other schools must be taken to mean other school of that type.’

### ***Genus no wider than necessary***

The tendency of the courts is to restrict the genus to an area that goes no wider than is necessary.

#### **EXAMPLE**

A string specified as ‘boots’ shoes, stockings and other articles’ would import the genus footwear rather than the wider category of wearing apparel.

### ***Use of context to identify genus***

In addition to the immediately surrounding words, other parts of the context may give assistance in finding the genus.

#### **EXAMPLE**

The expression ‘every trustee, guardian, committee, or other person’.

Latham, Re, IRC v Barclays Bank Ltd [(1962) Ch 616] it was held that the genus was persons holding property in a fiduciary capacity. The court was assisted by the previous mention in the subsection of persons holding beneficially.