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Interpreting Taxing Statutes # 95 – Exclusion of *ejusdem generis*

The *ejusdem generis* principle will be excluded where the contrary intention appears. Express words may be used to make it clear that the residuary words are not to be given a narrow meaning or this may be implicit having regard to other relevant interpretive criteria. [Ben 23.8]

SYNOPSIS

Like all other linguistic canons of construction, the *ejusdem generis* principle applies only where the contrary intention does not appear. The principle is moreover but one of the interpretative criteria that may be applicable in a particular case. Accordingly, it may be overridden by any indication that the result in produces would not conform to the legislative intention. In *Quazi v Quazi* [(1980) AC 744] Lord Scarman said:

‘If the legislative purpose of a statute is such that a statutory series should be read *ejusdem generis*, so be it; the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule, like many other rule of statutory interpretation, is a useful service but a bad master’.

Express exclusion

The *ejusdem generis* principle may be excluded expressly by the use of words such as ‘whether or not of the same kind as those mentioned’. However, less emphatic forms of words need to be considered with caution as much will depend on context.

The words ‘of whatever description’ have in certain contexts been held to exclude the *ejusdem generis* principle. [*A-G v Leicester Corpn* [1910] 2 Ch 359] *McCardie J* said:

‘[T]he comparative ease with which the *ejusdem generis* rule can be prevented from applying is shown by *Larsen v Sylvester* [1908] AC 295, where the words ‘of what kind soever’ were held sufficient for that purpose’. [*Magnhild (Owners) v MacIntyre Bros & Co* [1920] 3KB 321]

But the word ‘whatsoever’ in the phrase ‘or other person whatsoever’ in the Sunday Observance Act 1677, s 1 was held not to disapply the principle. [*Palmer v Snow* [1900] 1 QB 725] Again, the *ejusdem generis* principle was applied to the phrase ‘corn and grass, hops, roots, fruits, pulse’ notwithstanding that the residuary words were ‘or other product whatsoever’. [*Clark v Gaskarth* (1818) 8 Taunt]

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The words ‘or otherwise’ may be regarded as excluding the principle. As Hallett LJ said in *R v Uddin*:

‘In our view, the choice of the words or otherwise to follow the identified categories is significant. The word or creates an alternative scenario. The word otherwise is defined in the Oxford English dictionary as ‘in circumstances different from those present or considered’. The words or otherwise therefore distinguish the circumstances in question from the categories that precede them.’

### ***Implied exclusion***

In some cases the context or other interpretative criteria will be sufficient to displace the ejusdem generis principle.

#### **EXAMPLE**

By the Local Government Act 1933, s 76(1), a member of a local authority was required to disclose their interest and refrain from voting where they had ‘any pecuniary interest, direct or indirect, in any contract or proposed contract or other matter’ (emphasis added). Lord Parker CJ held that the mischief at which the enactment was directed required the italicized phrase to be given its unrestricted meaning. He said:

Whereas, of course, a consideration of the mischief aimed at does not enable the court to construe the words in a wider sense than they appear, it at least means that the court would not be acute to cut down words otherwise wide merely because this was a penal statute.’ [*Rands v Oldroyd* [1959] 1 QB 204]

### ***Implied exclusion: use of residuary term elsewhere***

The use of a term in a wide sense in one place in an Act may indicate that it is not intended to be given a narrower construction where it is used as a residuary term elsewhere.

#### **EXAMPLE**

An Act empowered an inspector of nuisances to inspect foodstuffs located in ‘any place’. Elsewhere the Act imposed a penalty on persons who prevented an inspector from entering any ‘slaughter-house, shop, building, market, or other place’ where carcasses were stored (emphasis added).

Held The unrestricted use of ‘Place’ in the provision conferring the power of inspection indicated that it was intended to have the same wide meaning in the second provision. [*Young v Grattridge* (1868) LR 4 QB 166]