

## **Bennion on Statute Law**

### **Part II - Statutory Interpretation**

\*\*\* Page 187 - Chapter Twelve

#### **Guides to Legislative Intention IV: Linguistic Canons of Construction**

The present chapter deals with the linguistic canons of construction, which reflect the nature or use of language. They are employed to arrive at the literal meaning of an enactment, and depend neither on its legislative character nor on its quality as a legal pronouncement. These canons apply in much the same way to all verbal forms, being based on the rules of grammar, syntax and punctuation and the use of language as a general medium of communication. When judges say, as they sometimes do, that the principles of statutory interpretation do not materially differ from those applicable to the interpretation of documents generally, it is these linguistic canons they have in mind.

##### **Construction of text as a whole**

The first linguistic canon is that an Act or other legislative instrument is to be read as a whole, so that an enactment within it is not treated as standing alone but is interpreted in its verbal context. As Holmes J said, 'you let whatever galvanic current may come from the rest of the instrument run through the particular sentence' (Holmes 1898- 99, 417).

Coke said that it is the most natural and genuine exposition of a statute to construe one part of it by another 'for that best expreseth the meaning of the makers' (1 Co Inst 381 lb). In *South West Water Authority v Rumble's* [1985] AC 609, 617 Lord Scarman said of paragraphs (a) and (b) of the Water Act 1973, s 30: 'It is not... possible to determine their true meaning save in the context of the legislation read as a whole'.

It follows that a general term used in one provision of an Act may by implication be modified by another provision elsewhere in the Act. Thus in *Cooper v Motor Insurers' Bureau* [1985] QB 575 the general term 'any person' in the Road Traffic Act 1972, s 145(3)(a) was held to be modified by an implication arising from s 143(1) of the Act.

Certain specific rules follow from the idea that a legislative text is to be construed as a whole.

*All words to be given meaning*

On the presumption that Parliament does nothing in vain, the court must endeavour to give significance to every part of an enactment. It is presumed that if a word or phrase appears in the enactment, it was put there for a purpose and must not be disregarded. This applies *a fortiori* to a longer passage, such as a section or subsection. Where in *Albert v Lavin* [1981] 2 WLR 1070, 1083 Hodgson J said that in an enactment defining a criminal offence the word 'unlawful' was surely tautologous he was rebuked by Lawton LJ in a later case (*R v Kimber* [1983] 1 WLR 1118, 1122). In *A-G's Reference (No 1 of 1975)* [1975] QB 773, 778 it was held that in the Accessories and Abettors Act 1861, s 8 the words 'aid, abet, counsel or procure' must each be taken to have a distinct meaning since otherwise Parliament would be indulging in tautology in using all four words. In *R v Millward* [1985] QB 519 the Court of Appeal rejected the appellant's argument that the Perjury Act 1916, s 1(1) applies only where the witness believes his false statement to be material, because this reading would render s 1(6) of the Act meaningless. In *Chaudhary v Chaudhary* [1984] Fam 19 it was held that the Recognition of Divorces and Legal Separations Act 1971, s 2(a) must have a restrictive effect, since otherwise it would have no operation.

It may happen however that no sensible meaning can be given to some statutory word or phrase. It must then be disregarded. As Brett J said in *Stone v Corporation of Yeovil* (1876) 1 CPD 691, 701: 'It is a canon of construction that, if it be possible, effect must be given to every word of an Act of Parliament or other document; but that, if there be a word or phrase therein to which no sensible meaning can be given, it must be eliminated'. Words may be robbed of meaning by a subsequent change in the law and the failure of the drafter of the amending Act to effect a consequential amendment (eg *R v Wilson (Clarence)* [1983] 3 WLR 686, 691).

*Same words to be given same meaning*

It is presumed that a word or phrase is not to be taken as having different meanings within the same instrument, unless this intention is made clear. Where the context shows that the term has a particular meaning in one place, it will be taken to have that meaning elsewhere. Thus Cleasby B said: 'It is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament' (*Courtauld v Legn* (1869) LR 4 Ex 126, 130). Where through unskilful drafting there is doubt as to whether this was indeed Parliament's intention, much difficulty may be caused (eg *Doe d Angell v Angell* (1846) 9 QB 328, 355, where 'rent' was used in two different senses throughout an Act).

A word or phrase with more than one ordinary meaning is termed

a homonym. It is presumed, unless the contrary intention appears, that where the legislator uses a homonym in an Act or other instrument it is intended to have the same meaning in each place. The same applies to cognate expressions such as 'married' and 'marry' (*/? v Allen* (1872) LR 1 CCR 367, 374).

Where an artificial meaning is given to a term for a particular purpose, it will not apply to use of the term where that purpose does not operate (eg *Moir v Williams* [1892] 1 QB 264).

*Different words to be given different meanings*

It is presumed that the drafter did not indulge in elegant variation, but kept to a particular term when he wished to convey a particular meaning. Accordingly a variation in the term used is taken to denote a different meaning. Blackburn J said in *Hadley v Perks* (1866) LR 1 QB 444, 457:

It has been a general rule for drawing legal documents from the earliest times, one which one is taught when one first becomes a pupil to a conveyancer, never to change the form of words unless you are going to change the meaning . . .

In the same place however Blackburn J recognised the possibility of elegant variation when he said that the legislature 'to improve the graces of the style and to avoid using the same words over and over again' may employ different words without any intention to change the meaning. It can only be said that this is bad drafting. Making use of pronouns when safe, the drafter should otherwise stick to the same word. Graces of style are all very well, but in Acts of Parliament they take a far second place to certainty of meaning.

*Conflicting statements within one instrument*

Where two enactments within an Act or other instrument conflict, it is necessary to treat one as modifying the other. If no other method of reconciliation is possible, the court adopts the principle that the enactment nearest the end of the instrument prevails (*Wood v Riley* (1867) LR 3 CP 26, 27) (see further pp 275-278).

*Effect of specific on general provision*

Drafters who wish to make clear that a specific provision is not intended to modify the meaning of a wider general provision often preface the former with the formula 'without prejudice to the generality of [the general provision] . . . This type of formula has its dangers, since often courts find themselves mentally unable to disregard the special provision when construing the wider one (eg

*R v Akan* [1973] QB 491, followed in *R v Secretary of State for the Home Department, ex parte Thornton* [1987] QB 36).

#### *Consolidation Acts*

The presumption of consistent meaning is weaker with consolidation Acts, since these combine the work of different drafters executed at different times (see *IRC v Hinchy* [1960] AC 748, 766). This particularly applies to tax enactments. Thus ss 428 and 455 of the Income and Corporation Taxes Act 1970, reproducing provisions of the Finance Act 1938, achieve results similar to those of s 16 of the Finance Act 1973, though by a different form of words. On this Lord Templeman said in *Carver v Duncan (Inspector of Taxes)* [1985] AC 1082, 1125:

. . . the Income Tax Acts are a vast patchwork begun in the nineteenth century and doomed never to be completed. It is useless to speculate why the draftsman in 1973 used words different from those employed by the draftsman in 1938. Oversight, or some difficulty, real or imagined, may have played a part.

#### **Meaning of ordinary words**

The legal meaning of a non-technical word used in an enactment is presumed to correspond to its ordinary meaning, which has been defined as its 'proper and most known signification'. If there is more than one ordinary meaning, the most common and well-established is taken to be intended. Lord Tenterden said words are to be applied 'as they are understood in common language' (*A-G v Winstanley* (1831) 2 D & CI 302, 310). Parke B spoke of adhering to 'the grammatical and ordinary sense of the words used' (*Grey v Pearson* (1857) 6 HL Cas 61, 106). Viscount Dilhorne LC required words to be given 'their ordinary natural meaning' (*Selvey v DPP* [1970] AC 304, 330). Graham J said 'words must be treated as having their ordinary English meaning as applied to the subject-matter with which they are dealing' (*Exxon Corp v Exxon Insurance Consultants International Ltd* [1981] 1 WLR 624, 633). In an appeal concerning who should be treated as a 'member of the family' within the meaning of the Rent Acts, Cohen LJ said that the question the county court judge should have asked himself was: 'Would an ordinary man, addressing his mind to the question whether Mrs Wollams was a member of the family or not, have answered "Yes" or "No"?'

#### *Several ordinary meanings*

Many terms have more than one ordinary meaning. Here the starting point is the most common and well-established meaning. In *R v*

*Income Tax Commissioners* (1888) 22 QBD 296, 309 Fry LJ said: 'The words of a statute are to be taken in their primary, and not in their secondary, signification'.

*Composite expressions*

A composite expression must be construed as a whole, but it is incorrect to assume that the whole is necessarily the sum of its parts. Because a certain meaning can be collected by taking each word in turn and then combining their several meanings, it does not follow that this is the true meaning of the whole phrase. Each word in the phrase may modify the meaning of the others, giving the whole its own meaning. (See *Mersey Docks and Harbour Board v Henderson* (1883) 13 App C as 595, 599.)

*Constructive meaning*

The court will apply a statutory term in a sense wide enough to include constructive meanings of the term. Thus in *Re Clore (deed) (No 3)* [1985] 1 WLR 1290 it was held that the provision in the Finance Act 1975, Sched 4, para 2(1) requiring a trustee to deliver an account specifying certain information 'to the best of his knowledge' extended to information contained in documents etc within the trustee's possession or control, even though not present to his mind.

*Technical terms*

If a word or phrase has a technical meaning in relation to a particular expertise, and is used in a context dealing with that expertise, it is to be given its technical meaning unless the contrary intention appears.

Technical terms are not terms in ordinary use, but require knowledge of the expertise with which they are connected in order to be correctly understood. As Blackstone said, they must be taken according to the acceptance of the learned in each art, trade and science (Blackstone 1765, i 39). Lord Esher MR said, where used in connection with a particular business, words are presumed to be used in the sense in which they are understood in regard to that business (*Unwin v Hanson* [1891] 2 QB 115, 119).

A technical expression may incorporate an ordinary word and give it a special meaning. An obvious example is Bombay duck, which not being duck at all but fish, would not be covered by an enactment regulating 'duck'. Again the Excise Acts place a duty on 'spirits' without elaborating the meaning. In *A-G v Bailey* (1847) 1 Ex 281 it was held that this, being a word of known import, is used in the sense in which it is ordinarily understood. It therefore

does not cover sweet spirits of nitre, an article of commerce not ordinarily described as 'spirits'. A technical term may have different meanings, or a wider and narrower meaning. Lord Macmillan once said that the term 'assessment' is used in the Income Tax Acts with no less than eight different meanings (*Commissioners for the General Purposes of the Income Tax Acts for the City of London v Gibbs* [1942] AC 402, 424). For examples of the judicial treatment of technical terms see, *Prophet v Plan Bros & Co Ltd* [1961] 1 WLR 1130 (fettling of metal castings); *Blankley v Godley* [1952] 1 All ER 436n (aircraft 'taking off'); *London and North Eastern Railway Co v Berriman* [1946] AC 278 (repairing of permanent way).

#### *Technical legal terms*

If a word or phrase has a technical meaning in a certain branch of law, and is used in a context dealing with that branch, it is to be given its technical legal meaning, unless the contrary intention appears. Thus in *R v Slator* (1881) 8 QBD 267, 272, where it was argued that the term indictment as used in the Corrupt Practices Prevention Act 1863, s 7 applied to any form of criminal proceeding, Denman J said: 'It always requires the strong compulsion of other words in an Act to induce the court to alter the well-known meaning of a legal term' (see also *Jenkins v Inland Revenue Commissioners* [1944] 2 All ER 491, 495; *Knocker v Youle* [1986] 1 WLR 934, 936).

Free-standing legal terms stand on their own feet, without need of definition. They have a meaning in law which exists for all purposes, not just for those of a particular enactment. This may be given by statute or at common law. Thus *highway* is defined at common law whereas *highway maintainable at the public expense* is defined generally by the Highways Act 1980, s 36(2).

#### *Technical non-legal terms*

If a word or phrase has a technical meaning in relation to a certain area of trade, business, technology, or other non-legal expertise, and is used in a context dealing with that expertise, it is to be given its technical meaning, unless the contrary intention appears. *Injenner v Allen West & Co Ltd* [1959] 1 WLR 554 it was argued that the term 'crawling boards' in certain regulations should be given the literal meaning of plain boards over which workmen could crawl. Evidence showed however that the term had a technical meaning in the trades concerned which required cross battens to be fitted to the boards, so as to prevent men from slipping. It was held that this technical meaning should be applied.

If a word is a technical term of two or more different fields of expertise it is necessary to determine which field is intended. In

*Chesterfield Tube Co Ltd v Thomas (Valuation Officer)* [1970] 1 WLR 1483 the Court of Appeal held that the legal meaning of the technical phrase 'generation . . . of power' in the General Rate Act 1967, Sched 3, para 1(a) was what the phrase meant to rating valuers not physicists.

*Terms with both ordinary and technical meaning*

Where an enactment uses a term which has both an ordinary and a technical meaning, the question of which meaning the term is intended to have is influenced by the context. If the context is technical, the presumption is that the technical meaning of the term is intended. Otherwise the ordinary meaning is taken as meant.

In *R v Commissioners under Boiler Explosions Act 1882* [1891] 1 QB 703, 716 Lord Esher MR, when considering in the light of scientific evidence the meaning of the word 'boiler', concluded that the Act 'was not meant to draw these scientific distinctions but to deal with the thing in which there is steam under pressure which is likely to explode'.

The Restriction of Offensive Weapons Act 1959, s 1(1) penalises any person 'who manufactures, sells or offers for sale or hire, or lends or hires, to any other person' any flick-knife. In *Fisher v Bell* [1961] 1 QB 394 a shopkeeper was accused of offering a flick-knife for sale by putting it in his shop window. The question was whether 'offer' was used in its popular or technical sense. Rather surprisingly it was held to be used in its technical sense in the law of contract, under which placing goods in a shop window does not constitute an 'offer'.

Case law may give an ordinary word a technical meaning. As Lord Wilberforce said in connection with 'office' as used in the Income Tax Acts, many words of ordinary meaning acquire a signification coloured over the years by legal construction in a technical context such that return to the pure source of common parlance is no longer possible (*Edwards (Inspector of Taxes) v Clinch* [1981] 3 WLR 707, 710). Where a term is used which has both an ordinary and a technical meaning it is permissible, in order to determine which meaning was intended, to seek guidance from the pre-enacting history. (*R v Nanayakkara* [1987] 1 WLR 265).

Archaisms

Sometimes, though very rarely, the legislator may use a term which is already archaic or obsolete. It is presumed that the term is intended to have this archaic meaning, though that does not prevent its legal meaning in the Act from being developed by the courts in the ordinary way (see pp 181-6 above as to updating construction).

The Civil Evidence Act 1968, s 8(2)(b) provides for enabling a party to require a person to be called as a witness unless he is 'beyond the seas', a phrase which also occurs in the Criminal Evidence

Act 1965, s 1(b). In *Rover International Ltd v Cannon Film Sales Ltd (No 2)* [1987] 1 WLR 1597, 1601 Harman J said of this:

It is a phrase which seems to me to be entirely archaic today. It has splendid overtones of Elizabeth I's reign and suchlike matters but is not a matter, I would think, of current speech or even lawyers' speech . . . However Parliament in its wisdom has chosen to use that phrase and I have to wrestle with it.

*Both archaic and modern meaning* Where Parliament uses a term which has an archaic meaning and also a (different) modern meaning it will be presumed, in the absence of any indication to the contrary, that the modern meaning is intended. In *R v Secretary of State for the Environment, ex pane Hillingdon LBC* [1986] 1 WLR 192 (affd [1986] 1 WLR 807) Woolf J held that 'committee' as used in the Local Government Act 1972, s 101(l)(a) was intended to have its modern meaning of a group of two or more persons, and not its obsolete meaning of a person to whom any function is committed.

*Term becoming archaic* Where a term used in relation to a statutory procedure has become archaic since the statute was enacted, the procedure should if possible employ an alternative term in current use (eg *R v Portsmouth Coroner, ex pane Anderson* [1987] 1 WLR 1640, 1645 (meaning of 'misadventure')).

### **Judicial notice of meaning**

Judicial notice is taken of the meaning of words in Acts and delegated legislation (other than technical terms not being those of the law prevailing within the court's jurisdiction). Martin B said: 'Is not the Judge bound to know the meaning of all words in the English language?' (*Hills v London Gaslight Co* (1857) 27 LJ Ex 60, 63), while Pollock CB remarked that 'Judges are philologists of the highest order' (*Ex pane David* (1857) 5 W R 522, 523).

Most judges allow their putative memories to be refreshed by the citation of dictionaries and other works of reference. Lord Coleridge said of dictionaries: 'it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books' (*R v Peters* (1886) 16 QBD 636, 641). A dictionary cited should be well known and authoritative' (*Camden (Marquess) v IRC* [1914] 1 KB 641, 647).

If the court is concerned with the contemporary meaning of a word at the time the Act was passed, it should consult a dictionary of that period (*Hardwick Game Farm v Suffolk Agricultural and Poultry Producers Association Ltd* [1966] 1 WLR 287; *R v Bouch* [1982] 3 WLR 673, 677).

Dictionaries can be used to arrive at the etymology of the word, which may guide the court (eg *R v Bates* [1952] 1 All ER 842, 845-846). If the term has been judicially defined in a relevant context, this will be treated by the court as a more reliable guide to its meaning than a dictionary is likely to provide (*Midland Railway v Robinson* (1889) 15 App Cas 19, 34; *Kerr v Kennedy* [1942] 1 KB 409, 413). This is because the term has then been 'processed' by the court, a topic discussed in Part IV below.

### **Evidence of meaning**

Evidence may not be adduced of the meaning of terms of which the court takes judicial notice; but is admissible as respects the meaning of other terms (*Camden (Marquess) v IRC* [1914] 1 KB 641, 650; *R v Colder and Boyars Ltd* [1969] 1 QB 151; *R v Anderson* [1972] 1 QB 304; *R v Stamford* [1972] 2 QB 391).

It seems that evidence should be admitted to establish whether or not a term is a technical term (*London and North Eastern Railway Company v Berriman* [1946] AC 278, 305). If the evidence shows it is, then the court determines whether it was intended to be understood in the technical sense.

Expert evidence of a technical matter may be admitted in order to determine whether the matter falls within a statutory term. Thus in *R v Skirving* [1985] QB 819 a book on cocaine was alleged to be an 'obscene article' within the meaning of the Obscene Publications Act 1959. It was held that expert evidence as to the nature and effect of cocaine was admissible, since this was not within the experience of an ordinary person.

Reference books may be consulted in lieu of evidence. Thus books by Mill and Stephen were cited in *Re Castioni* [1891] 1 QB 149 on the question of what offences are 'of a political character' within the meaning of the Extradition Act 1870, s 3(1). (See also *Bank of Toronto v Lambe* (1887) 12 App Cas 575, 581 (works on political economy cited as to meaning of 'direct taxation' in British North America Act 1867); *R v Bouch* [1983] QB 246 (*Encyclopedia Britannica* cited as to definition of 'explosive substance' in the Explosive Substances Act 1883, s 3(1)).

We now go on to consider certain specific canons of construction. Many of these are of great antiquity, as indicated by the fact that they are usually known in the form of a Latin phrase or maxim.

### **Noscitur a sociis**

A statutory term is often coloured by its associated words. As Viscount Simonds said in *A-G v Prince Ernest Augustus of Hanover* [1957] AC 436, 461: 'words, and particularly general words, cannot

be read in isolation; their colour and their content are derived from their context'. The Latin maxim *noscitur a sociis* (it is recognised by its associates) states this contextual principle, whereby a word or phrase is not to be construed as if it stood alone but in the light of its surroundings. While of general application and validity, the maxim has given rise to particular precepts such as the *eiusdem generis* principle and the rank principle, discussed later. The general contextual principle was well stated by Stamp J in *Bourne v Norwich Crematorium Ltd* [1967] 1 WLR 691, 696:

English words derive colour from those which surround them. Sentences are not mere collections of words to be taken out of the sentence, defined separately by reference to the dictionary or decided cases, and then put back into the sentence with the meaning which you have assigned to them as separate words . . . (See also *Peart v Stewart* [1983] AC 109, 117).

As always with an interpretative criterion, other considerations may displace the principle. For example the drafter may have specified certain terms not so as to give colour to a general phrase but to prevent any doubt as to whether they are included (*IRC v Parker* [1966] AC 141, 161). Where an enactment includes a word which in itself is neutral or colourless, the context provides the colouring agent. Walton J said that the word 'payment' 'has no one settled meaning but . . . takes its colour very much from the context in which it is found' (*Garforth (Inspector of Taxes) v Newsmith Stainless Ltd* [1979] 1 WLR 409, 412). In another case Stamp LJ said 'the words "occupation" and "occupier" are not words of art having an ascertained legal meaning applicable, or prima facie applicable, wherever you find them in a statute, but take their colour from the context' (*Lee-Verhulst (Investments) Ltd v Harwood Trust* [1973] 1 QB 204, 217).

### **Eiusdem generis**

The Latin words *eiusdem generis* (of the same kind or nature), have been attached to a canon of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. The principle may apply whatever the form of the association, but the most usual form is a list or string of genus-describing terms followed by wider residuary or sweeping-up words. The canon arises from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context. It is an instance of ellipsis, or reliance on implication.

As Rupert Cross put it, following Lord Diplock: 'the draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted . . .' (Cross 1987, 133). Or, as Odgers says,

it is assumed 'that the general words were only intended to guard against some accidental omission in the objects of the kind mentioned and were not intended to extend to objects of a wholly different kind' (Odgers 1987, 184). It follows that the principle is presumed to apply unless there is some contrary indication (*Tillmans & Co v SS Knutsford Ltd* [1908] 2 KB 385).

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', said Farwell LJ, 'there is no room for the application of the *ejusdem generis* doctrine' (*ibid*).

Judges do not always trouble to formulate the genus fully, it often being enough to indicate how it might be framed. In *Coleskill and District Investment Co Ltd v Minister of Housing and Local Government* [1968] 1 All ER 62, 65, where the generic string was 'building, engineering, mining', Widgery J said: 'without attempting to define the genus in detail, it seems clear to me that it is restricted to operations of the scale, complexity and difficulty which require a builder or an engineer or some mining expert'.

#### *Nature of a 'genus'*

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 literal meaning of the words it is said to regulate. The Customs Consolidation Act 1876, s 43 reads: 'The importation of arms, ammunition, gunpowder, *or any other goods* may be prohibited'. Although the 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'? In *A-G v Brown* [1920] 1 KB 773 it was held that the *ejusdem generis* principle applied to restrict the italicised words to objects of the same nature as the substantives listed in the generic string.

The *ejusdem generis* principle has also been applied to strings of adjectives (eg *Re Stockport Ragged, Industrial & Reformatory Schools* [1898] 2 Ch 687, where the phrase in question was 'cathedral, collegiate, chapter or other schools').

The tendency of the courts is to restrict the imputed genus to an area that goes no wider than is necessary to encompass the entire generic string. Thus a string specified as 'boots, shoes, stockings and other articles' would import the genus 'footwear' rather than the wider category of 'wearing apparel' (*Magnhild (SS) v McIntyre Bros & Co* [1920] 2 KB 321, 331). The string 'railway, road, pipeline or other facility' imports a facility for conveying goods, and so excludes storage facilities (see the Australian case of *Canwan Coals Pty Ltd v FCT* (1974) 4 ALR 223).

In addition to the generic string, other parts of the context may

give assistance in finding the genus. The Finance Act 1894, s 8(4) contained the string 'every trustee, guardian, committee, or other person'. It was held in *Re Latham, IRC v Barclays Bank Ltd* [1962] Ch 616 that the genus was persons holding property in a fiduciary capacity, but this was helped by previous mention in the subsection of persons holding beneficially.

*Single genus-describing term* Despite numerous dicta to the contrary, the *ejusdem generis* principle may apply where one term only establishes the genus, though in such cases the presumption favouring the principle is weakened. Thus in *A-G v Seccombe* [1911] 2 KB 688 it was held that the words 'or otherwise' in the phrase 'any benefit to him by contract or otherwise' in the Customs and Inland Revenue Act 1889, s 11(1) must be construed *ejusdem generis* with 'contract'. In *Lewisham BC v Maloney* [1948] 1 KB 51 it was held that in the phrase 'easement, right or other privilege' the word 'right' must be construed *ejusdem generis* with 'easement'. In *Parkes v Secretary of State for the Environment* [1978] 1 WLR 1308 the Court of Appeal held that in the phrase 'building or other operations' in the Town and Country Planning Act 1971, s 290 the other operations must be read as akin to building.

*Genus-describing terms surrounding wider word* Where a word of wider meaning is included in a string of genus-describing terms of narrower meaning, the *ejusdem generis* principle may operate to restrict the meaning of the wider word so as to keep it within the genus. The Dublin Carriages Act 1853, s 25 required a licence to be held before any person could lawfully 'use or let to hire any hackney carriage, job carriage, stage carriage, cart, or job horse'. In *Shaw v Ruddin* (1859) 9 Ir CLR 214 it was held that hackney carriage, job carriage, stage carriage and job horse were genus-describing words, the genus being conveyances used for hire. According the unrestricted word *cart* when found in their company, must be construed as limited to carts used for hire. (See also *Scales v Pickering* (1828) 4 Bing 448).

*General words followed by narrower genus-describing terms* The *ejusdem generis* principle is presumed not to apply where apparently general words are followed by narrower words suggesting a genus more limited than the initial general words, if taken by themselves, would indicate: *Re Wellsted's Will Trusts* [1949] Ch 296, 318; *Ambatielos v Anton Jurgens Margarine Works* [1923] AC 175, 183; *Canadian National Railways v Canadian Steamship Lines Ltd* [1945] AC 204, 211; *Re Wellsted's Will Trusts* [1949] Ch 296, 305.

#### *Exclusion of ejusdem generis principle*

An intention to exclude the *ejusdem generis* principle may be shown

expressly or by implication. Thus if he desires to indicate that the *eiusdem generis* principle is not to apply, the drafter may qualify the residuary or sweeping-up words by a suitable generalisation such as 'or things of whatever description' (*A-G v Leicester Corporation* [1910] 2 Ch 359, 369). However the word 'whatsoever' in the phrase 'or other person whatsoever' in the Sunday Observance Act 1677, was held *not* to disapply the principle (*Palmer v Snow* [1900] 1 QB 725). Again, the 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 431).

These examples show that the only safe drafting method is to use in relation to the residuary words explicit disapplying words. (See, eg, the Finance Act 1976, s 61(2), which speaks of benefits 'whether or not similar to any of those mentioned above in this subsection'). Another method is to include a definition of the residuary words. This will be construed on its own, without reference to the *eiusdem generis* principle (*Beswick v Beswick* [1968] AC 58, 87).

An implication against the application of the *eiusdem generis* principle to narrow a term arises where the term is used elsewhere in the Act in a wide sense (eg *Young v Grattridge* (1868) LR 4 QB 166).

### **The rank principle**

Where a string of items of a certain rank or level is followed by general residuary words, it is presumed that the residuary words are not intended to include items of a higher rank than those specified. By specifying only items of lower rank the impression is created that higher ranks are not intended to be covered. If they were, then their mention would be expected *a fortiori*.

Examples of the application of the rank principle include the following. In the Sunday Observance Act 1677, s i, the string 'tradesman, artificer, workman, labourer, or other person whatsoever' was held not to include persons above the artisan class (*Gregory v Fearn* [1953] 1 WLR 974). The string 'copper, brass, pewter, and tin, and all other metals' in a local Act of 1825 was held not to include precious metals such as gold and silver (*Casher v Holmes* (1831) 2 B & Ad 592). A power given to the Barons of the Exchequer by s 26 of the Queen's Remembrancer Act 1859 to make procedural rules for their court did not extend to giving rights of appeal to higher courts (*A-G v Sillem* (1864) 10 HLC 704; *Hotel and Catering Industry Training Board v Automobile Proprietary Ltd* [1968] 1 WLR 1526).

Megarry V-C suggests that the principle may apply to exclude a judge from the provision that in Welsh legal proceedings the Welsh language may be spoken 'by any party, witness or other person

who desires to use it' (Welsh Language Act 1967, s 1(1); see Megarry 1973, 169). Another modern example is the phrase 'an officer or examiner of the court or some other person' in RSC Ord 39, r 4(a). The concluding words have been held not to include judges (*Re Brickman's Settlement* [1981] 1 WLR 1560).

*Tapering strings* The rank principle has been held to apply where the string was regarded as tapering down, and the item in question, though not superior to items at the beginning, was superior to those listed towards the end. Thus where the string was 'horse, mare, gelding, mule, ass, ox, cow, heifer, steer, sheep or other cattle' bulls were held to be excluded since, although not superior to horses, they were regarded as superior to oxen, cows etc (*Ex parte Hill* (1827) 3 C & P 225). See also *R v Marcus* [1981] 1 WLR 774.

*Necessary disapplication* The rank principle does not apply if no items are left for the residuary words to cover but those of higher rank, or as Blackstone puts it, where 'the general words would otherwise be entirely void' (Blackstone 1765, i 63). He gives as an example the provision in the Statute of Marlborough 1267 which lists essoins 'in counties, hundreds, or in courts baron, or in other courts'. Since there were no other courts of lower or equal jurisdiction, the latter words were held to include the king's courts of record at Westminster (2 Inst 137).

### **Reddendo singula singulis**

The *reddendo singula singulis* principle concerns the use of words distributively. Where a complex sentence has more than one subject, and more than one object, it may be the right construction to *render each to each*, by reading the provision distributively and applying each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech. A typical application of this principle is where a testator says 'I *devise and bequeath* all my *real and personal* property to B'. The term *devise* is appropriate only to real property. The term *bequeath* is appropriate only to personal property. Accordingly, by the application of the principle *reddendo singula singulis*, the testamentary disposition is read as if it were worded 'I devise all my real property, and bequeath all my personal property, to B'.

The Immigration Act 1971, s 1 lays down general principles. It begins: 'All those who are in this Act expressed to have the right of abode in the United Kingdom shall be free to live in, and to come and go into and from, the United Kingdom . . .'. The phrase 'to come and go into and from' the United Kingdom appears clumsy. Applied *reddendo singula singulis*, it is to be read as if it said 'to come into the United Kingdom and go from it'. Why did not the

drafter put it in this way? No doubt because he wished to use the evocative phrase 'come and go'. Enactments often need to be read *reddendo singula singulis*. An important modern example is the European Communities Act 1972, s 2(1) (see p 60 above). For an instructive example founded on the Local Government Act 1933, s 59(1) see *Bishop v Deakin* [1936] Ch 409.

### **Expressum facit cessare taciturn**

To state a thing expressly ends the possibility that something inconsistent with it is implied in the passage in question. No inference is proper if it goes against the express words Parliament has used. 'Express enactment shuts the door to further implication' (*Whiteman v Sadler* [1910] AC 514, 527).

Where an enactment codifies a rule of common law, equity, custom or prerogative it is presumed to displace that rule altogether. This applies even where the term codification is not used. Accordingly the statutory formulation of the rule, whether or not it is to the like effect as the previous rule, by implication disapples any aspect of that rule not embodied in the new formulation. Note that this principle raises a purely linguistic assumption. It does not affect the possibility that on balance the interpretative factors may call for a strained construction of the enactment.

The chief application of the principle *expressum facit cessare taciturn* lies in the so-called *expressio unius* principle. This is dealt with next.

### **Expressio unius est exclusio alterius**

The maxim *expressio unius est exclusio alterius* (to express one thing is to exclude another) is an aspect of the principle *expressum facit cessare taciturn*. Known for short as the *expressio unius* principle, it is applied where a statutory proposition might have covered a number of matters but in fact mentions only some of them. Unless these are mentioned merely as examples, or *ex abundanti cautela*, or for some other sufficient reason, the rest are taken to be excluded from the proposition.

The *expressio unius* principle is also applied where a formula which in itself may or may not include a certain class is accompanied by words of *extension* naming only some members of that class. The remaining members of the class are then taken to be excluded. Again, the principle may apply where an item is mentioned in relation to one matter but not in relation to another matter equally eligible.

Section 16 of the Licensing Act 1872, an imperfectly-drafted Act, laid down three separate offences against public order. In the statement of the first offence the word 'knowingly' was included, but it was omitted in the case of the other two. This gave rise to the logical implication that these could be committed with or

without knowledge, and it was so held in *Mullins v Collins* (1874) LR 9 QB 292, 295. However in *Somerset v Wade* [1894] 1 QB 574, which concerned the contrast between 'permitting' in s 13 of the Act and 'knowingly permitting' in s 14, the decision went against the application of the *expressio unius* principle (see also *Dean v Wiesengrund* [1955] 2 QB 120).

#### *Words of designation*

The *expressio unius* principle applies where some only out of a possible series of substantives or other items are expressly designated. The application of the principle therefore turns on these words of designation.

The Diplomatic Privileges Act 1964 gave the force of law to certain provisions of the Vienna Convention on Diplomatic Relations 1961. These protected, in relation to a foreign mission, what were defined as the 'premises of the mission'. In *Intpro Properties (UK) Ltd v Sauvel* [1983] QB 1019 it was alleged that a private dwelling occupied by a financial counsellor at the French embassy in London was the subject of diplomatic immunity as being 'premises of the mission'. The definition of this phrase in art 1 of the Convention is 'the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including *the residence of the head of the mission*'. It was held that the specific mention of the residence of the 'head' of the mission made it clear that the residences of other members of the mission could not form part of the premises of the mission. (See also *R v Caledonian Railway* (1850) 16 QB 19).

#### *Words of extension*

Where it is doubtful whether a stated term does or does not include a certain class, and words of extension are added which cover some only of the members of the class, it is implied that the remaining members of the class are excluded. The most common technique of extending the indisputable meaning of a term is by the use of an enlarging definition, that is one in the form 'A includes B' (see p 134 above). Where B does not exhaust the class of which it is a member, the remaining class members are taken to be excluded from the ambit of the enactment. The Immigration Act 1971, s 2(3) states that for the purposes of s 2(1) of the Act the word 'parent' includes the *mother* of an illegitimate child. The class to which this extension relates is the *parents* of an illegitimate child. In *R v Immigration Appeals Adjudicator, ex pane Crew* (1982) *The Times*, 26 November, Lord Lane CJ said: 'Under the rule *expressio unius exclusio alterius*, that express mention of the mother implies that the father is excluded'.

The *expressio unius* principle is often applied to words of exception. An excepting provision may except certain categories either from the Act in which the provision is contained, or from the law generally. It is presumed that these are the only exceptions of the kind intended. The Road Traffic Regulation Act 1967, s 79 states that no statutory provision imposing a *speed limit* on motor vehicles shall apply to any vehicle on an occasion when it is being used for fire brigade, ambulance or police purposes. Speed limits are not the only statutory restrictions which might hinder such vehicles in an emergency, yet under the *expressio unius* principle these other restrictions, such as the duty to stop at a red light, would continue to apply (see *Buckoke v Greater London Council* [1971] 1 Ch 655).

*Words providing remedies etc*

Where an Act sets out specific remedies, penalties or procedures it is presumed that other remedies, penalties or procedures that might have been applicable are by implication excluded (eg *Felix v Shiva* [1983] QB 82 90-91; *Payne v Lord Harris of Greenwich* [1981] 1 WLR 754, 767).

*Where other cause for the expressio unius principle*

The *expressio unius* principle does not apply where it appears that there is a reason for singling out the words of designation other than an intention to exclude other terms. Thus they may be used merely as examples, or be included *ex abundanti cautela*, or for some other purpose. By the Poor Relief Act 1601, s 1 a poor-rate was imposed on occupiers of 'lands, houses, tithes and *coal mines*'. In *R v Inhabitants of Sedgley* (1831) 2 B & Ad 65 the argument that other mines were also intended to be rated, and that coal mines were mentioned merely as an example, was rejected (see also *C Maurice & Co Ltd v Minister of Labour* [1968] 1 WLR 1337, 1345; *Prestcold (Central) Ltd v Minister of Labour* [1969] 1 WLR 89).

As to items mentioned *ex abundanti cautela* see *McLaughlin v Westgarth* (1906) 75 LJPC 117, 118 (savings in private Acts); *Duke of Newcastle v Morris* (1870) LR 4 HL 661, 671 (peers' privilege of freedom from arrest) and the Canadian case of *Dockstader v Clark* (1903) 11 BCR 37. For an example of a case where there was some other reason for singling out the item in question for express mention see *Dean v Wiesengrund* [1955] 2 QB 120.

If an item which on the application of the *expressio unius* principle would be excluded is of a class which came into existence only after the passing of the enactment, it is probably right to disregard the principle as an aid to construction (*A-G for Northern Ireland's Reference (No 1 of 1975)* [1977] AC 105, 132).

**Implication by oblique reference**

Uncertainty in one part of a proposition may be resolved by implication from what is said in another part, even though that other part is not directly referring to the first part. Accordingly account is to be taken of a meaning of one provision in an Act that logically if obliquely arises from what is said elsewhere in the Act. Equally an express statement in an enactment may carry oblique implications respecting the legal meaning of other Acts, or of unenacted rules of law. It often happens that what is expressed in one place throws light on the meaning intended elsewhere. Thus doubt as to whether treason was a felony was settled by a passage in the Treason Act 1351 which, speaking of some dubious crimes, directed a reference to Parliament that it may there be adjudged 'whether they be treason, or other felony' (Blackstone 1765, iv 82).

Doubt as to whether 'interest' was confined to annual interest in the phrase 'interest, annuities or other annual payments' occurring in the Income Tax Act 1952 was set at rest by the necessary implication arising from the reference to *other* annual payments (*IRC v Frere* [1965] AC 402). An Act requiring Members of Parliament to swear 'on the true faith of a Christian' was held by necessary implication to exclude Jews from Parliament (*Miller v Salomons* (1853) 7 Ex 475; *Solomons v Miller* (1853) 8 Ex 778). When it was expressly enacted that an offence triable by magistrates might be committed within territorial waters, an implied jurisdiction to *try* that offence was held to be created (*R v Kent JJ, ex pane Lye* [1967] 2 QB 153, 178). The requirement in the Firearms Act 1968, s 26 that an application for a firearm certificate must be made to the chief constable for the area in which the applicant resides was held in *Bur din v Joslin* [1981] 3 All ER 203, where the applicant was a British army officer resident in Germany, to imply that a person who is not resident in an area which has a chief constable is not entitled to a certificate.

In making orders, following divorce, for financial provision or property adjustment, the court is required by the Matrimonial Causes Act 1973, s 25(1) 'to have regard to all the circumstances of the case'. The House of Lords held in *Jenkins v Livesey (formerly) Jenkins* [1985] AC 424 that by implication this placed a duty of disclosure on the parties, and empowered the court to set aside an order obtained without due disclosure.

*Implication where statutory description imperfectly met*

Where the facts of the instant case substantially though not entirely correspond to a description in the relevant enactment, it is presumed that the enactment is intended to apply in the same way as it would if they did entirely correspond. Where on the other hand the statutory description is partly but not substantially met, it is presumed that

the enactment is intended to apply in the same way as it would if the description were not met at all.

Where a statutory description is only partly met on the facts of the instant case, the question whether the enactment nevertheless applies is usually one of fact and degree. Necessary compression of statutory language makes it difficult for the drafter to use all the words needed to supply adequate connotation. This principle assists by providing guidance in the frequent cases where the statutory description is only partially complied with. Thus an Act prohibiting the making of 'wooden buttons' was held to be infringed by making buttons of wood notwithstanding that they had a shank of wire (*R v Roberts*) (1701) 1 Ld Raym 712). A car minus its engine was held to be within the statutory description 'mechanically propelled vehicle' (*Newberry v Simmonds* [1961] 2 QB 345). A policeman not wearing his helmet was held to be a 'constable in uniform' (*Wallwork v Giles* [1970] RTR 117; *Taylor v Baldwin* [1976] Crim LR 137).

Where on the other hand the facts do not substantially answer to the required description, the enactment does not apply. Thus a car bought for scrap, of which the engine was rusted up, the tyres were flat, and the gearbox and electrical apparatus were missing was held not to be a 'mechanically propelled vehicle' in *Smart v Allan* [1963] 1 QB 291, 298, where Lord Parker CJ said 'It seems to me as a matter of common sense that some limit must be put, and some stage must be reached, when one can say: "This is so immobile that it has ceased to be a mechanically propelled vehicle"'. There may be substantial correspondence with a statutory description even though on a quantitative basis the correspondence appears slight. Thus in *Hayes (Valuation Officer) v Lloyd* [1985] 1 WLR 714 it was held that certain agricultural land complied with the description 'land used as a racecourse' within the meaning of the General Rate Act 1967, s 26(3) even though racing took place on one day a year only. The racing took place at Easter and was attended by some 10,000 people.

#### *Multi-purpose cases*

Where a public authority reaches a decision for two purposes, only one of which is within its statutory powers, the validity of the decision depends on whether the other purpose is one of the main purposes or is merely subsidiary (eg *R v Inner London Education Authority, ex pane Westminster City Council* [1986] 1 WLR 28).

(Further discussion of linguistic canons of construction will be found in Part III below)