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Limiting the general: How practitioners can (and should) use the *ejusdem generis* rule of construction in everyday practice

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Canons of interpretation often serve as the means for articulating common sense inclinations. Take, for example, a local ordinance that addresses cars, vans, trucks, and *other vehicles*. Does "*other vehicles*" include helicopters and unicycles? What about skateboards? Native wit suggests no, of course not. This logical impulse is rooted in the *ejusdem generis* canon, an evergreen contextual principle that means "when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed."[1] Also known as Lord Tenterden's rule,[2] this canon was famously implemented in the Archbishop of Canterbury's Case[3] involving a dispute over whether payment of tithes due on lands which came to the crown "by any other means" included those lands that only came from inferior means but excluded those which came from a superior manner such as an Act of Parliament.[4] Now, over five centuries later, the canon endures in modern practice.[5] Indeed, as explained below, Illinois lawyers and judges regularly encounter a variety of scenarios where invoking this particular canon may advance or undermine an argument.[6]

But first, why? Why general wording at all? Why do drafters of laws and contracts perpetually lean on general phrases to dovetail specific lists and designations? As one author cogently reminds, until the legislature is capable of inscrutable prognostication, it will understandably be necessary to continue to use indefinite phrases like "and other."[7] For illustration, consider the exponential landscape of social media and the digital frontier: one can envision a scenario wherein the legislature meticulously crafts a statute aimed at issues confronting one manner of social media but such internet craze has already lapsed by the time the bill is passed into law. The same is true when legislatures identify specific types of weapons in a state's criminal code but are nevertheless mindful of analogous (but unknown) implements when they conclude such an act with a phrase like "any other dangerous weapon." In other words, good drafters will anticipate the unanticipated when fashioning laws, contracts, and other written instruments by bookending certain specifications with a general catch-all. Conversely, some practitioners, at their own risk, routinely employ general phrasing at the conclusion of specific itemizations (for reasons that usually reduce to the drafter wanting to retreat into the comfort of legalese or to the chorus of boilerplate monotony), without careful thought as to the rule's application.[8] Given that scholarship abounds on even such topics as the word "other,"[9] attorneys cannot be indiscriminate with their use of such general phrasing when it is preceded by detailed terms.

Before invoking the canon, a practitioner must be mindful of a few conditions. Notably, the rule "generally requires at least two words to establish a genus—before the *other*-phrase."[10] Meaning, if an ordinance simply addresses "cars and other vehicles," the rule cannot be summoned to limit the catch-all to only vehicles similar to cars in dimension, power, and appearance. So, a recitation of more than one item is first needed to form the "class" before a practitioner may attempt to leverage the general language to include a related but unspecified item.

Next, while some may contend that this "rule" is more akin to a "suggestion,"[11] Illinois law is clear that this canon is

applicable unless a contrary intent is evident.[12] Legal commentary supports this as it is generally agreed that, "the legal rules for the interpretation of statutes are in the absence of a controlling statute as much a part of the law of the country as any other rules of the common law."[13] What this means for the everyday practitioner seeking to utilize (or defeat) application of *ejusdem generis* is that legislative intent must first be considered (and given deference).

Turning to some examples, the availability of *ejusdem generis* is not exclusive to the assessment and interpretation of just statutes but may also be considered in scenarios involving contracts, wills, and similar written instruments.[14] In criminal law, the Supreme Court of Illinois cited the canon in a case involving whether the phrase "any other deadly or dangerous weapon or instrument of like nature" could be construed to include a pellet gun.[15] The Court answered in the negative by reasoning the catch-all phrase came at the end of the list of blade-type weapons. Accordingly, the Court held that such a phrase "was intended to refer only to weapons or instruments 'such like' the class of blade-type weapons which immediately preceded the clause in the provision, *i.e.*, weapons or instruments that are sharp and have the ability to cut or stab."[16]

In the probate realm, where a testator's bequest of "personal effects" to a friend was conjoined with another bequest to that same friend of "household goods" and "all other goods and chattels," the appellate court found that, pursuant to *ejusdem generis*, the bequest did not include intangible property such as stocks and bonds.[17] Similarly, with respect to an Illinois statute[18] addressing what allows some parties to collect prejudgment interest on any "bond, bill, promissory note, or other instrument of writing," appellate courts, citing the canon, recognize that "the critical similarity shared by the specifically listed items is that they evince the creation of an indebtedness or of a creditor-debtor relationship."[19]

The rule was good enough for Lord Tenterden when assessing statutes and stage-coaches; it remains relevant and instructive today. Illinois attorneys may (and should) consult this rule of construction when advocating for particular interpretations of statutes, contracts, estate plans, and similar written instruments. Across the legal spectrum, the rule of *ejusdem generis* remains an eloquent and aged technique for articulating rational limitations on ostensibly general phrasing. ■

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1. *Black's Law Dictionary*, 631 (10th Ed. 2014).

2. See *Sandiman v. Breach*, 7 Barn. & C. 96 (a law providing that no tradesman, artificer, workman, laborer, or other person whatsoever, should do or exercise any worldly labor, business, or work of their ordinary callings upon the Lord's day excluded stagecoaches).

3. *Archbishop of Canterbury's Case*, 2 Co. Rep. 46a (1596), 76 E.R. 519.

4. See William Feilden Craies, *A Treatise on Statute Law*, 184 (2nd ed. 1911, Stevens and Haynes, Law Publishers, Bell Yard, Temple Bar).

5. See Joseph Kimble, *Ejusdem Generis*: What Is It Good For?, 100 Judicature 48 (2016).

6. See Joel R. Cornwell, *Smoking Canons: A Guide to Some Favorite Rules of Construction*, CBA Rec., May 1996, at 43.

7. R. deJ. R., Statutory Construction: Doctrine of *Ejusdem Generis*, 17 Va. L. Rev., 511, 516 (1931).

8. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 212 (1st ed. 2012) ("Any lawyer or legislative drafter who writes two or more specifics followed by a general residual term without the intention that the residual term be limited may be guilty of malpractice.").

9. Frederick Stroud, *The Judicial Dictionary of Words and Phrases Judicially Interpreted*, 542 (1890).

10. Scalia & Garner *supra* note 8 at 207 citing *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 225 (2008). ("[t]he absence of a list of specific items undercuts the inference embodied in *ejusdem generis* that Congress remained focused on the common attribute when it used the catchall phrase.")

11. See *Citizens Utilities Co. v. Illinois Commerce Comm'n,* 50 Ill. 2d 35, 40 (1971) ("Rule of *ejusdem generis* is not a rule of mandatory application, but rather is a rule of construction to aid in ascertaining the legislative intent, which rule must yield when a contrary legislative intent is apparent.").

12. *Farley v. Marion Power Shovel Co., Inc.*, 60 Ill. 2d 432, 436 (1975).

13. R. deJ. R *supra* note 7 at 511.

14. *Brink's, Inc. v. Illinois Commerce Comm'n*, 108 Ill. App. 3d 186, 190 (1982).

15. *People v. Davis*, 199 Ill. 2d 130, 135 (2002).

16. *Id.* at 139.

17. *Sverid v. First Nat. Bank of Evergreen Park*, 295 Ill. App. 3d 919 (1st Dist. 1998).

18. 815 ILCS 205/2 (West 2017).

19. *New Hampshire Ins. Co. v. Hanover Ins. Co.*, 296 Ill. App. 3d 701, 708 (1st Dist. 1998).