

Answers to 'Latin Maxims' exercise

The following shows the answers to the 'Latin Maxims' exercise on page 252 of your textbook.

For each of these scenarios, choose the relevant Latin maxim and determine the outcome reached by applying it:

'It is an offence for a person to use a mobile telephone, laptop computer, personal digital assistant (PDA) or any other thing on board any flight within Australia'. Johnny uses a hand held Nintendo game on a Sydney to Melbourne flight. Has he committed an offence?

Both a yes and no answer could be correct to this question, provided the reasoning is sound.

Yes – *ejusdem generis* – they are all electronic gadgets, and a Nintendo is an electronic gadget so it comes within 'any other thing'.

No – *ejusdem generis* – all the specific things are devices capable to communication, whereas a Nintendo is not, so it does not come within 'any other thing'.

'It is an offence to pick, cut or pull down any plants or flowers on government property'. Cyndy collects frangipanis off the ground in the botanic gardens. Has she committed an offence?

No – *noscitur a sociis* – 'pick', 'cut' and 'pull down' are all destructive words, whereas Cyndy only picked the flowers off the ground.

Some may say yes – picking off the tree or picking up off the ground is the same thing. This is a less persuasive answer unless you had a definition of 'pick' which supported it. 'Pick' in this context more likely means 'pick off' not 'pick up'.

'... homes, or other places of abode'. Does this include a park bench for a homeless person?

This was a trick question. You cannot use *ejusdem generis* because there is only one specific before the general. You can use *noscitur a sociis*, or just look at the meaning of 'home' and 'abode'.

'Taxis may use bus lanes'. Does this include limousines?

No – *expressio unius est exclusion alterius* – express mention of taxis being able to use bus lanes excludes limousines.

Some may say yes – the definition of a taxi is any vehicle driven for hire. But not all limousines are driven for hire – some are privately owned.

s15 – 'Anyone selling, attempting to sell or having on their person any quantity, however small, of heroin, shall be imprisoned for up to 8 years'.

s38 – 'Any person found in possession of drugs, regardless of their purpose, shall be imprisoned for 1 year'.

Brian is found with a small quantity of heroin in his possession – what penalty will he face?

Up to 8 years – using *generalia specialibus non derogant*, the general drugs provision in s38 does not derogate from the specific heroin provision in s15.