

Examples of use of Latin Maxims today

In *Laemthong International Lines Co Ltd v BPS Shipping* (1997) 190 CLR 181 the High Court had to determine the meaning of 'charterer' in the *Admiralty Act 1988* (Cth), s19 of which stated that a claim *in rem* (against a ship instead of a person) can be made where the person who owes the debt is 'the owner or charterer of, or in possession or control of' the ship. An issue raised was whether *noscitur a sociis* could be used to find that the only sort of charterer to come under the section was one who was a kind of owner, or otherwise in possession or control of it. The appellant argued that it was only a voyage charterer, with no real control or ownership of the vessel, having rented it for only one journey using the ship's existing crew, and was therefore not a 'charterer' under the section. Justice Toohey, in deciding the appellant was covered by the clause, referred to *noscitur a sociis* as being relevant, but said that it had to be applied with care.

In *FAI Properties Pty Limited v John & Evangelia Apostolopoulos* [2002] ACTSC 58, Justice Spender used *expressio unius est exclusion alterius* to find that, because the *Tenancy Tribunal Act 1994* (ACT) conferred a right of appeal on questions of law, it therefore excluded the right of appeal on questions of fact or mixed fact and law. He said 'Such an approach is a manifestation of the well-known expressio unius principle'. He used *generalia specialibus non derogant* as well, saying, 'Where there has been a specific grant of power in a particular area, that grant governs the position even where there is a more general provision. This is a manifestation of the principle *generalia specialibus non derogant*'.

In *Mandalidis v Artline* [1999] 47 NSWLR 568 a dispute arose between the vendor (seller) and purchaser of a warehouse and office building near Sydney Airport. A certificate attached to the contract of sale warranted that 'the Council had not by resolution adopted any policy to restrict the development of the land because of the likelihood of land slip, bushfire, flooding, tidal inundation, subsidence or any other risk'. The purchaser found that the Council had a policy on aircraft noise, and sought to rescind (set aside) the contract. The vendor argued that did not come under the warranty because, using *eiusdem generis*, the general phrase 'any other risk' had to be interpreted by the general words that came before it, namely 'land slip', 'bushfire', 'flooding', 'tidal inundation' and 'subsidence'. They were all risks arising by reason of natural features of the land, and so a policy on aircraft noise would be excluded from it. The court, in deciding the purchaser could rescind the contract, said:

I accept that the *noscitur a sociis* and *eiusdem generis* rules of interpretation are available weapons in the armoury of statutory interpretation. But they are not always determinative, and it is arguable that they are less important now than once they were ... the task of a modern court, where the grammatical meaning of the legislation is open to doubt, is to adopt the construction which will promote the purpose or object of the Act (*Interpretation Act 1987* (NSW), s 33). This involves, as McHugh JA explained in *Kingston v Keprose* (11 NSWLR at 423), 'a sophisticated analysis to determine the legislative purpose and a discriminating judgment as to where the boundary of constructions ends and legislation begins'. After one has had regard to the objects or purposes of legislation of the kind presently under consideration, it is unlikely that much room will be left for the application of the old rules of statutory interpretation.