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Upon analysis it will be seen that practically an identical situation, and one wherein it is extremely difficult to discover any actual consideration, exists in all these cases. Moral obligation has, since the time of Lord Mansfield, been considered insufficient to support a promise; any benefit accruing from or because of the former agreement is obviously past consideration, hence insufficient,¹² and the position that any support is derived from the tainted original sale itself is untenable.¹³ The conclusion is seemingly inevitable that there can be no contract, due to lack of consideration, or that ratification of a Sunday agreement needs none. This latter argument is recognized clearly in only one case allowing recovery,¹⁴ but it is often announced as the reason for denying it.¹⁵ The real reason for running roughshod over these factors has been best stated in a recent opinion in Arkansas:¹⁶ "A buyer cannot retain possession of property and use it, then repudiate the contract as being void by reason of its execution on Sunday."

JAMES M. LITTLE, JR.

Criminal Law—Statutory Construction—Aeroplane as Motor Vehicle.

The defendant was a principal in the theft of an aeroplane and its transportation from Canada to Oklahoma. He was indicted under the National Motor Vehicle Theft Act,¹ which forbids the interstate transportation of stolen motor vehicles. The term "motor vehicle" is defined in such Act to include "an automobile, automobile truck, automobile wagon, motorcycle, or any other self-propelled vehicle not designed for running on rails." *Held*, the provisions of the Act do not include an aeroplane.²

It is the general rule that penal statutes are to be strictly construed.³ If the statute admits of two reasonable and contradictory

¹² See *Frey v. Fond du Lac*, 24 Wis. 204, 207 (1869).

¹³ *Tillock v. Webb*, 56 Me. 100 (1868); *Jones v. Belle Isle*, 13 Ga. App. 437, 79 S. E. 357 (1913); see *Gwinn v. Simes*, 61 Mo. 335 (1875).

¹⁴ *Gooch v. Gooch*, 178 Iowa 902, 160 N. W. 333 (1916).

¹⁵ *Reeves v. Butcher*, 31 N. J. L. 224 (1865); *Ladd v. Rogers*, 93 Mass. 209 (1865).

¹⁶ *McElhannon v. Coffman*, 173 Ark. 60, 292 S. W. 393 (1927).

¹ 41 STAT. 324, c. 89, §2a (1919), 18 U. S. C. A. 408 (1927).

² *McBoyle v. U. S.*, 51 Sup. Ct. 340 (March 1931), reversing 43 F. (2d) 273 (C. C. A. 10th, 1930), in which Cotteral, J., dissented.

³ *U. S. v. Wiltberger*, 5 Wheat. 76, 5 L. ed. 37 (1870); *Brace v. Gauger-Korsmo Const. Co.*, 36 F. (2d) 661 (C. C. A. 8th, 1929), *certiorari* denied, 281 U. S. 738 (1930); *State v. Crawford*, 198 N. C. 522, 152 S. E. 504 (1930); *People v. Mooney*, 87 Colo. 567, 290 Pac. 271 (1930).

constructions, that operating in favor of the accused is preferred.⁴ The power of prescribing punishment is in the legislature, not the courts,⁵ and the primary rule of construction is to ascertain and give effect to the legislative intent.⁶ As a guide to the intent of a statute, the rule of *ejusdem generis* is widely accepted and acted upon, especially in penal statutes.⁷ This rule is that where there are general words following particular and specific words, the former must be confined to things of the same kind or genus as those just enumerated, unless there is a clear manifestation of a contrary purpose.⁸ Thus "other" following an enumeration of specific classes is to be read as "other such like" and to include only others of similar character.⁹ This rule is applicable to the present statute and excludes aeroplanes, which are hardly other such types of vehicles as those specified. The rule of *ejusdem generis* is not applicable where the particular words embrace all objects of their kind so that the general words must be construed otherwise or be meaningless.¹⁰ But the instant statute does not come within this exception.¹¹

⁴ *Speeter v. U. S.*, 42 F. (2d) 937 (C. C. A. 8th, 1930); *Harrison v. Vose*, 9 How. 372, 13 L. ed. 179 (1849); *Weirich v. State*, 140 Wis. 98, 121 N. W. 652 (1909).

⁵ See *U. S. v. Wiltberger*, *supra* note 3, at 95.

⁶ 2 LEWIS' SUTHERLAND STATUTORY CONSTRUCTION §363 (2d ed. 1904); *U. S. v. Woolen*, 40 F. (2d) 882 (C. C. A. 10th, 1930); *State v. Barco*, 150 N. C. 792, 63 S. E. 673 (1909).

⁷ *U. S. v. Nichols*, 186 U. S. 298, 22 Sup. Ct. 918, 46 L. ed. 1173 (1901); *First National Bank of Anamoose v. U. S.*, 206 Fed. 374 (C. C. A. 8th, 1914); *U. S. v. 1150 Pounds of Celluloid*, 82 Fed. 627 (C. C. A. 6th, 1897).

⁸ 2 LEWIS' SUTHERLAND STATUTORY CONSTRUCTION, *supra* note 6, §422, and §§423-435 for illustrations; see *U. S. v. Sischo*, 262 Fed. 1001, 1005 (N. D. Wash. 1919); *State v. Craig*, 176 N. C. 740, 744, 97 S. E. 400-401 (1918); *Yarlott v. Brown*, 192 Ind. 648, 138 N. E. 17, 19 (1923); *State v. Hemrich*, 93 Wash. 439, 161 Pac. 79, 83, L. R. A. 1917B 962 (1916).

⁹ See *Rhone v. Loomis*, 74 Minn. 200, 204, 77 N. W. 31-32 (1898).

¹⁰ *U. S. v. Mescall*, 215 U. S. 26, 30 Sup. Ct. 19, 54 L. ed. 77 (1909); *American Ice Co. v. Fitzhugh*, 128 Md. 382, 97 Atl. 999, Ann. Cas. 1917D 33 (1916); *U. S. Cement Co. v. Cooper*, 172 Ind. 599, 88 N. E. 69 (1909); Note (1924) 9 IOWA L. BULL. 196 (*ejusdem generis* rule not applied to auto insurance policies against collision with "any other automobile, vehicle, or object").

¹¹ The following conveyances have been held vehicles within the purview of various statutes: *Emerson Troy Granite Co. v. Pearson*, 74 N. H. 22, 64 Atl. 528 (1906) (road traction engine); *Vincent v. Taylor Bros.*, 168 N. Y. S. 287, 288, 180 App. Div. 818 (1917) (threshing machine being drawn on wheels); *Berg v. Hetzler Bros.*, 166 N. Y. S. 830, 831, 179 App. Div. 551 (1917) (horse drawn ice-scraper); *Marselis v. Seaman*, 21 Barb. 319, 323 (N. Y. 1856) (sleigh); *Tulsa Ice Co. v. Wilkes*, 540 Okla. 519, 153 Pac. 1169, 1172 (1916) (bicycle). It is submitted that "any other self-propelled vehicle" in the present statute refers to such conveyances as electrically-propelled cars, bicycles with motors attached, tractors, traction engines, and the like. But for a contrary argument see (1930) 5 TULANE L. REV. 139.

The word "vehicle" by its derivation and definition is comprehensive enough to include watercraft and aircraft.¹² Yet no cases have been found including boats or aeroplanes under this general term.¹³ Statutes intended to apply to aircraft as well as to landcraft have expressly referred to both classes,¹⁴ as the legislature presumably would have done in the instant case if such were its intent. Statutes defining crimes are not to be extended by the courts by intentment on the grounds that they should have been made more comprehensive.¹⁵ "Vehicle" is understood generally to signify a conveyance operating on land. The court in the case under discussion has followed the common sense doctrine that "words of a statute are to be interpreted in accordance with the understanding of the common man from whose vocabulary they were taken."¹⁶

TRAVIS BROWN.

Equity—Injunction Against Unauthorized Veterinary Practice.

Two veterinary surgeons brought suit in a Virginia court to restrain from further practice of the profession one who had obtained his license without taking the examination required by statute. *Held*, No cause of action stated¹

This seems to be the first American case to reach a court of final jurisdiction in which members of a licensed profession have sought to cut off the competition of an unlicensed practitioner by injunction. But an injunction was denied in a similar case by an Ohio Circuit

¹² See *McBoyle v. U. S.*, 43 F. (2d) 273, 274 (C. C. A. 10, 1930).

¹³ See *Duckwall v. City of New Albany*, 25 Ind. 283, 286 (1865) (A ferryboat is not a vehicle. The word "vehicle" is rarely applied to watercraft); *Farmers' & Mechanics' National Bank v. Hanks*, 104 Tex. 320, 137 S. W. 1120, 1125 (1911) (an elevator is not a vehicle); *Davis v. Petrinovich*, 112 Ala. 654, 21 So. 344 (1896) (vehicle defined as any carriage moving *on land*, either on wheels or runners); *Conder v. Griffith*, 61 Ind. App. 218, 111 N. E. 816, 818 (1916) (vehicle any carriage or conveyance capable of being used as a means of transportation *on land*). See definition of motor vehicle in N. C. PUB. LAWS (1927), c. 122, §1 (patterned after the Uniform Motor Vehicle Registration Act).

¹⁴ 42 STAT. 854, 948 (1922), 19 U. S. C. A. §231b (1927) (including all forms of transportation on land, water, or in air); MASS. STAT. 1923 c. 370 (referring to aircraft, watercraft, or vehicle).

¹⁵ See *U. S. v. Chase*, 135 U. S. 255, 262, 10 Sup. Ct. 756, 758, 34 L. ed. 117, 120 (1890); *State v. Bishop*, 128 Mo. 373, 31 S. W. 9, 12, 49 Am. St. Rep. 569, 575, 29 L. R. A. 200, 208 (1895).

¹⁶ See *U. S. v. Bhagat Singh Thind*, 261 U. S. 204, 209, 43 Sup. Ct. 338, 341, 67 L. ed. 616, 620 (1923); *Church v. Mundy*, 15 Ves. 396, 406 (1808); *Town of Union v. Ziller*, 151 Miss. 467, 118 So. 293, 294 (1928).

¹ *Drummond v. Rowe*, 156 S. E. 442 (Va. 1931).