

## Obiter dictum and the ratio decidendi

You will frequently read assessments of cases and their holdings and encounter comments such as, “In dictum, the court said . . .” or “The court’s statements about x lack value as precedent because they were merely dictum.” This page is an unsophisticated and probably imprecise summary of a distinction that is important when using case law – that between the ratio decidendi and obiter dictum. Most lawyers don’t really think about it unless they have to; or they use the principles without being aware of them. First-year law students do not have this luxury and should think about the distinction whenever reading a case.

Read *Black’s* definition of “obiter dictum” before continuing. This term is used interchangeably with “obiter dicta,” “dicta,” and “dictum,” the “obiter” part being often lost by the way. The kernel of the definition is the notion that the court says something in the opinion that it need not have said to resolve the case.

Read *Black’s* definition of “ratio decidendi” before continuing. Depending on which version of the dictionary you are reading, you may see the following quote, which is helpful: “There are . . . two steps involved in the ascertainment of the ratio decidendi . . . First, it is necessary to *determine all the facts of the case as seen by the judge*; secondly, it is necessary to *discover which of those facts [the judge] treated as material.*” Rupert Cross & J.W. Harris, *Precedent in English Law* 65-66 (4th ed. 1991) (emphasis added).

Dictum can take several forms, including the following:

1. Facts not essential to the court’s decision.
2. Recitation of rules, or portions of rules, not essential to the court’s decision.
3. Discussion of hypothetical situations not actually before the court.
4. Statements about facts and law made in dissenting opinions.

In theory, dictum does not have value as precedent under the doctrine of stare decisis. In practice, however, it often has persuasive authority. (Many well-settled rules of constitutional law have their origins in dissenting opinions of earlier Supreme Court cases.)

Whenever you read a case, decide the following:

1. With regard to the rules stated, which were necessary to the decision of this particular case? This includes parts of rules stated but unnecessary for the case.
2. With regard to the facts identified, which were material in deciding this particular case?
3. What statements about the law and facts are unnecessary to the decision of the case?

When you identify dictum, don’t get too excited. It is weaker than the ratio decidendi, but not powerless. You may fail to defeat an opponent who relies entirely on dictum, and your dictum-loaded argument may wow a judge into dismissing your opponent’s dictum-less counter-arguments. Given the choice, always choose to base your arguments on the ratio decidendi – but recognize that your success may depend on your ability to identify, use, and defuse dictum.