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Ratio Decidendi vs Obiter Dicta

The Distinction Explained, With Real Case Examples

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NOTE TO STUDENTS

These notes are a study aid produced by The Legal Vault. They supplement but do **not** replace your lecture notes, prescribed texts, relevant statutes and legislation, and reading the cases in full. Always verify citations and section numbers against the primary sources before relying on them in assessment.

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Why This Distinction Matters

The distinction between the ratio decidendi and obiter dicta is one of the most frequently examined concepts in law school and one of the most commonly misunderstood. Getting it wrong has consequences at every level -- from how you read a case, to how you cite authority in your written work, to how you argue in a moot or tutorial.

Understanding this distinction is not merely an academic exercise. It determines:

- Which parts of a judgment are **binding** on lower courts under the doctrine of stare decisis.
- Which parts are merely **persuasive** and may be departed from.
- Which propositions of law you can cite as **authority** for a legal rule.
- How you structure your **IRAC Rule section** when citing a case.

THE CORE QUESTION

Every time you read a judgment, ask yourself: what did the court actually decide, and what was said incidentally? The answer to the first question is the ratio. The answer to the second is obiter.

The Two Concepts Defined

Ratio Decidendi

The reason for the decision

The ratio decidendi is the legal principle based on the material facts of the case that was essential to the court's conclusion. It is the binding part of the judgment -- the rule of law that the case establishes and that lower courts must follow under the doctrine of stare decisis.

Key point: The ratio is BINDING on courts below in the hierarchy.

Obiter Dictum

A thing said in passing

An obiter dictum (plural: obiter dicta) is any observation, comment, or statement of law made by the judge that was not essential to the decision. It may include comments on hypothetical situations, views on related questions of law not directly before the court, or statements about what the law would be in different circumstances.

Key point: Obiter dicta are PERSUASIVE only -- they are never binding.

How to Identify the Ratio Decidendi

Identifying the ratio is not always straightforward. Judges do not always label their ratio clearly. Here are four practical tests you can apply:

Test 1 -- The Necessity Test

Ask: if this proposition were removed from the judgment, would the court's conclusion change? If yes -- it is ratio. If no -- it is probably obiter. The ratio is the reasoning that was necessary to reach the conclusion.

Test 2 -- The Material Facts Test

The ratio must be tied to the material facts of the case. A proposition stated in the abstract -- without reference to the specific facts before the court -- is usually obiter. The ratio is always a rule applied to a particular factual situation.

Test 3 -- The Wambaugh Test

Professor Wambaugh proposed the following test: invert the proposition and ask whether, if the court had held the opposite, the decision would have been different. If inverting the proposition would change the outcome -- it is ratio. If the outcome would be the same -- it is obiter.

Test 4 -- The Subsequent Treatment Test

Look at how later courts have treated the case. Which propositions from the judgment have later courts cited as binding authority? Those propositions are likely the ratio. Propositions that are only cited as "interesting" or "persuasive" are likely obiter.

PRACTICAL NOTE

In most cases you will encounter in law school, the ratio is reasonably clear. The difficulty arises in complex, multi-judge decisions where different judges reach the same conclusion by different routes. In those cases, the ratio is the narrowest proposition that commands the support of the majority.

Real Examples from Botswana and Southern African Cases

The following examples show how ratio and obiter appear in actual judgments from your course.

Example 1 -- SA Railways & Harbours v National Bank of South Africa 1924 AD 704

This foundational contract law case established the objective theory of contractual consensus.

Ratio Decidendi

"The law does not concern itself with the working of the minds of parties to a contract, but with the external manifestations of their minds. Where one party's conduct reasonably leads another to believe that consensus has been reached, that party will be bound even if their subjective intention was different."

RATIO DECIDENDI: This is the ratio -- the objective test for consensus. It was essential to the court's decision and is binding on all lower courts in South Africa and Botswana.

Obiter Dictum

"It may be that in some exceptional circumstances, a party who genuinely did not consent might escape liability even under the objective test -- but we need not decide that question today."

OBITER DICTUM: This is obiter -- the court said it was unnecessary to decide this question. It is persuasive guidance but not a binding rule.

Example 2 -- Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256

The famous English case on unilateral offers to the public.

Ratio Decidendi

"An advertisement may constitute a binding unilateral offer to the public if it is sufficiently certain, shows the animus contrahendi, and contemplates acceptance by the performance of a specified act. A member of the public who performs the act accepts the offer and concludes a binding contract."

RATIO DECIDENDI: This is the ratio -- it was essential to the decision that Mrs Carlill be awarded the £100. Every element of this principle was necessary to reach that conclusion.

Obiter Dictum

"We do not decide whether the same principles would apply to an offer made in a private letter rather than a public advertisement, as that question does not arise on the facts before us."

OBITER DICTUM: This is obiter -- the court expressly declined to decide this point. It is not binding.

Example 3 -- Ramantele v Mmusi CACGB-104-12 (CA)

The landmark Botswana case on customary law and constitutional equality.

Ratio Decidendi

"Customary law rules that discriminate on the basis of sex in the devolution of property are inconsistent with the constitutional guarantee of equality and are void to the extent of the inconsistency. The Constitution is the supreme law of Botswana and prevails over any inconsistent customary rule."

RATIO DECIDENDI: This is the ratio -- it was the precise legal principle applied to the facts (the Ngwaketse inheritance rule) that led to the conclusion (the rule was void). It is binding on all Botswana courts.

Obiter Dictum

"We express no concluded view on whether a similar analysis would apply to customary rules in other contexts such as marriage or commercial dealings -- those questions must await a case in which they directly arise."

OBITER DICTUM: This is obiter -- the court expressly reserved those questions. Persuasive but not binding.

Quick Reference -- Ratio vs Obiter

Feature	Ratio Decidendi	Obiter Dictum
Meaning	Reason for the decision	Said in passing
Latin	Ratio decidendi	Obiter dictum (pl. obiter dicta)

Binding?	YES -- binding on lower courts	NO -- persuasive only
Essential to outcome?	YES	NO
Tied to material facts?	YES	Not necessarily
Can be cited as authority?	YES -- as binding authority	YES -- as persuasive argument only
Examples	The objective test in SA Railways; the offer to public rule in Carlill	Hypothetical comments; reserved questions; alternative reasoning

EXAM REMINDER

When you cite a case in the Rule section of your IRAC answer, you are citing its ratio decidendi -- the legal principle it establishes. Never cite a case for a proposition that was obiter. Always ask: is this the ratio of this case, or was it said in passing?