

## Important Legal Terms Employed by Judicial Authorities in Deciding Issues:



### Background:

"The study of the law qualifies a man to be useful to himself, to his neighbours, and to the public." - Thomas Jefferson

You might not have thought of this before, but in a legal situation especially representing client before authorities, language barriers are the last thing that should be on your mind. When you have to speak in front of an appellate authority, you should not allow any language issue to be a disadvantage or an obstacle for a good resolution of your case. It is necessary to be familiar with legal terms and their meaning in both languages as well.

This article will help you to get familiar with some of the most common legal terms.

- 1. Precedent** - A principle or rule established in an earlier case that is binding on or persuasive for a Court or Tribunal while deciding subsequent cases having similar issues or facts. This is important so that similar facts will yield similar and predictable outcomes. The principle by which judges are bound to precedents is known as *stare decisis* (a Latin phrase with the literal meaning of "*Let the decision stand*")

It may be noticed that precedent ceases to be a binding precedent-

- (i) if it is reversed or overruled by a higher court,
- (ii) when it is affirmed or reversed on a different ground,
- (iii) when it is inconsistent with the earlier decisions of the same rank,
- (iv) when it is sub silentio, and
- (v) when it is rendered per incuriam.

- 2. Per incuriam** - "**in curia** literally means "**carelessness**" and the phrase "**Per incuriam**" means judgements that are delivered with ignorance of some statute or rule. It is well settled that a judgement rendered in ignorance of a statute or a rule having statutory force, which would have affected the result, is not binding on a court or tribunal otherwise bound by its own decision or of a court of co-ordinate jurisdiction. In **Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court [1990] 3 SCC 682**, the Supreme Court explained the expression "per incuriam" "The Latin expression per incuriam means through

inadvertence. A decision can be said generally to be given per incuriam when the Supreme Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of the Supreme Court."

**3. Sub-silentio** - is a Latin term having legal meaning "under silence". It is often used as a reference to something that is implied but not expressly stated. The term is used when a court overrules the holding of a case without specifically stating that it is doing so. The Supreme Court in the case of **Municipal Corp. of Delhi v. Gurnam Kaur [1989] 1 SCC 101** explained the concept of sub silentio as under-"A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the Court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the Court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."

**4. Obiter dicta** - The Latin term obiter dicta means "things said by the way," and is generally used in law to refer to a non-necessary remark made by a judge. The binding part of a judicial decision is the ratio decidendi. An obiter dictum is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. In the case of **Mohandas Issardas v. A.N. Sattanathan, AIR 1955 Bom 113** made the following observations which not only explained what is obiter dicta but also brought out the distinction between ratio decidendi and obiter dicta." . . . an obiter dictum is an expression of opinion on a point which is not necessary for the decision of a case. This very definition draws a clear distinction between a point which is necessary for the determination of a case and a point which is not necessary for the determination of the case. But in both cases points must arise for the determination of the Tribunal. Two questions may arise before a court for its determination. The court may determine both although only one of them may be necessary for the ultimate decision of the case. The question which was necessary for the determination of the case would be the 'ratio decidendi'; the opinion of the Tribunal, on the question which was not necessary to decide the case would be only an 'obiter dictum'.

#### **5. Ratio decidendi -**

Ratio decidendi is a Latin phrase meaning "the rationale for the decision". It is "the point in a case that determines the judgement" or "the principle that the case establishes". In other words, ratio decidendi is a legal rule derived from, and consistent with, those parts of legal reasoning within a judgment on which the outcome of the case depends. It is a legal phrase which refers to principles used by a court to compose the rationale of a particular judgment. Unlike obiter dicta, the ratio decidendi is, as a general rule, binding on courts of lower and later jurisdiction.

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