

Obiter Dicta /ɒbɪtə 'dɪktə/

obiter

1573, from Latin., lit. "by the way," from ob "to, toward" + iter "journey; hence obiter dictum (1812)

"statement in passing," a judge's expression of opinion not regarded as binding or decisive.¹

In a case judgment, any statement of law that is not an essential part of the *ratio decidendi*, the legal reasoning, is, strictly speaking, superfluous. However, judges may make comments and remarks about the case after the final judgment. Any such statement is referred to as *obiter dictum* (*obiter dicta* in the plural). The weight accorded to the *dicta* varies with the type of statement made and/or the seniority of the court and the eminence of the judge making the comments. Some *obiter dicta* may be incidental, casual expressions carrying no weight of authority. As judicial opinions on points of law which are not directly relevant to the case in question they will have a mere recommendatory effect. Other *obiter dicta* may carry more weight. These statements are made to clarify the legal principle which the judge proposes to apply in his judgment. The judge may also review and interpret the evidence presented and explore its relation to the rest of the issues in the case. In so doing, a judge will use other examples and analogies to express and explain themselves.

Although *obiter dicta* statements do not form part of the binding precedent, they are persuasive authority and can be taken into consideration and cited in later cases if the judge in the later case considers it appropriate to do so. For instance, a judge, in imposing a sentence, might point to specific elements of the crime that justify a harsh or lenient sentence. Similarly, in cases where courts decline to accept a case because of lack of jurisdiction, a judge might sometimes make remarks on the merits or certain issues related to the case.

For you as a law student, the obiter dicta are important for two reasons. In the first place, you have to learn to be able to distinguish between the *obiter* and the *ratio* of a case. Secondly, it is important to read and take note of the obiter of any case. You may need to quote / refer to the opinions presented in the *obiter* of a case in your evaluation of a legal issue.

¹ Longman Dictionary of Contemporary English 4th Ed
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