A 1L's Glossary of Useful Terms

BRIEFING A CASE (BREEF-ing UH KĀS) v. Preparing an analytical summary of a judicial opinion, usually in preparation for class discussion or in preparation for law school exams. Formats for case briefs vary significantly and can be quite idiosyncratic. Typically, however, the format will follow the IRAC method. (*See* **IRAC**, *infra*. *See also* ***INFRA***, *infra*.)

CASE METHOD (KĀS MĔH-thud) n. The primary method of teaching law in law schools in the United States. Pioneered at Harvard Law School by Christopher Columbus Langdell, it is based on the idea that the best way to learn U.S. law is to read the actual judicial opinions that become the law under the rule of *stare decisis* (*see* **STARE DECISIS**, *infra*), a principle of Anglo-American common law origin. (*See* **COMMON LAW**, *infra*.) Especially in first-year courses, U.S. law professors typically use assigned cases from published casebooks (*see* **CASEBOOK**, *infra*), or from their own materials, often coupled with a Socratic method of teaching (*see* **SOCRATIC METHOD**, *infra*), to teach the law. The case method was later adapted by Harvard Business School and other business schools. In most other countries, law school still involves lecture-style study and analysis of abstract legal rules.

CASEBOOK (KĀS-boohk) n. A bound collection of highly edited, illustrative case decisions in a particular area of law, together with brief notes that summarize the holdings of other cases further refining the rule, raise problems with the reasoning of the illustrative case, or provide other useful information. A **CASEBOOK** should not be confused with a **TREATISE**, which is a scholarly textbook discussing and analyzing a particular area of the law, or a **STUDY AID**, which is a brief book or pamphlet that offers simplified explanation of a particular area.

CAUSE OF ACTION (CAWZ ŬV AK-shŭn) n. Sometimes called a claim, a cause of action is a set of facts sufficient to justify a court in awarding a "plaintiff" money, property, or the enforcement of a right against a "defendant." (*See also* **REMEDY**, *infra*.) The name given to some typical causes of action may be a phrase referring to the legal theory on the basis of which the plaintiff brings suit (*e.g.*, "breach of contract," "battery," "false imprisonment").

COMMON LAW (CĂ-min LAW) n. Law developed by individual judges or panels of judges through decisions in cases before them, called "case law," rather than through legislation (statutes) or administrative regulations. (*See* **COMMON LAW SYSTEM**, *infra*; **OPINION, COMMON LAW**, *infra*)

COMMON LAW SYSTEM (CĂ-min LAW SIS-tŭm) n. A legal system that treats case decisions by individual judges or panels of judges as binding on future cases with similar facts and legal issues. The system exists in countries with an Anglo-American legal history and tradition (*e.g.*, Australia, England, Ireland, New Zealand, the United States of America). (*See* **COMMON LAW**, *supra*; **OPINION, COMMON LAW**, *infra*; **SUPRA**, *infra*.)

DAMAGES (DAM-i-jiz) n. A type of legal relief in the form of a monetary award, as compensation for a loss or injury, against a defendant for liability under various claims or causes of action. (*See* **CAUSE OF ACTION**, *supra*.) Different areas of law provide for various types of available damages including, *e.g.*, compensatory damages, exemplary damages, special damages, punitive damages, etc.

DICTA (DIK-tah; Latin, pl. of *dictum*; from *dicere*, to speak) n. A statement in a court opinion that extends beyond the issue raised by the case before the court. As such, dicta are not binding under the principle of *stare decisis*. (*See* **STARE DECISIS**, *infra*; **OBITER DICTA**, *infra*.)

EQUITY (EK-wi-tee) n. The application of general principles of justice and fairness to relieve, correct, or supplement remedies available in a court of law. (*See, e.g.*, **ESTOPPEL**, *infra*.) The Chancery Court in England developed a separate system of equitable principles and procedure, alongside the common law system. The typical remedy in equity is the injunction. (*See* **INJUNCTION**, *infra*; **REMEDY**, *infra*.) The Federal Rules of Civil Procedure merged the separate systems of law and equity into one form of action, the civil action. FRCP 2. A few states still retain the separate law and equity systems, as well as separate law and equity courts.

ESTOPPEL (eh-STOP-uhl; fr. OF *estoupail*, "stopper plug;" also *estopper*, "stop up," "impede") n. Term referring to one of a series of legal and equitable doctrines. The historical example was *estoppel in pais*, a doctrine of equity (*see* **EQUITY**, *supra*) that precluded a person from denying or asserting anything to the contrary of what he or she had asserted to be true by his/her own deed, acts, or representations to another person, either express or implied. By extension, courts have also developed distinct doctrines, for example, *promissory estoppel*, an alternative to *contract* as a basis for enforcing a promise. (*See* **PROMISSORY ESTOPPEL**, *infra*.)

HOLDING (HŌL-ding) n. The determination of or answer to a question of law by a judge or panel of judges, based on the issue presented in a particular case. More familiarly known as the *ratio decidendi*. (*See* ***RATIO DECIDENDI***, *infra*.)

INFRA (IN-fră; Latin *infra*, below) adv. Referring to something discussed later. (*See also* ***SUPRA***, *infra*.)

INJUNCTION (in-JUNK-shŭn) n. Equitable remedy in the form of a court order requiring a party to do, or to refrain from doing, certain acts. A party subject to an injunction who fails to adhere to the injunction faces civil or criminal penalties and may have to pay damages or accept sanctions for failing to follow the court's order. (*See* **EQUITY**, *supra*.)

IRAC (EYE-rak) An acronym that stands for: **I**ssue, **R**ule, **A**pplication, and **C**onclusion. It is a methodology or checklist for organizing legal analysis, especially in answering complex hypothetical questions on law school exams. Proponents of IRAC methodology argue that it reduces legal reasoning to the application of a formula that helps organize your legal analysis so that it is clear and easy to follow. Opponents of IRAC methodology argue that it reduces legal reasoning to the application of a formula that tends to oversimplify your legal analysis so that it is dull and lacking in important detail. Both views are correct; IRAC is a useful tool for organization – if you don't use it as a substitute for thinking. (Not to be confused with the Insecticide Resistance Action Committee (IRAC), formed in 1984 as a specialist technical group to prevent or delay the development of resistance in insect and mite pests.)

IRAQ (ee-ROK; eye-RAK; Arabic: العراق Al-Iraq),) n. Garden spot of Western Asia, home to continuous successive civilizations since the 6th millennium BC. (Not to be confused with **IRAC**, *supra*.)

JURISDICTION (joor-iss-DIK-shŭn) n. From the Latin words *iuris* meaning "of law" and *dicere* meaning "to speak." Speaking of law, jurisdiction is the authority that a legal body or a political leader has to deal with all or specified legal questions or to create new laws or legal rules (legislative jurisdiction), to issue rulings and opinions, and make pronouncements on legal matters (judicial jurisdiction), or to administer and enforce laws (executive or administrative jurisdiction). The term may also be used to refer to a specific geographical area or subject matter to which such authority applies.

OBITER DICTA (OH-bit-ter DIK-tah; Latin, pl. of *obiter dictum*; from *dicere*, to speak or say, "said by the way") n. Statement made in a judicial opinion that does not form a necessary part of the court's decision, but is introduced into the opinion by way of illustration, analogy or argument. As compared with the expression *dicta* (*see* **DICTA**, *supra*), *obiter dicta* is really, *really* beyond the issue raised by the case before the court.

OPINION, COMMON LAW n. Written decision of a judge or panel of judges in a case, typically with reasons for the decision and legal analysis of past cases raising similar issues or facts. In a country with an Anglo-American legal history and tradition ("common law tradition"), such opinions are considered "precedents" that bind all future judges presiding over similar cases or issues. (*See* **CASEBOOK**, *supra*; **COMMON LAW**, *supra. See also* **SUPRA**, *infra.*)

PROMISSORY ESTOPPEL (PRĂ-miz-sŏr-ree eh-STOP-uhl) n. A doctrine of contract law that provides an alternative to an exchange of promises or "consideration" as a basis for enforcing a promise. The doctrine is sometimes referred to as *detrimental reliance*. In 1932, the American Law Institute memorialized the doctrine in § 90 of the RESTATEMENT OF CONTRACTS, which states that "[a] promise which the promisor should reasonably expect to induce action or forbearance of a definite and substantial character on the part of the promisee and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." The doctrine was continued in RESTATEMENT (Second), but without the requirement that the detriment be "substantial." (*See also* **ESTOPPEL**, *supra.*)

RATIO DECIDENDI (RAH-tzee-oh DEK-ee-DEN-dee) n. Latin phrase meaning "the reason for the decision." It is the legal explanation given by a judge or panel of judges in an opinion for the decision that the court has made in a case. (*See* HOLDING, *supra*; *see also SUPRA*, *infra.*)

REMEDY (REM-i-dee) n. Relief sought from a court by someone (the "plaintiff") claiming an injury by another person (the "defendant"). Typical remedies in U.S. law are damages (*see* **DAMAGES**, *supra*) and injunctive relief (*see* **INJUNCTION**, *supra*).

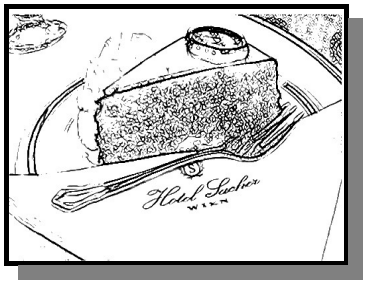
STARE DECISIS (STAR-ay duh-SYE-siss; STAR-ee dee-SYE-siss; from Latin maxim *Stare decisis et non quieta movere* ("stand by decisions and do not disturb the undisturbed")) Legal principle under which judges are obliged to respect the precedents established by prior decisions. The principle is considered a defining characteristic of the common law system. (*See* **COMMON LAW**, *supra. See also* **SUPRA**, *infra.*)

SOCRATIC METHOD (sō-KRAT-ik MĚH-thud) n. The traditional teaching procedure and style in U.S. law schools. For each class, the law professor will assign several cases from a casebook (*see* **CASEBOOK**, *supra*) to be read, sometimes with the editorial notes that accompany the assigned cases. In class, the professor will ask students questions about the assigned cases to determine whether they identified and understood the correct rule from the case (if there is one — in certain heavily contested areas of the law, there may not be one correct answer). Like the character Socrates in Plato's philosophical dialogues, the professor will pose hypothetical questions or problems and through careful questioning lead the students to discover important principles or aspects about the law that they are studying. The Socratic method differs in two important respects from the teaching methods used in most other academic programs. First, it requires students to work almost exclusively with primary source material that – especially when older classic cases are being considered – may be written in obscure or obsolete language. Second, a typical American law school class is supposed to be a dialogue about the meaning of a case, not a straightforward lecture, and "rules" or "legal principles" emerge from the continuing interplay of question and answer.

SUPRA (SOO-pră; Latin *supra*, above) adv. Referring to a citation, expression, or word discussed previously. (*See also* ***INFRA***, *supra.*)

TORT (tŏrt; French, *tort*, "mischief," "injury," "wrong;" Latin, *tortus* "twisted") n. The area of common law dealing with civil wrongdoings, as distinct from a crime. A person injured by another's wrongful act may be able to use tort law to receive damages (*i.e.*, monetary compensation) from the person responsible or "liable" for the injury. Major categories of torts are intentional torts (where the wrongdoer must be shown to act with some intention to act), negligent torts (where the wrongdoer must only be shown to have acted without the carefulness ordinarily expected in the circumstances), and strict liability torts (where the wrongdoer must only be shown to have done the injurious act). Not to be confused with *torte*. (*See* ***TORTE***, *infra.*)

TORTE (TŎRT-uh; German, *Torte*; Italian, *torta*) n. Cake, Central European in origin, made primarily with eggs, sugar, and ground nuts instead of flour, although some variants include bread crumbs or some flour. The best known tortes include the Austrian *Sachertorte* and *Linzertorte*, the German *Schwarzwälder Kirschtorte* and the Hungarian *Dobostorte*. Other well-known European confections referred to as tortes include the French *Gâteau St. Honoré*. A common element in most tortes is sweet icing, but exceptions include French tortes such as *Gâteau Mercédès* and *Gâteau Alcazar*. If you have occasion to participate in the McGeorge Summer Program in Salzburg, Austria, you may sample most of these tortes at one of the many *Konditoreien* and *Cafén* (or *Kaffeehäuser*) throughout the city.



Sacher Torte