

# Class 7

## Points at Issue

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# Cicero – *De Inventione* I, 8

Omnis res quae habet in se positam in dictione ac disceptatione aliquam controversiam, aut facti aut nominis aut generis aut actionis continet quaestionem. Eam igitur quaestionem ex qua causa nascitur constitutionem appellamus. Constitutio est prima conflictio causarum ex depulsione intentionis profecta, hoc modo: "Fecisti." "Non feci," aut: "Iure feci." Cum facti controversia est, quoniam coniecturis causa firmatur, constitutio coniecturalis appellatur. Cum autem nominis, quia vis vocabuli definienda verbis est, constitutio definitiva nominatur. Cum vero qualis res sit quaeritur, quia et de vi de genere negotii controversia est, constitutio generalis vocatur. At cum causa ex eo pendet, quia non aut is agere videtur quem oportet, aut non cum eo quicum oportet, aut non apud quos, quo tempore, qua lege, quo crimine, qua poena oportet, translative dicitur constitutio, quia actio translationis et commutationis indigere videtur. Atque harum aliquam in omne causae genus incidere necesse est. Nam in quam rem non incidit, in ea nihil esse poterit controversiae; quam eam ne causam quidem convenit putari.

# Cicero, *On Invention*, I, 8

- Every subject which contains in itself a controversy to be resolved by speech and debate involves a question about a fact, or about a definition, or about the nature of an act, or about legal processes. This question, then, from which the whole case arises, is called *constitutio* or the "issue." The "issue" is the first conflict of pleas which arises from the defense or answer to our accusation, in this way: .. You did it "; .. I did not do it," or .. I was justified in doing it." When the dispute is about a fact, the issue is said to be conjectural (*coniecturalis*), because the plea is supported by conjectures or inferences. When the issue is about a definition, it is called the definitional issue, because the force of the term must be defined in words. When, however, the nature of the act is examined, the issue is said to be qualitative because the controversy concerns the value of the act and its class or quality. But when the case depends on the circumstance that it appears that the right person does not bring the suit, or that he brings it against the wrong person, or before the wrong tribunal, or at the wrong time, under the wrong statute or the wrong charge, or with the wrong penalty, the issue is called translativa because the action seems to require a transfer to another court or alteration in the form of pleading. There will always be one of these issues applicable to every kind of case; for where none applies, there can be no controversy. Therefore, it is not fitting to regard it as a case at all,

# Four Categories

- Fact (Conjecture)
- Definition
- Value
- Jurisdiction

# Issues of Facts

- Time
  - Past
    - Did Lee Harvey Oswald kill JFK without assistance?
  - Present
    - Is the ceiling in the dormitory lounge leaking?
  - Future
    - Will the Boston Red Sox win this year's World Series?

# Issues of Fact

- Knowable and verifiable
- But only by conjecture.
- Aristotle's probabilities

# Past Figures of Thought (Forensic)

- Did he do it?
  - Motive
  - Opportunity
  - Capability
  - Character
  - Past Behavior

# Future Figures of Thought

- Dilemmas

- Iraq

Figures removed due to copyright restrictions.

- Iran

- Medical care

# Issues of Fact also include Issues of Cause and Effect

- Does smoking cause cancer?
- Do frogs cause warts?
- What caused the French Revolution?
- Does reading or viewing sexually explicit material increase or decrease the probability that an individual will commit sexually related crimes?

# Definition

- In many arguments the definition of a key term is the central point-at-issue:
  - Adult
  - Obscene
  - Harassment
  - Drug
  - Treason
  - Torture
  - Enhanced Interrogation
  - Enemy Combatant
  - Terrorist

# Obscenity

- Material utterly devoid of any redeeming social value?
- Such a criterion could only be judged within the context of “local community standards
- *Les Amants Case*
  - Justice Potter Stuart:
    - ***I can't define it [obscenity] but I know it when I see it.***

# Value

- X is good or bad
- Greater and lesser good
- Moral and aesthetic judgments
  - All murder is wrong
  - Hip-hop is great art
  - Whose rights are greater: a woman's or an unborn fetus.
- Includes *issues-of-obligation*
  - The state must help indigent people

# Jurisdiction or Competence

- Can elementary school teachers check lunch boxes for junk food and then throw it away?
- Are college students competent to make their own rules regarding living arrangements?

# Roe v. Wade

- Key Issues of
  - Fact
  - Definition
  - Value
  - Jurisdiction

# Group Assignment

Using one to four issues being debated on campus or nationally, identify an issue of fact, an issue of definition, an issue of value, and an issue of jurisdiction.

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