

Commonly Misused Words and Phrases

Below is a list of commonly misused words and phrases. Everyone misuses one of these words or phrases at some point, and you should review this list as you edit your work. If you use the correct word or phrase, your legal writing will be clearer and more effective.

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|---------------------------------|----------------------------|
| 1. Affect v. Effect | 10. Imply v. Infer |
| 2. Between v. Among | 11. Less v. Fewer |
| 3. As such | 12. Principle v. Principal |
| 4. Attain v. Obtain | 13. Proscribe v. Prescribe |
| 5. Begs the question | 14. Than v. Then |
| 6. Consequently v. Subsequently | 15. As per v. Per |
| 7. Farther v. Further | 16. Toward v. Towards |
| 8. Felt v. Thought/Concluded | 17. Tortious v. Tortuous |
| 9. Forego v. Forgo | 18. Very v. Really |

1. Affect v. Effect

Affect and effect sometimes get confused because *both* can be used as a noun or a verb, though affect is more commonly used as a verb and effect as a noun.

	Affect	Effect
As a Verb	Means to change or impact something. <i>Their words <u>affected</u> her mood.</i>	Means to bring about a particular result. <i>Their words <u>effected</u> great change.</i>
As a Noun	Generally used to describe someone's disposition. <i>She displayed a flat and catatonic <u>affect</u>.</i>	Means the result or consequence of something. <i>We see the <u>effects</u> of climate change.</i>

2. Between v. Among

Use between when referring to a direct or reciprocal relationship between any number of things. Use among when referring to a looser relationship within a group.

Examples:

- *I am standing between two trees.*
- *I walk among many trees in the forest.*

3. As such

Writers commonly (and incorrectly!) use as such as a synonym for therefore or another conclusion indicator. However, you should use as such only to refer to a noun or idea just described.

Incorrect Use of As Such	Correct (Without As Such)	Correct Use of As Such
<i>The defendant has raised an affirmative defense. <u>As such</u>, she has the burden of proof.</i>	<i>The defendant has raised an affirmative defense. <u>Therefore</u>, she has the burden of proof.</i>	<i>The fourth paragraph of the opinion was meaningless dicta. <u>As such</u>, it is not binding precedent.</i> <i>(Here, <u>as such</u> is a substitute for “meaningless dicta.”)</i>

4. Attain v. Obtain

You attain a goal, just as you would achieve a goal. You obtain an object, just as you would acquire an object.

5. Begs the question

Avoid using begs the question. This expression is commonly used in the same way as “raises the question.” However, begs the question is different; technically it means to assume the conclusion. It’s also more informal and open to interpretation than something like “raises the question.”

6. Consequently v. Subsequently

Consequently indicates a cause-and-effect relationship. Subsequently indicates a chronological relationship, independent of causation.

Note: Consequently can be useful tool when you are trying to highlight causation. Subsequently can be a useful tool when you are trying to downplay causation or simply want to note chronological order.

Consequently to Highlight Causation	Subsequently to Downplay Causation
<i>Ms. Smith announced she was going on maternity leave. <u>Consequently</u>, Mr. Jones fired her.</i>	<i>Ms. Smith announced she was going on maternity leave. <u>Subsequently</u>, she was fired.</i>

7. Farther v. Further

Farther indicates physical distance. Further indicates time or metaphorical distance; it can also be used to mean “in addition.”

Examples:

- *We realized that the crime occurred farther from the defendant’s house than we originally thought.*

- *So we decided to explore the evidence further.*
- *Further, we expanded the search area.*

8. Felt v. Thought/Concluded

Avoid using feel or felt as substitute for thought or concluded. Feel is a sense, reserved for an emotion or physical contact.

9. Forego v. Forgo

Forego means to come before. Forgo means reject.

10. Imply v. Infer

The *speaker or writer* implies something not explicitly communicated. The *listener or reader* infers this implicit idea from the communication.

11. Less v. Fewer

Use less for uncountable nouns and fewer for countable nouns.

Examples:

- *The red bucket has less water than the blue bucket.*
- *The red bag can hold fewer books than the blue bag.*

12. Principle v. Principal

A principle is a rule, often derived from morals, ethics, or law. Principal as a *noun* means someone in a high or superior position (for example, a school principal or principal-agent relationship). Principal as an *adjective* means first or main.

Examples:

- *The principle of stare decisis is a crucial part of common law.*
- *The school just hired a new principal.*
- *The principal issue is whether this court has jurisdiction.*

13. Proscribe v. Prescribe

Proscribe means forbid. In a legal context, prescribe means to set forth a rule.

14. Than v. Then

Than is used for comparisons. Then is used to indicate chronological sequence.

15. As per v. Per

As per is redundant. Simply using per is clearer and cleaner.

Example:

- *Per the judge's instructions, the jury will now deliberate.*

16. Toward v. Towards

Always drop the "s." Use toward.

17. Tortious v. Tortuous

Tortious refers to torts, and is what you will most likely use in legal writing. Tortuous means convoluted or full of twists and turns.

18. Very v. Really

Very and really are often used interchangeably, and in some cases they are similar. But, in legal writing, be careful how you use them. Very is generally used to intensify an adjective. Really is generally used to mean in actual fact.

Examples:

- *Justice Ginsburg is very strong.* (Justice Ginsburg has a high degree of strength.)
- *Justice Ginsburg is really strong.* (Justice Ginsburg is strong in actual fact.)

Note: Very is often an ambiguous word. For example, how much stronger than strong is very strong? If you can make a more precise statement, so do.