



## Commonly Misused Words and Phrases

Making sure that you use grammatically correct words and phrases is a simple way to improve your legal writing. By using proper grammar, you will gain credibility with your readers and your writing will gain clarity. This handout contains a list of misused words and phrases to help you avoid making these common mistakes.

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### 1. Affect v. Effect

In general, you will want to use “affect” as a verb and “effect” as a noun. However, “affect” and “effect” can both be used as a noun or a verb.

	<b>Affect</b>	<b>Effect</b>
As a Verb	Means to change or impact something. (“ <i>Their words affected her mood.</i> ”)	Means to bring about a particular result. (“ <i>Their words effected great change.</i> ”)

As a Noun	Generally used to describe someone's disposition. ( <i>"Her affect was flat and catatonic."</i> )	Means the result or consequence of something. ( <i>"His speech's effect was to incite panic."</i> )
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## 2. Among v. Between

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.

### Example:

- *Among the four of us, we had three opinions.*
- *I stand between a rock and a hard place.*
- *Between the three friends, a close relationship developed.*
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## 3. As such

While writers commonly use "as such" as a synonym for "therefore" or another concluding adverb, the correct use of "as such" is reserved for rare occasions. Use "as such" only to refer to a noun (an idea) as it was just described.

Incorrect	Correct	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, it is not binding precedent. (In this case, you are using "such" as 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

This is a commonly misused expression, and lawyers in particular are vigilant to its misuse. Our advice is to just stay away from the phrase.<sup>1</sup>

<sup>1</sup> O.K., if you really want to know: "Begs the question" does not mean the same thing as "raises the question." To beg the question is to assume the truth of a conclusion that has not been proved.

## 6. Consequently v. Subsequently

Use of the word “consequently” indicates a cause-and-effect relationship. Use of the word “subsequently” indicates a chronological relationship, without speaking to causation.

**Note:** “Subsequently” is a useful tool when you are trying to hide a “bad fact,” and “consequently” may help you highlight a “good fact.”

**Example:** In a wrongful termination suit, your word choice will depend on whether you are representing the plaintiff, and trying to establish causality, or representing the defendant, and trying to disprove causality.

If you are representing the plaintiff	If you are representing the defendant
<i>Mrs. Smith announced she was going on maternity leave. <u>Consequently</u>, Mr. Jones fired her.</i>	<i>Mrs. Smith announced she was going on maternity leave. <u>Subsequently</u>, she was fired.</i>

## 7. Farther v. Further

You use “farther” when indicating distance in a physical space. You use “further” when indicating time or metaphorical distance.

**Example:** We realized that the crime occurred farther from the defendant’s house than we originally thought. So, we decided we needed to explore the evidence further. Further into our investigation, we realized the defendant was innocent.

## 8. Felt v. Thought/Concluded

Do not use “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.

**Example:**

- 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 (think principal-agent relationship). Principal as an adjective means first or main.

**13. Proscribe v. Prescribe**

To proscribe is to forbid. In the legal context, to prescribe is to lay out a rule.

**14. Than v. Then**

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

**15. Temporal conjunctions**

Many say this is an outdated rule, but plenty of picky readers and writers prefer that writers only use conjunctions such as “while” and “since” when referring to time. You can maintain clarity and credibility by restricting yourself to using “while” and “since” temporally.

**While**

Classically, “while” is used to denote two things happening at the same time. But it is now often used as a substitute for “although.” You should stick to using “while” when referring to time and “although” or “despite” to indicate contrast.

<b>Avoid this:</b>	<b>Instead, do this:</b>	<b>Temporal use of “while”:</b>
<i>While I am a Republican, I voted for President Obama in the last election.</i>	<i>Although I am a Republican, I voted for President in the last election.</i>	<i>The accomplice waited in the getaway car while the defendant robbed the bank.</i>

**Since**

Many readers do not care if a writer uses “since” as a synonym for “because.” However, some may prefer that “since” be used temporally to indicate something that happened before something else.

<b>Avoid this:</b>	<b>Instead, do this:</b>	<b>Temporal use of “since”:</b>
<i>Since I am a Republican, I voted for Mitt Romney in the last election.</i>	<i><u>Because</u> I am a Republican, I voted for Mitt Romney in the last election.</i>	<i>I have voted in every election <u>since</u> I turned eighteen.</i>

## 16. Toward v. Towards

Always drop the “s.” Towards is never correct.

## 17. Tortious v. Tortuous

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

## 18. Very, Really, and Meaningless Intensifiers

“Very” and “really” are often used interchangeably but mean two different things in formal writing. “Very” is used to intensify an adjective. “Really” is a synonym of truly.

### Example:

- Justice Ginsburg is very strong.

The word “very” is used to intensify or emphasize the adjective “strong.”

- Justice Ginsburg is really strong.

“Really” is used to mean: You may not believe me, but Justice Ginsburg truly is strong.

**Note:** “Very” is often an ambiguous and meaningless word. How much stronger than “strong” is “very strong”? Stronger than the average person? Stronger than the average Supreme Court Justice? Stronger than the average octogenarian? If you have a clear comparison in mind use it; otherwise, just stick with the adjective without the meaningless intensifier. Other intensifiers, such as “extremely,” may be clearer than “very” but still can be vague and empty and should be avoided.