

## University of Ottawa Faculty of Law (Civil Law Section)

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From the Selected Works of Hon. Gerald Lebovits

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# Problem Words and Pairs in Legal Writing—Part II

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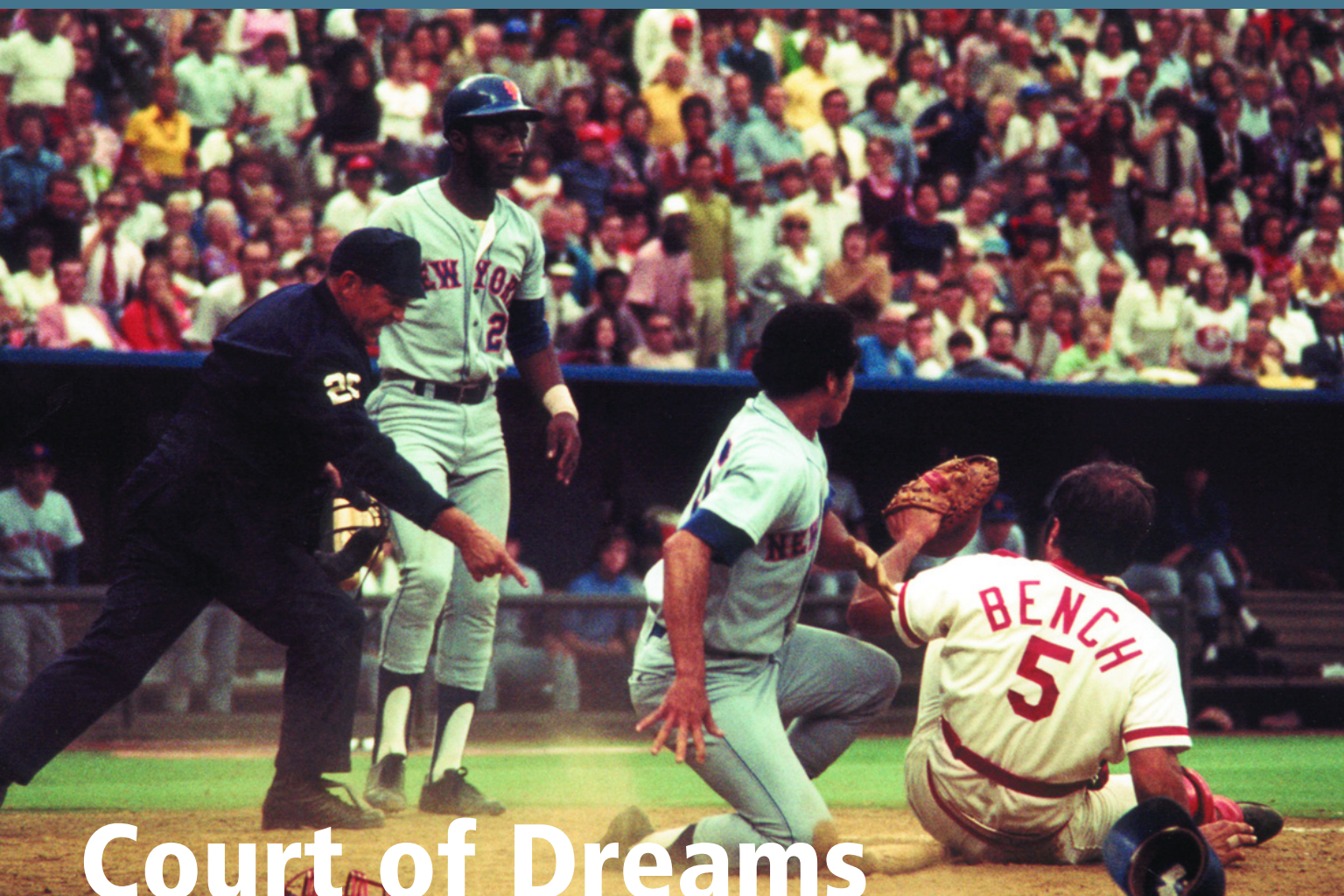
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## Problem Words and Pairs in Legal Writing—Part II

**A**s Lord Chief Justice Mansfield wrote, “Most of the disputes in the world arise from words.”<sup>1</sup> Therefore, utilize words good. Irregardless how others employ words, you are suppose to use them like a writer should. Be especially careful to use adverbs correct. Otherwise your writing will look horribly.

*Bad, badly.* Use “bad,” an adjective, to modify a noun or pronoun (“He did a bad job”) or to describe emotions. Use “badly,” an adverb, to modify a verb, to answer the question “how” (he played badly), or to describe physical sensations. *Correct:* “The court attorney felt bad because his judge felt badly after she fell off her chair.”

*Balance, remainder.* A “balance” is not a remainder, except as a part of an account. The “remainder” is what is left over.

*Bellwether.* A wether is a male sheep that leads its flock and has a bell around its neck. The word is not spelled “bellweather.”

*Beneficent, benevolent.* To be “beneficent” is to do good. To be “benevolent” is to offer supportive sentiments. *Correct:* “I would rather be ruled by a beneficent than a benevolent dictator.”

*Bi-, semi-.* “Bi-” is an ambiguous prefix. Biweekly, for example, means every two weeks, but many believe, incorrectly, that it means twice a week. Twice a week, in fact, is “semiweekly.” Semiperfect advice for those who need bifocals: Do not use “bi-” or “semi-”; both have the potential to confuse. Instead, write “twice a week,” “once every two weeks,” and so on.

*Bisect, dissect.* To “bisect” is to cut into two equal parts. To “dissect” is to

cut into parts of any number or size but two equal parts.

*Blatant, flagrant.* Something or someone “blatant” is offensive or brazen. A “flagrant” act is a wrong act, done openly and knowingly.

*Boat, ship, vessel.* A “boat” is a small craft. A “ship,” the more common word for “vessel,” is a large craft suitable for travel on the high seas.

*Bombastic.* To be “bombastic” is to be pompous, not strident or violent.

*Breach, breech.* “Breach” as a noun, means a “violation” or a “gap.” As a transitive verb, “breach” means “make a gap in.” As an intransitive verb, “breach” means “to break through water.” A “breech” is the back part of a gun or gun-barrel or a birth in which the baby’s buttocks emerge first.

*Bring, take.* To “bring” is to carry toward. To “take” is to carry away. *Correct:* “She brings home the bacon but takes it to work.”

*Broke, broken.* “Broken” is the participle of “broke.” It is illiterate to write that something is “broke.” A person who writes free handbooks on legal writing, however, becomes “broke” in the pecuniary sense.

*Burglarize, burgle.* Neither back-formation is acceptable in formal writing.

*Can, could, may, might.* “Can” and “could” mean “able.” Do not use either word to express a possibility or permission. “May” means “permission” or “possibility.” “May” will confuse when it can mean either “permission” or “possibility.” If “may” might mean either “permission” or “possibility,” use “might.” Thus, “I may write the opinion” *can mean* “I am permitted to write the opinion” or “I will write

the opinion if I get around to it.” “Might” is the past and past perfect tense of “may”; implies a conditional (“Ms. X might run for Village Justice”); expresses a supposition when used in the subjunctive (“The court attorney is acting as if he might run for judicial office”); and is a strong synonym for “may” (“Judge X said that it may happen, but I am certain that it might”).

*Cannot, can not?* — the former.

*Capital, capitol.* The seat of government is the “capital.” “Capitol” is the building. Capital punishment awaits those who confuse “capital” with “capitol.”

*Carat, caret, karat.* A “carat” is a unit of weight for precious metals and stones. Editors use a “caret” (“^”) to note that something should be inserted. A “karat” is a measure of the fineness of gold.

*Catch-22, dilemma, Hobson’s choice.* A “Catch-22” is an impossibility. *Correct:* “John could not get a job without experience, and he could not get experience without a job.” A “dilemma” is a choice between two bad bargains — also known as a “Sophie’s Choice” or being “between a rock and a hard place.” To be in a dilemma does not mean “to be in a bind, plight, predicament or quandary.” A “Hobson’s choice” is no choice at all. A Hobson’s choice means “take it or leave it.” In the clichés “between a rock and a hard place” and “between Scylla and Charybdis,” neither offers any comfort, but the latter offers a safe though difficult exit.

*Character, reputation.* “Character” defines what you are. “Reputation” is what others think of you.

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*Cite, citation, site.* "Cite" is a transitive verb: "The court attorney's citations [not cites] are accurate." *Correct:* "He cited [omit to] a case." In legal writing, authorities are called "citations," not references. A "site" is a place, such as a battle site or a Web site.

*Cohort.* A "cohort" is not a colleague or a co-conspirator. A cohort is a group so large it cannot be counted and which is united in a common goal. *Correct:* "A cohort of law clerks pressed for a raise." In Roman times a "cohort" was a group of 500–600 soldiers.

*Common, mutual.* *Correct:* "We and our mutual friend share common interests."

*Compare to, compare with, contrast.* Use "compare to" when the things being compared are alike, when the phrase introduces a similarity. Use "compare with" when the things being compared are both alike and different. *Correct:* "The court compared the New York statute with the New Jersey statute." Do not use "compare with" if you make no comparison. "The Chief Judge hired five court attorneys this year compared with four last year." *Becomes, for example:* "The Chief Judge hired five court attorneys this year; last year she hired four." Use "contrast" when things are compared only for their differences. Your sixth-grade teacher's "compare and contrast" is a tautology. To compare something with something else is to note similarities and differences.

*Compel, impel, induce.* To "compel" is to force. To "impel" is to persuade. To "induce" is to impel gently.

*Compendious.* "Compendious" means "abridged," not "voluminous."

*Compleat, complete.* Both mean "perfectly skilled or equipped," but "compleat" is archaic.

*Complement, compliment.* To "complement" is to complete something. To "compliment" is to flatter. *Correct:* "Because the judge's necklace complemented her judicial robes, the court officer complimented the judge."

*Comprise, consists of, includes.* "Comprise" means "to contain," "to embrace," or "to consist of." "The elements comprise the statute" is incorrect because statutes comprise elements, not the other way around. *A tip:* Use "has" instead of "comprises": "The statute has elements." *Note:* "Includes" precedes a partial list and thus is not a synonym for "comprises." More to "include": A sentence that includes "include" may not also include "some." Thus, the following is incorrect: "Some of the briefs included one from an amicus."

*Concerned about, concerned with.* To be "concerned about" is to worry about it. To be "concerned with" is to have an interest in it. *Correct:* "Ms. X, the court attorney, was concerned about the intern's writing because Ms. X was concerned with writing a draft opinion."

*Confute, deny, refute.* To "confute" is to "refute" conclusively. To "deny" is to disavow. To "refute" is to destroy by argument. *Incorrect:* "He refuted the charge." Use "denied."

*Congenial, genial.* To be "congenial" is to be easy to get along with. To be "genial" is to be pleasant. *Correct:* "Her geniality made her congenial."

*Connote, denote.* Words "connote" what they suggest. They "denote" what they mean.

*Consecutive, continuous, continual, successive.* "Consecutive" and "continuous" mean "uninterrupted" or "unbroken." "Continual" and "successive" mean "intermittent" or "repeated at intervals."

*Consist of, consist in.* "Consist of" refers to materials. *Correct:* "A computer consists of a motherboard, a screen, and a keyboard." "Consist in" refers to abstract qualities or intangibles. *Correct:* "The character of a good law clerk consists in effort and integrity."

*Consistently, constantly.* Both suggest something ongoing. What occurs "consistently" occurs without contradiction. What occurs "constantly" occurs persistently.

*Contemptible, contemptuous.* To be "contemptible" is to deserve contempt.

To be "contemptuous" is to feel or express contempt. *Correct:* "The court is contemptuous of contemptible attorneys." A contemnor has been contumacious and is guilty of contempt.

*Continue, continually, continuously, resume.* "Continue" suggests no interruption. "Resume" does. "Continually" means "again and again." "Continuously" means "without stopping."

*Converse, reverse.* The "converse" is the turning about: "The judge knows the defendant" is the converse of the defendant knowing the judge. The "reverse" is the opposite or the contrary. *Correct:* "Please list your citations in reverse chronological order: from newest to oldest."

*Convince, persuade.* To "convince" is to satisfy by argument. To "persuade" is to influence someone to believe that you are correct. An attorney may convince a client that he should settle but not persuade him to do so. *Correct:* "Opinion writers must persuade. It is not good enough for them to convince."

*Correspond with, correspond to.* Use "correspond with" to mean "writing to other people." Use "correspond to" to analogize.

*Correspondent, co-respondent, corespondent.* A "correspondent" is a euphemism that describes the third party in a divorce action. A "co-respondent" is a second litigant responding to an action or proceeding or, in some jurisdictions, an appeal. A "correspondent" writes letters or is a journalist in any medium.

*Cost, price, value, worth.* "Cost" is the amount the purchaser paid. "Price" is amount the seller asks for the article. "Value" is assessed by comparing the article with a fair standard. A buyer's need or desire for an article determines its "worth." *Correct:* "He knows the cost of everything and the value of nothing."

*Council, counsel, consul.* A "council" is an organization. "Counsel," a noun or a verb, is advice or someone who gives advice. A "consul" is an officer in the foreign service. *Correct:* "Counsel gave good counsel to the Council of Elders and the French consul."

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*Credible, creditable, credulous, credence, incredible, incredulous.* A “credible” person or thing is believable. “Creditable” means “worthy of belief or praise.” A person who is “credulous” is someone too willing to believe. “Credence” means “mental belief” or “acceptance.” “Incredulous” is the opposite of “credulous.” A person or thing unworthy of belief is “incredible.”

*Criticize, criticism, critical.* To “criticize” is to assess. “Criticism” and “critical” assessments can be positive or negative, but neither is given without explanation. A “critic” criticizes the good and the bad. A “critical” person finds fault everywhere.

*Currently, presently.* “Currently” is “now.” “Presently” is “soon.” Note: It is redundant to use the present tense “is,” “am,” or “are” with “currently.” Excise accordingly: “[Currently] I am a law clerk.” Soon after you learn this rule you will cut currently presently. *A tip:* Use “now” or “soon” rather than the pretentious “currently” or “presently.”

*Data, datum.* “Data” is plural. “Datum” is singular. Avoid a construction that uses “datum,” which is obsolete.

*Deduction, induction.* “Deduction” is reasoning from general principles to specific conclusions. Reasoning deductively is a civil-law hallmark. “Induction” is reasoning from one or more specific observations to a general principle. Reasoning inductively is a common-law hallmark.

*Definite, definitive.* “Definite” means “explicit.” “Definitive” means “exhaustive” and “authoritative.”

*Delete, omit.* To “delete” is to erase. To “omit” is to leave something out intentionally or to neglect accidentally.

*Delusion, illusion.* A “delusion” is a false belief. An “illusion” is a false perception.

*Des’ert, desert’, dessert.* The issue here is pronunciation: Place the right emPHASIS on your syllABLES. *Correct:* “Her friend wanted to desert her while they were eating dessert in the desert. She got her just deserts.”

*Diagnosis, prognosis.* A “diagnosis” analyzes a bodily condition. A “prognosis” is a projected course of a disease or condition.

*Dialectal, dialectic, dialectical.* “Dialectal” means “pertaining to a dialect of language.” “Dialectic” is the art of reasoning correctly. “Dialectical” means “pertaining to dialectic.”

*Differ from, differ with.* *Correct:* “The two court clerks differ from each other in temperament.” *Correct:* “The two court clerks differ with each other about politics.”

*Different from, different than.* The former is always correct, unless the sentence sounds tortured, but the latter may be used to compare differences: “Judge A’s writing style is different from Judge B’s, but Judge C’s style is even more different than Judge A’s and Judge B’s.” The phrase “should be no different from” is incorrect. *Correct:* “The rule should not be different from . . .”

*Dis-, un-.* Words that have an “un-” prefix are weaker than words that have a “dis-” prefix. An “united group,” for example, was never united. A “disunited” group was once united but is no longer. To be “uninvolved” is not to be involved. To be “disinvolved” is to have withdrawn from involvement. To be “unorganized” is to lack order. To be “disorganized” is to have been organized but now to be in disarray. To be “unqualified” is to lack qualifications. To be “disqualified” is to lose one’s qualifications. To be “unsatisfied” is to be not entirely satisfied. To be “dissatisfied” is to be entirely unhappy.

*Disassemble, dissemble.* To “disassemble” is to take apart something that was once assembled. To “dissemble” is to conceal.

*Disburse, disperse.* To “disburse” is to pay out. To “disperse” is to separate and move apart in into different directions.

*Disclose, divulge, expose, reveal.* To “disclose” is to make private information public. To “divulge” is to pass a secret to a select group. To “expose” is to make public something reprehensible. To “reveal” is to unveil something beyond one’s knowledge.

*Discomfit, discomfort.* To “discomfit” is to thwart. To “discomfort” is to make uncomfortable.

*Discover, invent.* To “discover” is to find something that exists but which was unknown. To “invent” is to bring something new into existence. *Correct:* “The pilgrims might not have discovered America, but they invented the Thanksgiving Dinner.”

*Discreet, discrete.* To be “discreet” is to be circumspect. Something “discrete” is separate or disconnected.

*Disinformation, misinformation.* “Disinformation” is a deliberate falsehood. “Misinformation” is incorrect information.

*Disinterested, uninterested.* To be “disinterested” is to be neutral. To be “uninterested” is not to care. *Correct:* “We want our judges to be disinterested, not uninterested.”

*Dissimulate, simulate.* To “dissimulate” is to conceal. To “simulate” is to feign or to create the effect of. The two words are not antonyms.

*Distinct, distinctive.* “Distinct” means “easily perceived.” Something “distinctive” is different.

*Divers, diverse.* According to divers authorities, “divers views” are various views. “Diverse” views are opposing views. But “divers” is archaic.

*Doubtless, no doubt, doubtlessly, indubitably, undoubtedly.* Even doubting Thomases agree that “doubtless” and “no doubt” suggest “probably” and therefore are weak. “Doubtlessly” and “indubitably” are pretentious. Pick “undoubtedly” to express certainty. But recall that adverbs often weaken. Thus, “He lied” is stronger than “He undoubtedly lied.”

*Duplicate, replicate.* A “replica” is a copy made by the original creator. A “duplicate” is an exact copy. ■

1. *Morgan v. Jones*, [1773] Lofft 160, 176.

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