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Problem Words and Pairs in Legal Writing—Part IV

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Problem Words and Pairs in Legal Writing — Part IV

This series of columns will help you decide which word to use. But once you've resolved the issue of word choice, be careful to use the rite (wright? write? right?) homonym and homophone. Homonyms are words that have the same form as other words but which have different meanings ("through" the wall or "through" with work). Homophones are words that are pronounced the same but are spelled differently ("aid" and "aide"; "dear" and "deer"; "hear" and "here"; "aisle" and "isle"; "bee" and "be").

The Spell Checker Poem makes it clear how errors can go undetected:

I have a spelling Checker;
It cam with my PC.
It clearly marks for my revue,
Mistakes I cannot sea.
I've run this poem threw it;
I'm sure your pleased to no.
Its letter perfect in it's weigh;
My Checker tolled mi sew!

Two rite with care is quite a feet,
Of witch won should bee proud.
And we mused dew the best wee can,
Sew flaws are knot aloud.¹

One New York judicial opinion innocently explains the nature of homophone errors, in a sense. In 1988 a court reporter transcribed a trial judge's instruction to a jury in a criminal case that "each defendant is presumed to be innocent *in a sense*."² The Appellate Division affirmed the conviction but chastised the judge. After the Appellate Division's opinion was published, the prosecution moved to correct the opinion. Here's how the Appellate Division decided the

motion, amending its opinion "in fairness to the parties, and indeed to the trial judge":

Essentially, the People confront us with the same problem which confounded Frederick, the love-starved hero of *The Pirates of Penzance*, whose life, as all Savoyards know, was severely complicated by the failure of his nurse, in his infancy, to understand his dying father's wish that Frederick be apprenticed to a pilot. Due to a sad misunderstanding, the nurse apprenticed Frederick to a pirate, with dire consequences that are only resolved in the last act. Thus the People urge here that Justice [Edward J.] McLaughlin, in his charge to the jury, did not say that the defendant is presumed to be innocent "*in a sense*," but merely repeated the word "*innocence*." There is no suggestion that this was done through "*innocent mer-riment*," in the sense used by *The Mikado*.³

If, whether. "If," when compared with "whether," means "if and only if." "Whether," when compared with "if," means "whether or not." Attorney: "Judge, please let me know if (or *whether*?) you want me to brief the issue." The "if" requests an answer only if the judge wants a brief. The "whether" requests an answer to the attorney's question no matter what. Law clerk: "Your opinion writing will be competent if (or *whether*?) you practice writing." For most people, it is "if." Only stars write competently whether or not they practice writing.

Illegal. Anything against the law, including the civil law, is illegal. If you

mean illegal in the penal sense, prefer "criminal" to "illegal."

Impediment, obstacle. An "impediment" hinders action. An "obstacle" blocks action.

ImPLY, infer. To "imply" is to suggest or express indirectly. To "infer" is to surmise or conclude. The writer implies; the reader infers.

Important, importantly? — the former. The pretentious "more importantly" is grammatically incorrect, a hyper-correction.

In, into, in to. "In" means "within." "Into" means "from outside to inside" or "from one point to another." The "in" in an adverb-preposition combination modifies a verb. *Correct:* "While drunk, Mr. X drove *in* his Corvette. In his stupor he drove *into* a van. But he turned himself *into* an honest citizen by turning himself *in to* the police."

Inequity, iniquity. An "inequity" is an inequality or unfairness in treatment. An "iniquity" is an evil deed.

Informant, informer. The two are synonymous; both give information. But only an informer gives information to law enforcement. Some information: New York courts habitually call informers "informants," as in "confidential informants," because "informer" has a pejorative connotation.

Ingenious, ingenuous, disingenuous. Something or someone "ingenious" is innovatively smart. Someone "ingenuous" is candid and guileless. "Disingenuous" people hide their feelings and thoughts. A "disingenuous" argument might be a correct argument, but it is not a candid argument.

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Innumerable, numerous. Things “innumerable” can be counted, but only with great difficulty. “Innumerable” does not mean “countless.” “Numerous” means many.

Instinctive, intuitive. “Instinctive” behavior is inborn. “Intuitive” behavior is unreasoned. *Correct:* “After the witness instinctively blinked and swallowed, the trial judge intuitively suspected that the witness was lying.”

Intra, inter. “Intra” means “within” or “inside.” “Inter” means “between” or “among.” An intramural Moot Court competition, for example, is a competition held within a school for students of that school only. An intermural Moot Court competition is held for students of more than one school.

Involve. To “involve” means “to envelop.” It does not mean to “cause,” “concern,” “imply,” “mean,” “result in,” or “use.” *Incorrect:* “The case involved a civil-rights dispute.” ■

1. Anonymous, reprinted in Street News, New York City, 5th Issue 2000, at 3, col. 2.

2. See *People v. Jorge*, 159 A.D.2d 237, 238, 552 N.Y.S.2d 217, 218 (1st Dep’t) (mem.) (emphasis in original), *lv. denied*, 76 N.Y.2d 859, 561 N.E.2d 899, 560 N.Y.S.2d 999 (1990).

3. *People v. Jorge*, 161 A.D.2d 372, 372, 555 N.Y.S.2d 116, 117 (1st Dep’t 1990) (mem.) (emphases in original).

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