Problem Words and Pairs in Legal Writing—Part V

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David Orr –
In a grand tradition…

Poetry critic, poet, lawyer
by Monica Finch

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Parts I through IV of this series appeared in previous issues of the Journal. The Legal Writer continues.

Judicial, judicious. “Judicial” pertains to the judiciary. To be “judicious” is to be wisely cautious.

Jurist. A “jurist” is someone well versed in the law. Not all judges are jurists, and not all jurists are judges.

Last, latest. “Last” means “final.” “Latest” means “most recent.”

Leave me alone, let me alone. “Leave me alone” means “do not disturb me.” “Let me alone” means “do not disturb me.”

Lectern, podium. Speakers put notes, and pound, on a “lectern.” Speakers stand on a “podium.” If you want a podium under your lectern, get a podium.

Liable to, likely. “Liable to” suggests negative consequences. “Likely” is powerful.

Lie, lay. To “lie” is to prevaricate or to recline or remain in one condition; conjugate — “I lie down,” “yesterday I lay down,” “I have lain down.” To “lay” is to place or produce; conjugate — “I lay down the papers,” “yesterday I laid the papers down,” “I have laid the papers down.”


Loan, lend. “Loan” is a noun. “Lend” is the verb. “Lend [not loan] me your ears.”

Loath, loathe. To be “loath” is to be hesitant. To “loathe” is to hate. “I am loath to eat broccoli because I loathe broccoli.”

Logistic, logistics, logistical. “Logistic” is the adjective. “Logistics” is the noun, not the plural of “logistic.” “Logistical” is pretentious bureaucratese.

Majority, plurality. A “majority” is a number greater than half. A “plurality” is the greatest number of votes, but less than half. “Majority” is not a synonym for “most” or “major.” Incorrect: “The law clerk spent the majority of her time drafting opinions.” Drafting might, however, have occupied most of her time, the major part of her time, or the majority of her hours.

Masterly, masterful. Someone or something “masterly” has or contains the skills of a master. Someone “masterful” is powerful. Correct: “The masterful Chief Judge wrote a masterly opinion.” May be, maybe, perhaps. “May be,” an adverb, means “is possibly.” Correct: “It may be that the court reporter is right. On second thought, maybe the court clerk is right.”

Meretricious, meritorious. “Meretricious” means “obviously vulgar.” Something “meritorious” has merit.

Meticulous, scrupulous. To be “meticulous” is to be fussy about small details. To be “scrupulous” is to handle details precisely and in a principled way.

Mitigate, militate. To “mitigate” is to moderate or to alleviate. “Militate” is to have weight or effect, for or against. Correct: “The facts militate for mitigation of sentence.”

Momentarily. Something that happens “momentarily” happens for a fleeting moment. “Momentarily” does not mean “at any moment.”

Nauseated, nauseous. Correct: “I felt nauseated after I smelled the nauseous fumes of formaldehyde.” Not to repeat this ad nauseam, but it is incorrect to write, “I felt nauseous yesterday.”


Nominal, low. How low can you go? A “nominal” amount is so low it is merely symbolic.

Nonsense. “Nonsense” is gibberish. Only colloquially does it mean “incorrect.” Incorrect: “Appellee’s argument is nonsense.” Correct: “Carroll loved to write nonsense: ‘Twas brillig, and the slithy toves/ Did gyre and gimble in the wabe: All mimsy were the borogoves/ And the mome raths outgrabe.’” Lewis Carroll, Through the Looking Glass and What Alice Found There 18–19 (1946).

Observance, observation, observed. “Observance” means “comply with” or “celebrate.” Correct: “In observance of its rules, the OCA allowed its nonjudicial employees to engage in the observance of New Year’s Day.” (Written without the nominalizations, that sentence should read, “To observe its rules, the OCA allowed its nonjudicial employees to observe New Year’s Day.”) A quick observation: “Observation” and “observed” mean “noting” or “seeing.” Correct: “The
court officer made an observation in court after she observed the exhibit.”

Obsolescent, obsolete. Something “obsolescent” is becoming “obsolete.”

Opaque, translucent, transparent. Light cannot shine through something “opaque,” and “opaque” people are obtuse. Light can shine through something “translucent,” but images cannot be perceived. Images can be seen through something “transparent,” and “transparent” people are frank and open.

Oral, verbal. “Oral” refers to spoken communication. “Verbal” refers to any communication using words, as opposed to nonverbal communication.

Oriented, orientated. “Oriented” is weak. Recast the sentence. “Orientated” is an unaccepted back-formation to “orient.”

Overlook, oversee. To “overlook” is not to notice. To “oversee” is to supervise. Correct: “The overseer overlooked something.”

Paltry, petty, trivial. Something “paltry” is worthless small, especially compared to something else. A “petty” thing or act is an unimportant thing or act. A “petty” person is narrow-minded. Something “trivial” is insignificant. Correct: “After defendant made a paltry contribution of $1,000 toward his $10,000 fine, a petty administrative-law judge resentenced him to pay $15.00 for committing a trivial offense on the subway.”

Parameter, perimeter. “Parameter” is a mathematical term that denotes a quantity that varies depending on conditions. Only colloquially does it mean “perimeter,” which means “boundary,” “extent,” or “limit.”

Partly, partially. Unless idiom suggests otherwise, use “partly” to mean “in part.” Partially, like most adjectives that become adverbs (words that end in “ly”), are so prettified they look ugly. Especially avoid “partially” when that word is ambiguous: “The Appellate Division, Third Department, ruled partially for the appellant” might mean that the court was not impartial.

Pending, impending. Something “pending” has not yet come or is not yet settled. Something “impending” adds a threat.

Penniless, penurious. To be “penniless” is to be poverty stricken. To be “penurious” is to be stingy.

Penultimate. “Penultimate” means “next to last.” It does not mean “ultimate” or “paramount.”

People, persons, party, individual. Use “people” for individuals collectively. Use “persons” for a small and specific number of individuals. Does this compute? “Three people were in court, but two left. One person remained.” No. One “person” remained. Therefore, “three persons were in court.” And do you party? It is technically incorrect to refer to one litigant or person as a “party” — a party of one makes for a boring party — although this usage abounds in legal writing. “The party of the first part” is a legalism, and a stylistically incorrect one at that. Use “individual” to contrast one person with many. Do not use “individual” as a synonym for “person.” And do not call someone “certain” or “one.” Incorrect: “One John Doe.” Incorrect: “A certain John Doe.”

Percent, percentage. Use percent with a number. Correct: “Exactly 99.999 percent of New York’s court attorneys are good at legal research.” Use “percentage” when a number is omitted. Correct: “What percentage of the judge’s opinions are decided within 90 days?” Neither “percent” nor “percentage” is spelled with two words in modern American English. Incorrect: “Per cent.”

Peruse. To “peruse” means “to read carefully,” not “to glance at.”

Place, put. To “place” is to “put” carefully.

Pleaded, pled. The past participle of “plead” is “pleaded.” “Pled” is disfavored.

Possible, feasable, practical, impractical, practicable, impracticable. What is “possible” can and likely will happen. What is “feasible” or “practicable” is desirable and efficient and can be done easily. A person or thing can be “practical,” as opposed to “theoretical,” but only a thing can be “practicable.” “Practical” means “useful” or “sensible.” It refers to an actuality. “Feasible” and “practicable” refer to potential. Correct: “It is possible that you will find the Manual for Small Claims Arbitrators a practical guide. Reading it in time for your next court date is practicable.” Correct: “What is practicable is not always practical.”

Precedence, precedents. “Precedents” are court decisions, whether binding, persuasive, distinguishable, on all fours, reversed, overturned, right, or wrong. Something given “precedence” has a priority in time or rank.

Precipitate, precipitant, precipitous. To “precipitate” is to cause something rashly. “Precipitant” and its adverb “precipitantly” stress the speed of “precipitate.” “Precipitous” refers to physical steepness.

Prescribe, proscribe. To “proscribe” is to prohibit. To “prescribe” is to require.

Premise, pretext. A “premise” is a pretending. A “pretext” is an excuse for doing or not doing something. Correct: “The police officer had a pretext to expertise when he testified that he knew what a pretextual arrest is.”

Principal, principle. As a noun, a “principal” is money or someone who either empowers an agent to agree to a contract or to commit a crime or who is first in rank. As an adjective, “principal” means “main.” A “principle” is a basic truth, a fundamental law, a doctrine. Incorrect: “She is an effective principle court attorney.” No, although she might be an effective principal court attorney if she has learned her legal principles and is ethically principled. Mnemonic: The school principal is your pal, and a principle, which means “a rule,” ends in “le,” like “rule.”

Prostrate, supine, prone. Being “prostrate” is lying face down. Being “prostrate” is lying face down submissively or fearfully. (A “prostate” is a male body part; a man cannot have prostate cancer, although the illness may cause him to become prostrate.) Being “supine” is lying face up.
To have “zeal” is to be eager.
To have “zest” is to enjoy.
“R” We. It is “We are Toys,” not “Us are Toys.”

Valuable, valued, invaluable. Something “valuable” has intrinsic or monetary worth. It is “invaluable” if it is priceless. Something or someone “valued” is held in high regard or appraised. Both valuable and invaluable mean “having great value.” Some valuable advice: Because valuable and invaluable are synonyms, not opposites, do not use “invaluable,” which many believe means “not valuable.”

Correct: “The entire Official Law Reports series is both valued and valuable.”

Venal, venial. Someone “venal” is corruptible. Someone or something “venial” is forgivable.

Where, when, if. “Where” denotes a place. “When” denotes a time. Do not use “where” or “when” to define something. Recast the sentence to use “if.” Also do not write, “The seminal case is Mollineaux, where the court held . . . .” Write, “The seminal case is Mollineaux, in which the court held . . . .”

While, a while. “While” refers to a period of time. Incorrect: “He wrote the opinion during the time that [should be while] he was in court.” “A while” refers to a short period of time. Correct: “I will write for a while.” Correct: “I will write awhile.”

Zeal, zest. To have “zeal” is to be eager. To have “zest” is to enjoy. Correct: “I have zeal about his zest for writing.”

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