

Foreword

The Honorable Thomas M. Reavley
United States Court of Appeals for the Fifth Circuit

In 1984, a young man named Bryan Garner, the grandson of my erstwhile and esteemed colleague on the Supreme Court of Texas, Justice Meade F. Griffin, joined my Fifth Circuit chambers as one of my law clerks. I knew he had a scholarly bent, but at one point he surprised me with a huge file of index cards that he'd been compiling since his first week of law school—a cache of linguistic jottings that ended up being enshrined in the book you're now reading. An interesting hobby, I thought, until the representative of a Boston publisher sought my help to persuade this 25-year-old Mr. Garner to accept a significant advance payment and allow publication of his book (losing out, I soon discovered, to Oxford University Press). It then dawned on me that I might have a remarkable lexicographer in my office.

The years have verified this and have seen his ongoing achievements. I have watched Bryan closely as he has marched on in a career of prodigious creativity and productivity. He is the acknowledged authority when it comes to legal language and legal rhetoric. Since this book on legal usage first appeared in 1987, he has transformed *Black's Law Dictionary* into the most authoritative law dictionary ever published. He has taken both English usage and (with this book) legal usage to new heights. It is with pride and gratitude that I can herald another contribution by the legal world's most eminent writer and master of language.

Garner's Dictionary of Legal Usage not only defines a wealth of terms and expressions but also offers an abundance of clear, concise directions for their correct and effective use. Although legal terms here receive special attention, the scope of these directions on usage remains as broad as the language itself, whether one's community be that of American English or British English. The dictionary clearly defines many misused or confusing words, legal and nonlegal, and contains much useful information on syntax, pronunciation, and spelling.

Here may be found up-to-date information and practical guidelines on language and style—including discussions of obstacles and pitfalls in communication—all directed toward improved legal writing, whether in judicial opinions, briefs, pleadings, or letters. The entries on generic writing problems, such as SPLIT INFINITIVES, FUSED PARTICIPLES, MISPLACED MODIFIERS, and TITULAR TOMFOOLERY, draw copious examples from legal opinions, briefs, and law-review articles. Garner examines problems peculiar to legal writing, such as BIBLICAL AFFECTATION, LAW REVIEWESE, CITATION OF CASES, and the handling of CASE REFERENCES. These discussions are generally entertaining as well as informative, and many of these topics have never been treated so extensively in a book on legal-writing style.

Lawyers, law students, and general readers interested in clear expression or convincing argument will all find this to be a valuable resource. What is the best noun corresponding to the verb *to recuse*? Do you say you *confected* a pleading? Do you *confront* issues before a judge? Do you *imply* intention from someone's actions, or, as a judge, do you *imply* terms into a contract? Are you fond of using *meaningful* and *hopefully* and *mental attitude*? Are you prone to employ *as to* or to prefer *conclusional* over *conclusory*? Have you *forgone* discovery and stated the *gravamen* of your argument? What do you understand the meaning of *Lochnerize* to be? In the judgment of an appellate court, what are the correct objects of *reverse* and *remand*? Should you have questions

or hesitation about the use of these or other expressions in legal writing, the *Dictionary of Legal Usage* offers clear-cut and judicious guidance.

Along with explanations of legal meanings of otherwise ordinary English words, Garner includes law terms that have historically been omitted in the standard unabridged dictionaries, such as *adversarial*, *conclusory*, *enjoinable*, *litigational*, *pre-textual*, *quashal*, *recusement*, and *veniremember*. Also recorded are many words having legal meanings that are neglected in the standard dictionaries, such as *duplicitous*, *imply*, *judicial*, *probate*, *remote*, and *supersede*.

Garner pinpoints differences between any number of near-synonyms: *collateral estoppel* (or *issue preclusion*) and *res judicata*; *compel* and *impel*; *concurrent jurisdiction* and *pendent jurisdiction*; *fictitious*, *fictive*, and *fictional*; *incident to* and *incidental to*; *material* and *relevant*; *quantum meruit* and *quantum valebant*, and hundreds of similar sets of words. Most of us will find entries that renew explanations of terms and expressions learned in law school and long since forgotten. We may likewise encounter distinctions and nuances that are new to us.

Garner's Dictionary of Legal Usage helps lay to rest some of the linguistic superstitions that many of us grew up with, such as blanket prohibitions against split infinitives, against beginning sentences with *and* or *but*, against using *between* with more than two objects, and so on. Language is rarely if ever governed by absolute proscriptions (see FORBIDDEN WORDS AND PHRASES), and Garner is careful to lead the reader to discriminate and differentiate, rather than to latch on to oversimple formulas that can so easily displace true thought about what constitutes good writing. Surely one of the missions of this book is precisely to foster such thought.

The meaning that language carries, and the spirit it arouses, are the product of words and phrases, *comprehensible* words and phrases. Excess language misdirects. Ambiguous language confuses. Errors in grammar, in diction, in spelling, as well as in fact or logic, distract and destroy confidence. No writer can afford to underestimate the importance of precise, well-placed words. Compiled with the writer's interests in mind, *Garner's Dictionary of Legal Usage* is not only an essential reference but also a lively, personal commentary on legal language as used today.

Classified Guide to Essay Entries

This guide lists essay entries that may be grouped according to (1) style; (2) grammar and usage; (3) legal lexicology and special conventions; (4) word formation, inflection, spelling, and pronunciation; and (5) punctuation and typography. Essay entries are cross-referenced with words set in small capitals. This guide does not include any entries that are concerned only with the meaning or idiomatic use of title words, or with their spelling, pronunciation, etymology, or inflections.

Style

ABSTRACTITIS

ACRONYMS AND INITIALISMS

ALLITERATION

- A. Pleasant Examples
- B. Unpleasant Examples

AMBIGUITY

- A. Generally
- B. Uncertain Stress Producing Ambiguity
- C. Syntactic Ambiguity
- D. Poor Word Choice Producing Ambiguity

AMERICANISMS AND BRITISHISMS

ANFRACUOSITY

ANTHROPOMORPHISM

ARCHAISMS

ARGUMENT, MODES OF

BIBLICAL AFFECTATION

BRIEF-WRITING

BURIED VERBS

CASE REFERENCES

- A. Short-Form References
- B. Locatives with
- C. As Attributive Adjectives
- D. Hypallage with
- E. Personification of Cases

CHAMELEON-HUED WORDS

CITATION OF CASES

- A. Beginning Sentences with Citations
- B. Midsentence Citations
- C. Incidental Use of Case Names
- D. Citations in Text

CLICHÉS

COLLOQUIALITY

COMPANY NAMES

CONNOTATION AND DENOTATION

CONTRACTIONS

CUTTING OUT THE CHAFF

DATES

- A. Order
- B. Month and Year
- C. As Adjectives
- D. Written Out
- E. In Contracts

DEFINITIONS

- A. When to Use
- B. Lexical and Stipulative Definitions

C. Inept Definitional Terms

D. "Stuffed" Definitions

E. Placement

F. Signaling Defined Terms in Text

G. When to Compose

DOCUMENT DESIGN

DOUBLETS, TRIPLETS, AND SYNONYM-STRINGS

ENUMERATIONS

- A. *First(ly), second(ly), third(ly); one, two, three*
- B. Comma Before the Last Element

ETYMOLOGICAL AWARENESS

EUPHEMISMS

FIRST PERSON

- A. Awkward Avoidance of First Person
- B. The Collegial *we* of Judges
- C. Approaching Autobiography

LOTSAM PHRASES

FOOTNOTES

- A. Textual Footnotes
- B. For Citations

FORBIDDEN WORDS AND PHRASES

- A. Generally Useless Words and Phrases
- B. Ignorant Malformations

FORMAL WORDS

FORMS OF ADDRESS

- A. Addressing Federal Judges
- B. Addressing State-Court Judges
- C. Four Rules in Using *The Honorable*
- D. *Mr. Justice; Mrs. Justice; Madam Justice*
- E. Third-Person References
- F. Lawyer-to-Lawyer References
- G. Signing Off
- H. The Lone *sincerely*

FUDGE WORDS

FUSTIAN

GALLICISMS

GOBBLEDYGOOK

HERE- AND THERE- WORDS

ILLOGIC

- A. Illogical Comparison
- B. Dangers and Misplaced Modifiers
- C. Disjointed Appositives
- D. Mistaken Subject of a Prepositional Phrase
- E. Insensitivity to Metaphor

- F. Poor Exposition of Sequence
- G. Vexatious Little Words with Plain Meanings
- H. Complete Obliviousness in the Task of Writing

INELEGANT VARIATION

INITIALESE

IRONY

ISSUE-FRAMING

- A. Generally
- B. Deep vs. Surface Issues
- C. Persuasive vs. Analytical Issues
- D. Readers' Reactions
- E. The Importance of It All

JARGON

- A. Definition
- B. Jargonmongering

LATINISMS

LEGALDEGROOM

LEGALESE

LEGALISMS AND LAWYERISMS

LEGAL-WRITING STYLE

LEGISLATIVE DRAFTING

LITERARY ALLUSION

- A. Effective Use of Allusion
- B. Poor Use of Allusion

MAXIMS

METAPHORS

- A. Mixed and Mangled Metaphors
- B. Legal Metaphors
- C. The Overwrought Metaphor

MISCUES

- A. Unintended Word Association
- B. Misplaced Modifiers
- C. Remote Antecedents
- D. Failure to Hyphenate Phrasal Adjectives
- E. Misleading Phraseology
- F. Ill-Advisedly Deleted *but*

MYTH OF PRECISION, THE

NEOLOGISMS

NOUN PLAGUE

NUMERALS

- A. General Guidance in Using
- B. Coupling Numerals with Words
- C. Not Beginning Sentences with Numerals
- D. Round Numbers
- E. Decades
- F. Judicial Votes

OBSCURITY

- A. Overelaboration
- B. Initialese

OFFICIALESE

OVERPARTICULARIZATION

OVERSTATEMENT

OXYMORONS

PARALEPSIS

PASSIVE VOICE

- A. Generally
- B. The Otiose Passive

- C. Confusion of Active and Passive Constructions

- D. The Ambiguous Passive

- E. Active Wrongly Used for Passive

- F. The Dishonest Passive

- G. The Double Passive

- H. Special Active Use with *issue*

- I. **Passive tense*

PERIPHRAISIS

PERSON

PHRASAL ADJECTIVES

- A. General Rule
- B. Phrasal Adjectives of Foreign Origin
- C. Snakelike Compounds
- D. Suspension Hyphens
- E. Amount or Period of Time
- F. Proper Noun
- G. Phrasal Adjectives Following the Noun
- H. Phrases with Only One Element Joined

PHRASAL VERBS

PHRASING

PLAIN LANGUAGE

- A. Generally
- B. Definitions
- C. An Old Idea
- D. Plain-Language Principles
- E. Efforts to Use Plain Language
- F. The Trouble with the Word *plain*
- G. Prospects
- H. A Plain-Language Library

PSITTACISM

PUNS

PURPLE PROSE

QUOTATIONS

- A. Use of Quoted Material
- B. Handling Block Quotations
- C. Punctuating the Lead-In
- D. American and British Systems
- E. Ellipses

REDUNDANCY

- A. General Redundancy
- B. Awkward Repetitions
- C. Common Redundancies

RHETORICAL QUESTIONS

SEMANTICS

SENTENCE ENDINGS

SENTENCE LENGTH

SET PHRASES

SEXISM

- A. The Pronoun Problem
- B. Words Ending in *-man*
- C. Feminine Forms in *-ess* and *-trix*
- D. Equivalences
- E. Statute of Limitations

SIMILES

SLIPSHOD EXTENSION

SOUND OF PROSE, THE

- A. Undue Alliteration or Rhyme
- B. Unwieldy or Illogical Imagery

H. Unsplit Verb Phrases

I. Prepositions Moved from the End of the Sentence

J. Borrowed Articles for Borrowed Nouns

K. Overrefined Pronunciation

JANUS-FACED TERMS

A. The Basic Idea

B. Simultaneously Referring to the Case Name and the Named Party

C. Pronoun Used Also as an Expletive

D. Two Different Senses of the Same Word

E. Word Referred to as a Word, While Purporting to Have Substantive Meaning as Well

F. Preposition Given Two Meanings

MALAPROSPICES

MISPLACED MODIFIERS

NEGATIVES

A. Colliding Negatives

B. *Not un—*; *not in—*

C. Negative Prefixes

D. Periphrastic Negatives

E. *No* and *not*

NOUNS AS ADJECTIVES

NOUNS AS VERBS

OBJECT-SHUFFLING

PARALLELISM

PARTICLES, UNNECESSARY

PASSIVE VOICE

A. Generally

B. The Otiose Passive

C. Confusion of Active and Passive Constructions

D. The Ambiguous Passive

E. Active Wrongly Used for Passive

F. The Dishonest Passive

G. The Double Passive

H. Special Active Use with *issue*I. **Passive tense*

PHRASAL ADJECTIVES

A. General Rule

B. Phrasal Adjectives of Foreign Origin

C. Snakelike Compounds

D. Suspension Hyphens

E. Amount or Period of Time

F. Proper Noun

G. Phrasal Adjectives Following the Noun

H. Phrases with Only One Element Joined

PHRASAL VERBS

POSTPOSITIVE ADJECTIVES

PREPOSITIONS

A. Ending Sentences with

B. Redundancy of

C. Wrongly Elided

D. Correctly Matching with Verbs

E. Repetition of After Conjunctions

F. Getting It Wrong

PRONOUNS

A. Underused in Legal Writing

B. Nominative and Objective Case

C. Predicate Nominatives

REMOTE RELATIVES

RUN-ON SENTENCES

SENTENCE ADVERBS

SPLIT INFINITIVES

A. Splits to Be Avoided

B. Justified Splits

C. Awkwardness Caused by Avoiding Splits

SUBJECT-VERB AGREEMENT

A. False Attraction to Noun Intervening Between Subject and Verb

B. Reverse False Attraction

C. False Attraction to Predicate Noun

D. Compound Subjects Joined

E. Conjectively

F. Alternatives

G. Plural Words Referred to as Words

H. Misleading Connectives

I. Plural Units Denoting Amounts

J. The False Singular

K. Inversion

L. *Thing after thing (is) (are)*

M. Subject Area Implied

N. *One in five; one of every five*

SUBJUNCTIVES

SWAPPING HORSES

SYNOPSIS

TENSES

A. Sequence of

B. Subjunctives

C. The Historical Present

D. Present Tense for Ongoing Truth

E. Past-Perfect Tense

TMESIS

UNDERSTOOD WORDS

ZEUGMA AND SYLLEPSIS

A. Syllepsis

B. Zeugma

Legal Lexicology and Special Conventions

BRIEF-WRITING

CASE REFERENCES

A. Short-Form References

B. Locatives with

C. As Attributive Adjectives

D. Hypallage with

E. Personification of Cases

CAUSATION

A. *Proximate cause; legal cause; direct cause; cause in fact*

- B. *Immediate cause; effective cause; causa causans*
- C. *Producing cause; procuring cause*
- D. *Intervening cause; supervening cause*
- E. *Superseding cause; sole cause*

CITATION OF CASES

- A. Beginning Sentences with Citations
- B. Midsentence Citations
- C. Incidental Use of Case Names
- D. Citations in Text

COMMON-LAW PLEADINGS

DOUBLET, TRIPLET, AND SYNONYM-STRINGS

EQUITY PLEADINGS

FICTIONS

GALLICISMS

GOVERNMENTAL FORMS

HERE- AND THERE- WORDS

INTERPRETATION, MODES OF

- A. Theories
- B. Specific Interpretive Terminology

JARGON

- A. Definition
- B. Jargonmongering

JUDGMENTS, APPELLATE-COURT

LATINISMS

LAW FRENCH

LAW LATIN

LAW REVIEWESE

LAWYERS, DEROGATORY NAMES FOR

- A. Names Actually Given to Lawyers
- B. Prejudicial Names for Other Forms of Life

LEGALDEGROOM

LEGALESE

LEGALISMS AND LAWYERISMS

LEGISLATIVE DRAFTING

MAXIMS

MINGLE-MANGLE

MYTH OF PRECISION, THE

NEOLOGISMS

NONCE WORDS

OPINIONS, JUDICIAL

- A. Tense
- B. Judicial Humor
- C. Separate Opinions

PARTY APPELLATIONS

POPULARIZED LEGAL TECHNICALITIES

TERMS OF ART

WORDS OF AUTHORITY

- A. *Shall*
- B. *Shall not*
- C. *Must*
- D. *Will*
- E. *May*
- F. *May not; may not*
- G. *is entitled to*
- H. Using a Consistent Glossary

WORLD COURT PLEADINGS

Word Formation, Inflection, Spelling, and Pronunciation

AE

ANTE-; ANTI-

BACK-FORMATIONS

-CIDE

CO-

- A. Hyphenation with
- B. Attaching to Noun Phrase

COUNTER-

CYBER-

DOUBLING OF FINAL CONSONANTS

-EDLY

-EE

- A. General Principles
- B. Word Formation
- C. Stylistic Use of *-ee/-or* Correlatives

EN-; IN-

-ER

- A. And *-or*
- B. Suffix *-er* Misleadingly Suggesting Agent Noun in Law Words
- C. And *-re*

-ETH

EXTRA-

FOR-; FORE-

HYBRIDS

INTER-; INTRA-

-IZE; -ISE

- A. Verbs Ending in *-ize*
- B. Verbs Ending in *-ise*

JURIDICO-

LEGO-

LOAN TRANSLATIONS

MORPHOLOGICAL DEFORMITIES

MUTE E

NEEDLESS VARIANTS

NEGATIVES

- A. Colliding Negatives
- B. *Not un—*; *not in—*
- C. Negative Prefixes
- D. Periphrastic Negatives
- E. *No* and *not*

NON-

- A. As a Separable Prefix
- B. With Nouns and Adjectives
- C. With Verbs

-OR; -OUR

PER-

PLURALS

- A. Borrowed Words
- B. Mass (Noncount) Nouns
- C. Words Ending in -o
- D. Nouns Formed from Past-Participial Adjectives
- E. Compound Nouns
- F. Proper Names
- G. Parenthetical Plurals

PORTMANTEAU WORDS

POSSESSIVES

- A. Singular Possessives
- B. Plural Possessives
- C. Units of Time or Value and the Genitive Adjective
- D. Of Inanimate Things
- E. Incorrect Omission of Apostrophe
- F. Past-Participial Adjectives as Attributive Nouns

G. Phrasal Possessives

H. Followed by Relative Pronouns

I. Attributive Possessives

POST-

PRE- [+ noun]

PRONUNCIATION

- A. General Principles
- B. Commonly Mispronounced Lawyers' Words
- C. Latin Terms
- D. Law French
- E. BrE Idiosyncrasies
- F. Some Famous Judges' Names

RE- PAIRS

SEXISM (B), (C)

SUB-

VOWEL CLUSTERS

-WISE

Punctuation and Typography

CAPITALIZATION

- A. All Capitals
- B. Up-Style Headings
- C. Rules of Law
- D. Vessel Names
- E. Judges' Names
- F. Trademarks
- G. Party Names

DOCUMENT DESIGN

ENUMERATIONS

- A. *First(ly), second(ly), third(ly); one, two, three*
- B. Comma Before the Last Element

INITIALESE

ITALICS

- A. Generally
- B. Foreign Phrases
- C. Latin Phrases Beginning with *in*

NUMERALS

- A. General Guidance in Using
- B. Coupling Numerals with Words
- C. Not Beginning Sentences with Numerals
- D. Round Numbers
- E. Decades
- F. Judicial Votes

PARENTHESES

- A. Syntactic Effect
- B. Overuse of

PHRASAL ADJECTIVES

- A. General Rule
- B. Phrasal Adjectives of Foreign Origin
- C. Snake-like Compounds
- D. Suspension Hyphens
- E. Amount or Period of Time
- F. Proper Noun
- G. Phrasal Adjectives Following the Noun
- H. Phrases with Only One Element Joined

PUNCTUATION

- A. Generally
- B. The Apostrophe [']
- C. The Colon [:]
- D. The Comma [,]
- E. The Dash [—; -]
- F. The Exclamation Mark [!]
- G. The Hyphen [-]
- H. Parentheses [(...)]
- I. The Period or Full Stop [.]
- J. The Question Mark [?]
- K. Quotation Marks [" "]
- L. Semicolon [;]
- M. Square Brackets ([)]
- N. Virgule [/]

Pronunciation Guide

Pronunciations are shown within virgules. Syllables are separated by hyphens in pronunciations, and syllables spoken with the greatest stress are shown in boldface type.

ə	for all vowel sounds in turbid, among, journal, trust, monk	n	as in none, end, run
a	as in pact, democrat, drafting	ng	as in gang, rank, hung
ah	as in alms, father, calm	o	as in modern, confidential, conscience
ahr	as in bargain, argue, pardon	oh	as in over, parole, quote
air	as in care, lair, aware	ohr	as in lore, floor, bore
aw	as in law, cause, flaw	oi	as in moist, oyster, toy
ay	as in litigate, delay	oo	as in too, boon, flute
b	as in brief, bankruptcy, bench	oor	as in poor, boor, tour
ch	as in chambers, chance, chief	or	as in board, court
d	as in deposition, divorce, disclosure	ow	as in power, our, flower
e	as in evidence, appellate, rescue	p	as in primary, plenary, prison
ee	as in freedom, appeal, pleading	r	as in reporter, reprieve, rules
eer	as in peer, gear, weird	s	as in sue, swear, sentence
f	as in forensic, bailiff, iffy	sh	as in shoe, shoulder, push
g	as in guilt, flog, grieve	t	as in term, transact, testify
h	as in hang, holiday, hornbook	th	as in thief, theory, ethics
hw	as in which, while, whether	th	as in that, whether, either
i	as in civil, innocent, condition	uu	as in book, full, woman
i	as in trial, right, file	v	as in venire, relevant, device
j	as in juror, jail, justice	w	as in win, wordy, work
k	as in clerk, check, county	y	as in yes, year, yellow
l	as in law, liberty, legislate	z	as in zap, dizzy, busy
m	as in marshal, matrimony, methods	zh	as in pleasure, vision, leisure

A

a; an. This entry treats two common problems with the indefinite articles; for advice on using definite and indefinite articles generally, see **ARTICLES**.

A. Choosing Between *a* and *an*. The indefinite article *a* is used before words beginning with a consonant sound, including *-y-* and *-w-* sounds <a European country> <a one-year limitation>. The other form, *an*, is used before words beginning with a vowel sound <an LL.B. degree> <an SEC subpoena>. Since the sound rather than the letter controls, it's not unusual to find *a* before a vowel or *an* before a consonant. For those who have been wondering, the correct form is *a usufruct* in Louisiana law and *a hypothec* in Scots law.

The distinction between *a* and *an* was not solidified until the 19th century. Up to that time, *an* preceded most words beginning with a vowel, regardless of how the first syllable sounded. The U.S. Constitution reads: "The Congress shall have Power . . . To establish an uniform Rule of Naturalization . . ." U.S. Const. art. I, § 8. But that is no excuse for a modern writer: "Thus retaining *an unique* [read *a unique*] and personal quality style creates nevertheless an essential value in all written expression." Perlie P. Fallon, *The Relation Between Analysis and Style in American Legal Prose*, 28 Neb. L. Rev. 80, 80 (1949).

Writers on usage formerly disputed whether the correct article is *a* or *an* with *historian*, *historical*, and a few other words. The traditional rule is that if the *-h-* is sounded, *a* is the proper form. If we follow that rule in modern AmE, most people would say *a historian*. Even H.W. Fowler, in the England of 1926, advocated *a* before *historic(al)* and *humble*.

But the theory behind using *an* in such a context is that the *-h-* is very weak when the accent is on the second rather than the first syllable (giving rise, by analogy, to **an habitual offender*, **an humanitarian*, **an hallucinatory image*, and **an harassed schoolteacher*). So no authority countenances **an history*, though several older ones prefer **an historian* and **an historical*. Justice Benjamin Cardozo wrote: "What we hand down in our judgments is *an hypothesis*. It is no longer a divine command." *Law and Literature*, 52 Harv. L. Rev. 471, 478 (1939). Earlier, Justice Oliver Wendell Holmes had used the same phrase.

Today, however, **an hypothesis* and **an historical* are likely to strike readers and listeners as affectations in need of editing. Anyone who sounds the *-h-* in such words should avoid pretense and use *a*. Hence: *a hypothecation*, *a hereditament*, *a hallucinatory image*, *a harassed schoolteacher*. See **humble**.

B. In the Distributive Sense. *A*, the distributive sense <ten hours a day>, has traditionally been considered preferable to *per*, which originated in commercialese and **LEGALESE**. It is wrong to consider *a* informal or colloquial in this context. The natural

idiom is *sixty hours a week* and *ten dollars a pair*, though it has become common to encounter *sixty hours per week* and *ten dollars per pair*. E.g.:

- "The only high earners (forty dollars *per* [read *an*] hour) were occasional prostitutes." Joel F. Handler, *Women, Families, Work, and Poverty*, 6 UCLA Women's L.J. 375, 398 (1996).
- "Federal land management expenditures, measured in dollars *per* [read *an*] acre, have more than tripled since 1962." Jonathan H. Adler, *Free & Green*, 24 Harv. J.L. & Pub. Pol'y 653, 672 (2001).
- "The workers . . . earned, on average, five dollars *per* [read *an*] hour less than did workers at similar plants around the country." Gerald Torres, *Translation and Stories*, 115 Harv. L. Rev. 1362, 1368 (2002).

Nonetheless, the distributive *per* is at least minimally acceptable, except in the phrase *as per*. (See **as per**.) And in a few contexts, especially when used attributively, *per* is the only idiomatic word. E.g.: "There have also been attempts to reduce the *per-unit* cost through standardization of contracts, notably in the distribution of computer software through 'shrink-wrap licenses'." Mark A. Lemley, *The Economics of Improvement in Intellectual Property Law*, 75 Tex. L. Rev. 985, 1054 (1997).

A.B. See **able-bodied seaman**.

***abalienate.** See **alien**, vb.

abandon = (1) to give up property or some right with the intent of never claiming it again; or (2) in family law, to leave children or a spouse willfully and without an intent to return. In sense 1, a person's losing a billfold (say) and then giving up an unsuccessful search does not mean that the person *abandons* the lost billfold: to *abandon* it, the person would have to take some purposeful action such as throwing it away. For more on this word and its near-synonyms, see **relinquish**.

abandoned property. See **lost property**.

abandonee means, not "one who is abandoned," as the suffix *-ee* might suggest, but "one to whom property rights [in a thing] are relinquished." As in *advancee* (= one to whom money is advanced) and *patentee* (= one to whom a patent has been issued), the suffix *-ee* carries a dative sense. Leff wrote that "there are numerous circumstances in which abandonment of something by one person will have the practical or even legal effect of vesting that thing in a particular other person, who thus may usefully be called an *abandonee*." Arthur A. Leff, *The Leff Dictionary of Law*, 94 Yale L.J. 1855, 1856 (1985). See **-EE** (A).

abandum; *abandonum. *Abandum* is the correct spelling of this word, which means "anything

2 **abate**

prohibited or ordered to be cast away." **Abandonum* is a historical misspelling.

abate is a FORMAL WORD common in legal contexts, meaning (1) *vb.*, "to nullify; quash; demolish" <to abate a legal action>; (2) *vb.*, "to diminish" <to abate a debt>; or (3) *vb.*, "to remove physically" <to abate a nuisance>; or (4) *vb.*, "to come to an end" <all suits abate upon the death of the plaintiff>. There is, additionally, a technical legal sense that is rarely if ever used today: "to thrust oneself tortiously into real estate after the owner dies and before the legal heir enters" <abatement of freehold>.

Today *abate* is used most often in senses 2 and 3—e.g.:

- (Sense 2) "The rent should *abate* proportionally to the extent the loss of use of the dishwasher and stovetop deprive Boelter of her full normal use of the premises." *Boelter v. Tschantz*, 779 N.W.2d 467, 473–74 (Wis. Ct. App. 2009).
- (Sense 3) "A person who suffers from a nuisance may *abate* it, i.e. remove it, even without giving notice, if he can do so without going on to another's land." William Geldart, *Introduction to English Law* 144 (D.C.M. Yardley ed., 9th ed. 1984).

The adjective is *abatable*—e.g.:

- "Why should a defendant be 'rewarded' with a statute of limitations defense when she causes technically *abatable* harm that is so extensive that the cost of *abating* it exceeds the value of cleanup to plaintiff?" Ronald G. Aronovsky, *Back from the Margins*, 84 *Denv. U. L. Rev.* 395, 478 (2006). (In that example, it would be preferable to hyphenate *statute-of-limitations defense*, just so, to show the PHRASAL ADJECTIVE.)
- "The court then went on to attack the ostensibly logical premise that an *abatable* nuisance is, by definition, not permanent." Brandon Archer, Note, *Shoe Odors and Pollutants! Don't Bother Me!*, 59 *Baylor L. Rev.* 171, 182 (2007).

abator. So spelled.

ABBREVIATIONS. See ACRONYMS AND INITIALISMS & INITIALESE.

***abbuttals**. See **abutment**.

abdicate may mean (1) "to disown"; (2) "to discard"; or (3) "to renounce." In legal writing it usually takes on sense 3—e.g.:

- "We did not . . . imply that we had *abdicated* our equitable powers to prevent an unjust forfeiture." *Foundation Dev. Corp. v. Loehmann's, Inc.*, 788 P.2d 1189, 1195 (Ariz. 1990).
- "The majority, as I see it, has *abdicated* its responsibility to enforce federal constitutional norms." *Clemons v. Mississippi*, 494 U.S. 738, 774 (1990) (Blackmun, J., concurring in part & dissenting in part).

abduct; abduce. These words overlap in meaning, but are not interchangeable. Both may mean "to draw away (a limb, etc.) from its natural position" (*OED*). Yet the more common meaning of *abduct* is "to lead away by force." (For a fuller definition, see **abduction**.) Although the *OED* contains a notation that *abduce* is

archaic, W3 does not label it so; in any event, it is certainly rare.

abductee. See -EE (C).

***abductor**. See **abductor** (B).

abduction; kidnapping; *kidnaping; child-stealing. *Abduction* = the act of leading (someone) away by force or fraudulent persuasion. *Black's Law Dictionary* 4 (9th ed. 2009). It constitutes a statutory offense in many states; for example, *abduct* is statutorily defined in one state as "to restrain a person with intent to prevent his liberation by: (A) secreting or holding him in a place where he is not likely to be found; or (B) using or threatening to use deadly force." Tex. Pen. Code Ann. § 20.01 (Vernon 2003).

In England, *abduction* was traditionally given a narrower sense: "the offence of taking an unmarried girl under the age of 16 from the possession of her parents or guardian against their will." *Concise Dictionary of Law* 2 (2d ed. 1990). The OCL additionally defines *abduction* in English law as taking "a girl under 18 or a defective woman of any age from the possession of her parent or guardian for the purpose of unlawful sexual intercourse, or a girl under 21 with property or expectations of property from such possession to marry or have unlawful sexual intercourse, or . . . taking away and detaining any woman with the intention that she shall marry or have unlawful sexual intercourse with a person, by force or for the sake of her property or expectations of property."

In current AmE and BrE, *abduction* has virtually no connotations relating to the victim's sex. But in older British legal writing—and at common law—the victim is almost invariably a woman. Abduction of voters, a criminal offense in G.B., is one usage in which the abductee's sex is always irrelevant.

Kidnapping = the act or an instance of stealing, abducting, or carrying away a person by force or fraud, often with a demand for ransom (W3). *Kidnaping* (the -pp- spelling is preferred) is not restricted in application to children as victims, though the etymology suggests it. *Child-stealing* is the technical statutory term for the abduction of children. See **kidnapping** (B).

abductor. **A. Plural Form**. *Abductor* forms two plurals: -tors and -tores. The English plural, *abductors*, is preferable to the Latin plural, *abductores*.

B. And *abductor. This alternative spelling, which is etymologically inferior, is not as widespread as *abductor*.

***aberrance; *aberrancy**. See **aberration**.

aberrant, adj.; aberrational; aberrative. *Aberrant* = deviating from behavioral or social norms. *Aberrational* = of or relating to an aberration. *Aberrative* = tending toward aberration.

Some writers use *aberrational* when *aberrant*, the more usual word, might work better—e.g.: "Their

conduct was so *aberrational* [read *aberrant*], almost unbelievable, that the prosecution and judges found it difficult to sort out the implications of what had transpired." Jay Katz, *Human Sacrifice and Human Experimentation*, 22 *Yale J. Int'l L.* 401, 411 (1997).

aberration; *aberrance; *aberrancy; aberrant, *n.* *Aberration* denotes (1) a deviation or departure from what is normal or correct, or (2) a mental derangement. **Aberrance* and **aberrancy* are NEEDLESS VARIANTS.

Although the word *aberration* is not limited to persons, *aberrant* almost always is. As a noun, it means "a deviant; one deviating from established norms."

Aberration and its cognates are occasionally misspelled with *-bb-* and with one *-r-*—and these misspellings are what linguists sometimes call autological (that is, they are themselves aberrational). E.g.:

- "Santiago takes issue with canonical Dominican nationalist narratives that repudiate the period of Haitian occupation as an external *abberation* [read *aberration*]." Tayyab Mahmud, *City and Citizenship*, 52 *Clev. St. L. Rev.* 51, 53 (2005) (paraphrasing Charles R. Venator Santiago).
- "Spotted Bear contends that the 41-month sentence is unreasonable in light of his lack of criminal history [and] the *abberational* [read *aberrational*] nature of the crime." *U.S. v. Spotted Bear*, 207 *Fed. Appx.* 760, 760 (9th Cir. 2006).
- "Reported data that appeared to be *abberational* [read *aberrational*] (statistically or otherwise) were not included in the calculations." *U.S. v. Valencia*, 34 *Media L. Rep.* 2494, 2495 (S.D. Tex. 2006).

aberrational; aberrative. See **aberrant**.

abet. See **aid and abet**.

abetment (= the act of abetting) is sometimes erroneously made **abettance* or **abettal*, both NEEDLESS VARIANTS.

abettor. A. And abetter. In both BrE and AmE, *abettor* is the more usual spelling; the *OED* states that it "is the constant form of the word as a legal term." *Abettator* is the defunct LAW LATIN term from old English law. See *-ER (A) & perpetrator*. Cf. **bettor**.

B. And its Near-Synonyms: confederate; conspirator; accomplice; accessory. See **confederate (A)**.

C. Compared to perpetrator; inciter; criminal protector. See **perpetrator**.

abeyance has a general sense ("a state of suspension, temporary nonexistence, or inactivity" [*OED*]) and a technical legal sense ("expectation or contemplation of law; the position of waiting for or being without a

claimant or owner" [*OED*]). But even in legal contexts, the general lay sense is common—e.g.:

- "Texas would not consider his claim if this action were held in *abeyance*." *Carter v. Proctor*, 755 F.2d 1126, 1131 (5th Cir. 1985).
- "The statute implicitly recognizes that a child's life cannot be held in *abeyance* while the parent is unable to perform the actions necessary to assume parenting responsibilities." *In re C.L.G.*, 956 A.2d 999, 1005 (Pa. Super. Ct. 2008).

abhorrent, literally "shrinking with horror" (*OED*), in law frequently refers to things in the sense "so far removed from (another thing) as to be repugnant or inconsistent"—e.g.: "The potential for this self-censorship is *abhorrent* to the First Amendment." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 318 (1979) (Brennan, J., concurring in part & dissenting in part).

abide. A. General Senses. *Abide* = (1) to stay <the right of entering and abiding in any state in the Union>; (2) to tolerate, withstand <we won't abide that type of contemptuous behavior>; (3) to obey (construed with *by*) <abide by the law>; (4) to await <our decision must abide the outcome of the general election>; or (5) to perform or execute (in reference to orders or judgments) <as a trial judge, I must abide the judgment of the circuit court>. The last is the strictly legal meaning—e.g.: "Since we do not doubt that the court will promptly proceed to certify . . . and will *abide* our decision before proceeding to trial, we decline to issue a peremptory order at this time." *In re McClelland Eng'rs, Inc.*, 742 F.2d 837, 838 (5th Cir. 1984).

Abide also commonly takes on the sense "to await," as here: "The judgment should be reversed and a new trial granted, with costs to *abide* the event." *Wank v. Ambrosino*, 121 N.E.2d 246, 249 (N.Y. 1954).

Abide by is a PHRASAL VERB meaning "to acquiesce in or conform to"—e.g.:

- "The fact that defense attorneys are, as Bill Stuntz has noted, 'repeat players with whom the government must deal often,' certainly gives the government an added reason to *abide by* its plea agreements." Daniel C. Richman, *Cooperating Clients*, 56 *Ohio St. L.J.* 69, 93 (1995).
- "Absent evidence to the contrary, we must presume that juries understand and *abide by* a district court's limiting instructions." *U.S. v. Downing*, 297 F.3d 52, 59 (2d Cir. 2002).
- "The Court further added that jurors' emotional involvement and seriousness in considering the gravity of the situation did not mean that the jurors would not follow the court's instructions or *abide by* their oaths." Brooke A. Thompson, *Criminal Law—The Supreme Court Expands the Witt Principles to Exclude a Juror Who Would Follow the Law*, 30 *UALR L. Rev.* 845, 856–57 (2008).

4 ability

In this sense, omitting the *by* is awkward at best, unidiomatic at worst—e.g.: “A defendant must *abide* [insert *by*] the rules of evidence and procedure.” *U.S. v. Bautista*, 145 F.3d 1140, 1151–52 (10th Cir. 1998).

Abiding = lasting, enduring. E.g.:

- “We are left with the *abiding* belief that Hagy’s appeal against the city and county was brought frivolously, unreasonably, and without legal or factual foundation.” *Hagy v. State*, 51 P.3d 432, 439 (Idaho Ct. App. 2002).
- “The voter’s refusal to disaffiliate from the major party may reflect her *abiding* commitment to that party.” *Clingman v. Beaver*, 544 U.S. 581, 601 (2005) (per Thomas, J.).

B. Past-Tense and Past-Participial Forms. With the meanings most probably to be found in legal texts (“await” and “execute”), *abided* is the preferred past tense and past participle. In sense 1 (“to stay, dwell”), *abode* is the preferred past tense, and either *abode* or *abided* as the past participle. In other senses, *abided* is the preferred past tense and past participle.

ability; capacity. Whereas *ability* is qualitative, *capacity* is quantitative. *Ability* refers to a person’s power of body or mind <a lawyer of great ability>; *capacity*, meaning literally “roomy, spacious,” refers figuratively to a person’s physical or mental power to receive <her memory has an extraordinary capacity for details>.

For the distinction between *capacity* and *capability*, see *capacity*.

ab initio; in initio. *Ab initio* means “from the beginning” <an act beyond one’s legal competence is void *ab initio*>; *in initio* means, as its prefix suggests, “in the beginning.” Neither LATINISM seems quite justified in ordinary contexts, although *ab initio*, which in legal writing is used commonly in the phrase void *ab initio*, is common enough not to be particularly objectionable—e.g.:

- “Diversification is generally a response to an unavoidable risk, however, and here the risk can be eliminated *ab initio*.” Thomas H. Jackson, *Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors’ Bargain*, 91 Yale L.J. 857, 863 (1982).
- “This ignores, *ab initio*, another constant and powerful necessity in human existence: our relationship to one another—the importance to human dignity of community, of collective values, and of ‘group rights.’” Peter G. Danchin, *Suspect Symbols*, 33 Yale J. Int’l L. 1, 46 (2008).

Leff noted that the phrase is sometimes used in the sense “thoroughly,” roughly equivalent to “from first to last.” Arthur A. Leff, *The Leff Dictionary of Law*, 94 Yale L.J. 1855, 1863 (1985). E.g.: “If the defendant is clearly guilty . . . then he will just as clearly be convicted again—with the added benefit that states irritated at holding new trials will have a new (and apparently sorely needed) incentive to comply with the Vienna Convention *ab initio* in future cases.” Note, *Too Sovereign but Not Sovereign Enough*, 116 Harv. L. Rev. 2654, 2675–76 (2003).

abjudge; adjudge. These words are antithetical in one sense. *Abjudge* is a rare term (not in most abridged dictionaries) meaning “to take away by judicial

decision” (OED). *Adjudge*, in contrast, means “to award, grant, or impose judicially” (*id.*). One *abjudges from* and *adjudges to*. For the latter term’s other senses, see *adjudge*.

abjudicate is synonymous with *abjudge*. See *abjudge*.

abjure. A. Near-Synonyms Distinguished: renounce; forswear; swear off; recant; retract. These verbs share the sense “to disavow a practice, act, statement, or belief that one previously espoused.” *Abjure* and *renounce*—the closest synonyms—both connote a solemn and rather public repudiation of an earlier vow, habit, or tenet <abjure using hardball tactics> <the defendant renounced his gang affiliation>. *Forswear*, like its more colloquial sibling *swear off*, suggests a negative oath <it’s a sound principle of legal drafting to forswear using the word *shall*>. *Recant* and *retract* emphasize taking back what one has previously said—*recant* implying more of an admission of error, and perhaps a tone of contrition, than *retract* <once the racist implications of his statement were widely recognized, he recanted> <she retracted her earlier statements but refused further comment>.

B. Distinguished from adjure. *Abjure* may mean either (1) “to renounce” <Germany abjured the use of force> or (2) “to avoid” <her evaluation abjured excessive praise>. *Adjure* means “to charge or entreat solemnly; to urge earnestly” <Reagan adjured the Soviets to join him in this noble goal>.

C. Cognate Forms for abjure and adjure. The noun forms are *abjuration* (or *abjurement*—now defunct) and *adjuration*. The adjectival forms end in *-tory*. The agent nouns are *abjurer* and *adjurer*.

abjurer; *abjuror. The first spelling is preferred. See *-ER (A)*.

able. For the meaning of this word in the phrase *ready, willing, and able*, see *ready, willing, and able*.

able-bodied seaman; able seaman. The former, though much more recent, seems to be the usual term in admiralty law, meaning “a merchant seaman certified for all seaman’s duties” (AHD). It is abbreviated *A.B.* The phrase *able seaman* is used in the U.S. Shipping Code, 46 U.S.C. § 7307 (2006). It also appears in Herman Melville’s *Billy Budd* (1891). To categorize either as a NEEDLESS VARIANT of the other would be difficult and footless. See *seaman & mariner*.

aboard. Usually restricted to ships in BrE, this word is used broadly in AmE—e.g.: “Once *aboard* the bus Agent Woodruff announced . . . that he was performing an immigration inspection.” *U.S. v. Portillo-Aguirre*, 311 F.3d 647, 650 (5th Cir. 2002).

abode, as past tense of *abide*. See *abide (B)*.

abode, place of. This phrase is a pretentious way of referring to someone’s home or house. It’s also redundant, since *abode* is a place. See *REDUNDANCY*.

***abolishment; *admonishment.** These nouns are inferior to—and much rarer than—the organically derived *abolition* and *admonition*; no longer is there any difference in meaning between the *-ment* and the *-tion* forms. Yet the *-ment* forms, though NEEDLESS VARIANTS, waywardly persist in much legal writing—e.g.:

- "Later cases have heeded this *admonishment* [read *admonition*] and courts have been reluctant to disqualify judges under the due process clause for apparent conflicts of interest." David Scott Coward, Note, *The Adjudicatory Power of the FSLIC over Claims Involving Savings and Loans in FSLIC Receivership*, 88 Colum. L. Rev. 1325, 1358 (1988).
- "With a strong *admonishment* [read *admonition*], the court responded that if a tenure committee was acting in good faith, 'disclosure should not adversely affect the decision-making process.'" James H. Brooks, *Confidentiality of Tenure Review and Discovery of Peer Review Materials*, 1988 BYU L. Rev. 705, 715.
- "Accompanying the then-emergent sentiment favoring the *abolishment* [read *abolition*] of capital punishment came a renewed skepticism regarding conversions accomplished in the shadows of the gallows." Robert N. Strassfeld, *Robert McNamara and the Art and Law of Confession*, 47 Duke L.J. 491, 508 (1997).
- "Epstein then calls not only for the *abolishment* [read *abolition*] of these 'parasitic' rules but also for the enactment of a new rule that will explicitly permit refusal to contract with a person out of discriminatory tastes." Hila Keren, "We Insist! Freedom Now," 11 Mich. J. Race & L. 133, 157 (2005).

abort = (1) (of a pregnancy, project, or mission) to end prematurely; (2) (of a fetus) to cause to be expelled before full development; or (3) (of a pregnant female) to cause to have an abortion. Senses 1 and 2 are more usual than sense 3, which, as an example of HYPALLAGE, strikes many readers as odd. E.g.: "In a case of 1949, the trial judge sentenced a husband who had tried to *abort* his wife and killed her to five years' penal servitude." Glanville Williams, *The Sanctity of Life and the Criminal Law* 155 (1957).

abortee. Logically, one might expect this word to refer to the fetus (one who is aborted)—but by convention, and based on sense 3 of *abort*, the word *abortee* refers to the woman whose miscarriage has been produced. See Rollin M. Perkins, *Criminal Law* 100 (1957). Today the word is little used even in legal contexts, perhaps because it seems callous. See -EE.

***aborticide.** See **abortion**.

abortifacient; contraceptive. An *abortifacient* is anything intended to produce an abortion. *Contraception* is anything designed to prevent conception. *Abortifacient* should not be used to include *contraceptive*.

abortion; *aborticide; feticide. The word *abortion*, strictly speaking, means no more than "the expulsion of a nonviable fetus" (W3). In this sense it is

synonymous with *miscarriage*. But today it more commonly applies specifically to an intentionally induced miscarriage—not one that results naturally or accidentally. Though *abortion* was once used interchangeably with *criminal abortion*, that is no longer so with the advent of *legalized abortion*. In the criminal context, then, it is necessary to use the full phrase *criminal abortion* or *crime of abortion*.

***Aborticide** = the act of destroying a live fetus. It appears to be a NEEDLESS VARIANT of *abortion*—and a tendentious one. In any event, though, **aborticide* is an ill-formed equivalent of *feticide*. If, as the dictionaries suggest, it is formed on the verb *abort*, then ironically it is what H.W. Fowler called an "abortion," but here is termed a MORPHOLOGICAL DEFORMITY. If it is formed on the noun *abortus* (= an aborted fetus), then it is illogical, for an abortionist does not—except in the grossest imaginable circumstances—"kill" (*-cide*) a fetus that has already been aborted. **Aborticide* is to be avoided in favor of the superior alternative, *feticide* (BrE *feticide*).

The term *feticide* is often used to denote the killing of a fetus, especially by an assault and battery against the mother.

The current euphemism for *abortion*—a highly charged term since the Supreme Court handed down *Roe v. Wade*, 410 U.S. 113 (1973)—is *pregnancy termination*. See EUPHEMISMS.

ABORTIONS, LINGUISTIC. See MORPHOLOGICAL DEFORMITIES.

abortive; aborted. *Abortive* means "unsuccessful because cut short." It takes on the figurative sense of *aborted* (= cut short), as an *abortive trial*, i.e., one cut short before the verdict by, e.g., settlement of the dispute. (Note that *-ive*, an active suffix, here has a passive sense.) E.g.:

- "Shortly after Oxford's wedding to Anne, he and his guardian quarreled over the latter's role in the prosecution of Oxford's relative the Duke of Norfolk; moreover, Oxford was involved in an *abortive* scheme to rescue the convicted duke from the tower." Peter A. Jaszi, *Brief of Appellant Edward De Vere, Seventeenth Earl of Oxford*, 37 Am. U. L. Rev. 647, 707 (1987).
- "These statutes have been used against government employees who leak classified information to the media, and recently in an *abortive* effort to prosecute private lobbyists who received such leaks." Note, *Media Incentives and National Security Secrets*, 122 Harv. L. Rev. 2228, 2231 (2009).

Abortive is archaic in reference to abortions of fetuses, except in the sense "causing an abortion"; and in that sense, it is a NEEDLESS VARIANT of *abortifacient*. See **abortifacient**.

abound. See **many** (B).

about; approximately. *Approximately* is a FORMAL WORD; *about* is the ordinary, perfectly good

6 above

equivalent. *About* should not be used, as it often is, with other terms of approximation such as *estimate* or *guess*, because it means “roughly” or “approximately.” Hence “roughly about \$10,000” is redundant.

above. A. For above-mentioned. *Above* is an acceptable ellipsis for *above-mentioned*, and it is much less inelegant—e.g.: “As the *above* arguments indicate, the cornerstone premises in Lessig’s overall set of arguments—as well as the overall rhetorical posture of the book—are that amateur-remix-cultural activity is, under current law, criminal activity.” Steven A. Hetcher, *Using Social Norms to Regulate Fan Fiction and Remix Culture*, 157 U. Pa. L. Rev. 1869, 1899 (2009).

It was long thought that *above* could not properly act as an adjective. But the word has long been so used in legal writing of the highest quality—e.g.:

- “If the *above* sections were the only law bearing on the matter, [we assume] that they created a civil liability to make reparation to anyone whose rights were infringed.” *Slater v. Mexican Nat’l R.R.*, 194 U.S. 120, 126 (1904) (per Holmes, J.).
- “Yet in the middle of the *above* passage from Lord Lindley’s opinion there is a sudden and question-begging shift in the use of terms.” Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale L.J. 16, 37 (1913).

The OED records this use from 1873 and states: “By ellipsis of a pple. as *said*, *written*, *mentioned*, *above* stands attributively, as ‘the *above* explanation.’”

Although some critics have suggested that *above* in this sense should refer only to something mentioned previously on the same page, this restriction is unduly narrow. Still, it’s often better to make the reference exact by giving a page or paragraph number, rather than the vague reference made possible by *above*. But idiom will not allow *above* to modify all nouns: **above vehicle* is unidiomatic for *vehicle mentioned above*. Better yet, simply write *the vehicle*, if readers will know from the context which one you’re talking about.

A less-than-common and NEEDLESS VARIANT of *above-mentioned* is **before-mentioned*. See **above-mentioned**, **afore** & **aforesaid**.

B. As an Attributive Noun. This casualism, which has appeared even in Supreme Court opinions, derives from the uses discussed above in (A). E.g.: “Clearly, the *above* is not intended to be an exclusive list of the issues that a Florida attorney may encounter in drafting a trust.” Nancy S. Freeman, *Trust Me: Practical Advice for Drafting Florida Trusts*, 83 Fla. B.J. 20, 28 (May 2009).

above-captioned. See **above-mentioned**.

***above-made** is an unnecessary compound, and an ugly one—e.g.:

- “Indeed, empirical data tend to support the *above-made* [read *above*] prediction.” Jens C. Dammann, *Freedom of Choice in European Corporate Law*, 29 Yale J. Int’l L. 477, 511 (2004).

- “Without a doubt, this is a criticism equally applying to the *above-made* [read *above*] defense proposal.” Theresa A. Gabaldon, *Milberg Weiss: Of Studied Indifference and Dying of Shame*, 2 J. Bus. & Tech. L. 207, 241 (2007).

above-mentioned; above-quoted; above-styled; above-captioned. All such compounds should be hyphenated; one sees the tendency nowadays to spell *above-quoted* and *above-mentioned* as single words. Actually, it is best to avoid these compounds altogether by using more specific references; that is, instead of writing the *above-mentioned* court, one should name the court (or, if it has just been named, write *the court*, *that court*, or some similar identifying phrase). Then again, any of these options may simply be a sign of OVERPARTICULARIZATION, the cure for which would be simply to omit the reference altogether. See **above (A)**, **aforesaid** & **captioned**.

above-referenced. See **reference**, vb.

above-stated. See **above (A)** & **aforesaid**.

above-styled. See **above-mentioned**.

abridgable; abridgable. *Abridgable* is the preferred spelling in AmE; *abridgeable* in BrE. See MUTE E.

abridge; violate. Constitutional and other rights are often said to be *abridged* or *violated*. But a connotative distinction is possible. *Violate* is the stronger word: when rights are *abridged*, they are merely diminished; when rights are *violated*, they are flouted outright. Following are examples of the milder term:

- “The provision of a new and sanitary building does not [ensure] that it will be operated in a constitutional way . . . and the first amendment can be *abridged* in the cleanest quarters.” *Jones v. Diamond*, 636 F.2d 1364, 1375 (5th Cir. 1981).
- “Rather, Coleman asserts, the court first considered the merits of his federal claims and applied the procedural bar only after determining that doing so would not *abridge* one of Coleman’s constitutional rights.” *Coleman v. Thompson*, 501 U.S. 722, 740–41 (1991) (per O’Connor, J.).
- “Both the trial court and the Court of Appeal held that the potential delay that Jordan’s substitution might engender was sufficient to warrant *abridging* Bradley’s Sixth Amendment rights.” *Bradley v. Henry*, 510 F.3d 1093, 1102 (9th Cir. 2007) (Noonan, J., concurring).

See **adjure** & **violate**.

abridgeable. See **abridgable**.

abridgment; abridgement. Although BrE usually includes the medial *-e-*, AmE omits it. Armed with this knowledge, an American writer should not defend his “misspelling” on grounds of preferring the BrE form. Cf. **acknowledgment** & **judgment**.

abrogate. See **nullify**.

abscond can be both transitive (“to hide away, conceal [something or someone]”) and intransitive (“to depart secretly or suddenly; to hide oneself”). The latter is more common today—e.g.: “He sold the

is not homicide if the death occurs more than a *year and a day* after the act was committed.

Why a year *and a day*—not just a year? Because several centuries ago, English lawyers computed times by including both the first and the last day, so that a year from January 1, 1500, was considered to be December 31, 1500. Hence the day was tacked on to make up a full year. Today, of course, times are generally computed by excluding the first day.

Year Book; Year-Book; year-book; yearbook. Each of these forms except for the last has appeared in legal history books that discuss the unofficial English law reports dating from 1282 to 1537. The predominant form is *Year Book*, although the leading modern legal historian, J.H. Baker, refers to the *year-books*. See J.H. Baker, *An Introduction to English Legal History* 204–07 (3d ed. 1990). If that usage suggests a trend, then *yearbook* cannot be far away, since the manifest destiny of the hyphen is to disappear.

year of our Lord. See A.D.

yellow-dog contract (= an employment contract forbidding membership in a labor union) has become a part of American legal JARGON. The term dates from 1920. E.g.: "The rapidly increasing use of the so-called 'yellow-dog contracts' has grown into a serious threat to the very existence of labor unions. In view of the inequitable conditions that surround the formation of such agreements and the unfair division of their obligation, to appeal to equity for their enforcement is to disregard the fundamentally ethical foundations of courts of chancery." Felix Frankfurter & Nathan Greene, *Labor Injunctions and Federal Legislation*, 42 Harv. L. Rev. 766, 779 (1929).

Today such contracts are generally illegal, having been outlawed by the Wagner Act of 1935: "A chocolate manufacturing company proposed an unlawful 'yellow-dog contract' when its president asked a job applicant if she would sign a statement pledging not to join a union or be affiliated in any way with unions." *Today's Summary and Analysis*, Daily Labor Rep., 3 Apr. 1991, at A-A.

yet. See *as yet & although . . . yet.

you, the second-person pronoun, is invaluable in drafting consumer contracts that are meant to be generally intelligible. Consider the difference between the following versions of a lease provision:

Resident shall promptly reimburse owner for loss, damage, or cost of repairs or service caused in the apartment or community by improper use or negligence of resident or resident's guests or occupants.

vs.

You must promptly reimburse us for loss, damage, or cost of repairs or service caused anywhere in the apartment community by your or any guest's or occupant's improper use.

Of course, the drafter must carefully define *you* and *us*, but doing so is usually a straightforward matter. See SUPERSTITIONS (K).

young person. See **child**.

your; you're. *Your* is possessive <take your time> and *you're* is the contraction (= *you are*) <you're welcome>.

your defendant. See **your petitioner**.

your Honor. This is the accepted American way of addressing a judge in person, especially in oral argument. Of British practice, an eminent barrister writes: "Judges prefer to be known as *my lord* or *your Honour* or *your Worship* (the last of these being an anachronistic but revealing indication of the vanity that can afflict adjudicators in minor courts and tribunals)." David Pritchard, *Judges* 157 (1987).

your ladyship; your lordship. See **my lord**.

your petitioner; your defendant; your plaintiff; etc. Phrases such as these are quaint ARCHAISMS to be avoided. E.g.:

- "Your relator [read *The relator*], George W. Farmer, makes known that he is a resident and citizen of the state of Nebraska." *State v. Grand Island & W.C.R. Co.*, 43 N.W. 419, 419 (Neb. 1889) (quoting a petition).
- "Your petitioner [read *The petitioner*] has reliable information and therefore believes that the defendant is intending to leave the jurisdiction." *National Auto. & Cas. Ins. Co. v. Queck*, 405 P.2d 905, 907 (Ariz. Ct. App. 1965) (quoting a petition).

yours. See FORMS OF ADDRESS (H).

Z

zetetic; zetetic. This adjective, meaning "proceeding by inquiry or investigation," is preferably spelled *zetetic* (OED & W3), though some law dictionaries anomalously spell it *zetetic*. The Center for Scientific Anomalies at Eastern Michigan University publishes a journal called *The Zetetic Scholar*, devoted to the skeptical analysis of paranormal claims.

ZEUGMA AND SYLLEPSIS. These are two closely related figures of speech. *Zeugma* is the better-known name, whereas *syllipsis* is the more common phenomenon. Our discussion might therefore usefully begin with the latter.

A. Syllepsis. Literally "a taking together, comprehension," *syllipsis* denotes the figure of speech in which

a word—usually a verb or preposition—is applied to two other words or phrases in different senses (often literally in one sense and figuratively in the other). Unlike zeugma, *syllipsis* is not a grammatical error. It is usually both purposeful and humorous—e.g.:

- "Noah Swayne of Ohio . . . was a corporation lawyer, as successful as he was callously unethical, who was not to *change his spots or his spottiness* throughout his long judicial career." Fred Rodell, *Nine Men* 137 (1955).
- "In January Dan Breen *took the oath and his seat* in the Dáil." J. Bowyer Bell, *The Secret Army: The IRA* 58 (1997). (*Take* has two objects, *oath* and *seat*, but applies to them in different senses.)

B. Zeugma. Literally "a yoking or bonding," *zeugma* is a grammatical error. It occurs when a single word is applied to two or more words or phrases when it properly applies to only one of them. One species of *zeugma* (the nontransferable auxiliary) plagues legal writing because lawyers so frequently try to express themselves alternatively—e.g.:

- "A grand jury appearance by a defendant *may—as it often has—lead to* [read *may lead, as it often has led, to*] his complete exoneration." *People v. Goldsborough*, 568 N.Y.S.2d 999, 1001 (Sup. Ct. 1991).
- "On a motion to dismiss . . . , the court does not assess the sufficiency of the evidence that a plaintiff *has or will put forth* to support her claim." *Prince v. Madison Square Garden*, 427 F.Supp.2d 372, 378 (S.D.N.Y. 2006). (*Put* is made to be both a past-tense and a future-tense verb.)
- "Wilkes argues that he can be safely incarcerated and that his life *has and will continue to show* [read *has shown and will continue to show*] 'redeeming qualities,' such as helping others." *Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009).

- "At least two bills and two joint resolutions *have or will be submitted* [read *have been, or will be, submitted*] for consideration." J.D. Stetson, *State Sovereignty, Drunken Driving Will Be Targeted*, *Gillette News Record*, 16 Jan. 2010, at B8.

Cf. JANUS-FACED TERMS.

zonal; zonary. The adjective corresponding to *zone* is *zonal* in all but medical (obstetric) senses.

zonate; *zonated. The term meaning "arranged in zones" is best made *zonate* rather than **zonated*.

zygnomic; mesonomic. These terms are the inventions of Albert Kocourek, the legal theorist and creative neologist. A *zygnomic* jural relation involves an act whose evolution directly abridges the freedom of the *servus* (= the legal person who bears a ligation (i.e., the generic term for the servient side of a jural relation—it includes duty, disability, liability, and inability)) in the enjoyment of a legal advantage. A *mesonomic* jural relation does not, legally speaking, directly affect a human being's natural physical freedom—yet it has legal consequences in its evolution. See Albert Kocourek, *Jural Relations* 69 (1927). Julius Stone summed up these NEOLOGISMS well: "Kocourek's *mesonomic-zygnomic* distinction is no doubt a valuable one, even if we shrink back at the neologisms." Julius Stone, *Legal System and Lawyers' Reasonings* 148 (1964). And who does not shrink back? It is all pure JARGON and GOBBLEDYGOOK. Still, for that very reason, it provides what some must consider a fitting conclusion to a law dictionary.