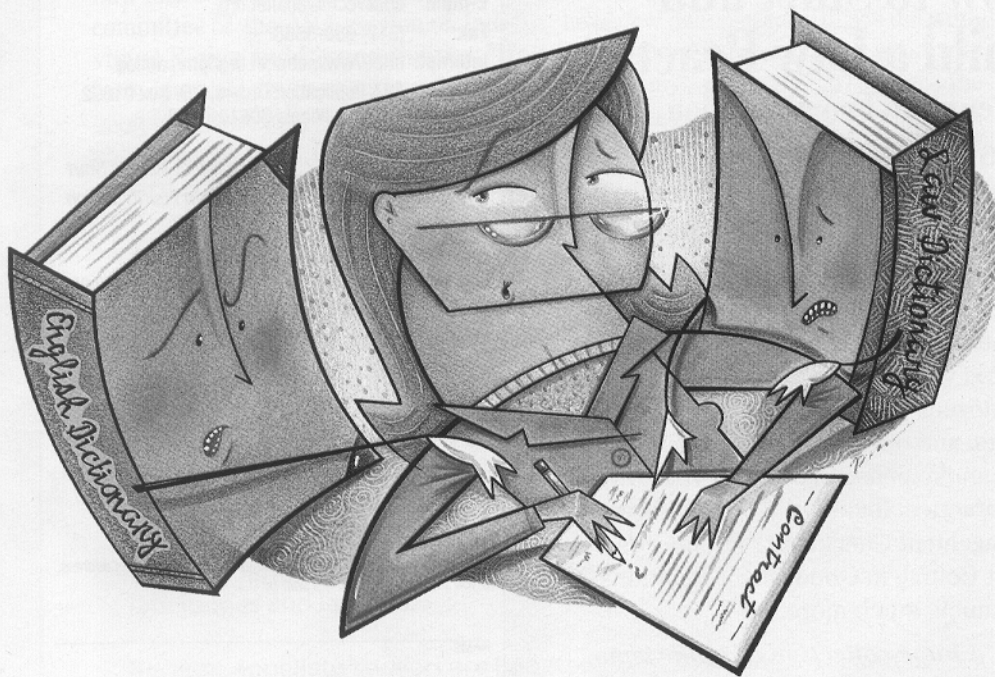


Word definitions can vary greatly between the legal and the nonlegal

ONE OF THE TRICKIEST things in law school is adjusting your vocabulary. On the one hand, you're bombarded with lots of strange new words and phrases. That's not so difficult to manage: when you first encounter *res judicata* or *ancillary proceeding*, you just look it up in a good law dictionary. On the other hand, you also encounter ordinary English words with strange new meanings. These are particularly challenging.



Sometimes you'll know that a word is being used oddly. When you first read that a contract isn't supported by "consideration," you sense that something unusual is going on. Your parents may have asked you to show consideration for others. Your teachers may have referred to the book "now under consideration." But now, in law, you have to wonder what *consideration* might mean. It isn't kindness, and it isn't examination.

In fact, as defined in the seventh edition of *Black's Law Dictionary*, the word *consideration* means "something of value (such as an act, a forbearance, or a

return promise) received by a promisor from a promisee." Oh, dear, you may think, that's something you're not really familiar with. Maybe you've never seen *forbearance* before. So you turn to that entry: "the act of refraining from enforcing a right, obligation, or debt."

Maybe you now feel comforted that you're starting to learn what *consideration* means in law. Maybe the idea is still foggy to you. You may not be accustomed to thinking about so many types of human behavior (acts, refraining from acts, and return promises) under one abstract heading. But there's no more concrete way of defining an abstract word like *consideration*. Lawyers, you realize, think about the world a little differently from nonlawyers.

As you read on in the casebook, you see that the contract you're reading about has been "avoided." You may think that someone has "gotten around" or "escaped from" contractual obligations. And you might be on the right track, but you'd be missing the legal meaning. *Avoid*, in this context, means "to make void" or "nullify." It has nothing to do with the ordinary meaning of the word.

Some new meanings you'll pick up gradually and naturally by osmosis. But it's dangerous to rely on your ability to intuit meaning. The fact is that you'll need to refer to a good dictionary.

Below I've collected a few of the common English words that law students must relearn to succeed in their studies. Once you understand them, you'll be well on your way to reading law with a greater degree of comprehension.

appropriation *Common meaning:* money allocated for a certain purpose, especially by a legislature. *In law:* the taking away of private property or the tort of making commercial use of another person's name or likeness.

assault *Common meaning:* a physical attack. *In law:* the act of putting someone in reasonable fear of a physical attack or offensive touching.

assignment *Common meaning:* a task or appointment to a position. *In law:*

the transfer of one person's legal interest in property to another person <assignment of account>, or an appellant's charge that the trial court made a mistake <assignment of error>.

attachment *Common meaning:* one thing fastened to another thing, or affection for another person. *In law:* seizure of property to secure or satisfy a money judgment <attachment of wages>.

bargain *Common meaning:* something bought at a discounted price; a good buy. *In law:* an agreement between two people for the exchange of promises or performances (not necessarily in a legal contract) <benefit of the bargain>.

bona fide *Common meaning:* genuine; real. *In law:* done in good faith <bona fide effort at mediation>.

constructive *Common meaning:* positive; promoting further development. *In law:* irrebuttably established by operation of law <constructive knowledge>; established by a legal fiction in order to craft a remedy <constructive trust>.

contribution *Common meaning:* a donation. *In law:* the right of a tortfeasor who has paid more than a proportionate share of a judgment to recover the excess from other defendants.

conversion *Common meaning:* the changing from one form into another, or adopting a new religion. *In law:* the act of treating the property of another as one's own, as by possessing it or disposing of it.

depose *Common meaning:* to dethrone a monarch. *In law:* to take someone's testimony in a sworn deposition; to testify.

determine *Common meaning:* to decide something. *In law:* to end (terminate) something, usually an interest in property <cease and determine>.

devise *Common meaning:* to think up a scheme for doing something. *In law:* to pass on property to someone through a will. As a noun, *devise* also may refer to the property passed on by will, the particular provision in the will, or the will itself.

disability *Common meaning:* a debilitating physical condition. *In law:* a legal incapacity, such as being a minor and therefore unable to contract.

distress *Common meaning:* anguish. *In law:* the seizure of property to secure a debt; the property seized; a court order

for such a seizure <distress sale>.

foreign *Common meaning:* of another country. *In law:* (in addition to the common meaning) of another jurisdiction, especially another state <a judgment from a foreign court>.

garnish *Common meaning:* something added to a plate of food to add color, ornamentation, or flavor. *In law:* to attach property being held by a third person, such as wages held by an employer, in order to pay the owner's debt, such as child support.

impeachment *Common meaning:* a formal charge against a government official, especially a president or judge (but not, as many believe, the removal from office). *In law:* a challenge to the truthful-

In law, consideration isn't kindness.

ness of a witness or the reliability of documentary evidence.

impertinent *Common meaning:* rude. *In law:* irrelevant, especially in reference to matter contained in a pleading that does not pertain to any issue material to the cause of action.

infant *Common meaning:* a baby. *In law:* as easily, a strapping 17-year-old fullback; a minor (under 18 in most jurisdictions).

information *Common meaning:* knowledge. *In law:* a criminal charging instrument filed by a prosecutor without the need of a grand jury indictment, often used for misdemeanors but also used by many states for charging felonies.

permissive *Common meaning:* tolerant of behavior that others might object to, especially said of parents. *In law:* permissible, especially of counterclaims that may be joined in a suit between two parties, or may be brought in a later action as the parties see fit.

prefer *Common meaning:* to favor one thing over another. *In law:* to bring (a charge) against a criminal defendant, or to present a case to a grand jury.

preference *Common meaning:* the tendency to favor one thing over another. *In law:* a transfer of money or property by an insolvent person or company to one creditor before filing for bankruptcy, to the detriment of other creditors.


prejudice *Common meaning:* to evoke a bias, especially one based on emotions. *In law:* to put one at a legal disadvantage; to impair one's legal rights or cause of action <disallowing this evidence will unfairly prejudice our case>.

prescription *Common meaning:* an instructed course of action, especially a regime of medicine. *In law:* a rule or set of rules; also, the gain or loss of title by long-term open and notorious possession or by prolonged nonuse <easement by prescription>.

recital *Common meaning:* an artistic performance, especially by music or dance students; repetition of poetry or prose, especially to an audience. *In law:* a statement in a contract or deed, identifying the parties and detailing facts surrounding the transaction (once indicated by the introductory words "whereas" and "therefore," although that usage is fading).

service *Common meaning:* assistance; rite; repair. *In law:* the formal delivery to someone of legal papers such as a pleading, a summons, or a writ <service of process>.

set aside *Common meaning:* to put to one side; to earmark for some purpose. *In law:* to overturn a conviction or to vacate a judgment or court order <the appellate court set aside the money judgment and remanded the case for relitigation on that issue>.

style *Common meaning:* fashion, flair, manner, rhetoric. *In law:* a case name <the complete style of the case is *Vanna White v. Samsung Electronics America, Inc.*>. 

Bryan A. Garner, president of LawProse Inc., is the author most recently of *Legal Writing in Plain English* (2001). He also is editor in chief of all the current editions of *Black's Law Dictionary*.