



## Miscue Words

As a legal writer, you generally want your reader’s experience to be smooth and seamless. When you communicate your narrative and your arguments, you want to remain as invisible as possible; ideally, you will anticipate and answer your reader’s questions before they arise, and your reader will arrive at your conclusions as if on their own. You do not want awkward or confusing phrasing to jar the reader into hearing you rustling behind the curtain.

Certain miscue words can create momentary insecurity and disrupt your reader’s smooth ride. Even if your reader discerns your meaning in a moment or two, too many small moments of doubt can erode your reader’s overall confidence in your writing.

What do I mean by miscue words? Here are a few examples:

### Due to

Writers occasionally use the words *due to* as a substitute for *because*. This creates problems for two reasons. First, in legal writing, sometimes we analyze issues relating to debt or other monies due. In those instances, the word *due* primes our readers to expect a different discussion. If, instead, we simply mean *because of*, our readers will ultimately puzzle out the meaning, but there will be a moment of confusion.

*Due to* also tends to signal a less dynamic sentence. Consider:

- Due to the defendant’s conduct, Ms. Gestautas lost \$4 million in profits.
- Defendant’s conduct deprived Ms. Gestautas of \$4 million in profits.

Although the first example does the job, the second is more concise,<sup>1</sup> it ties the consequences more directly to the defendant’s actions, and the use of the word *deprive* casts the defendant’s conduct in a more damaging light.

### Since

*Because* is a perfectly good word. Use it. Too often, people use *since* when they really mean *because*, and this risks creating the momentary apprehension that you intend the primary meaning of *since*: an intervening period between one event and another. For example:

- Susie was late to work since her dog Petey chewed her smart-phone last week.
- Since the running group had agreed to meet at Swan and Sunrise, Marti has been waiting in the Starbucks parking lot.

You can see the potential confusion. How many times has Susie been late to work? Just how long has Marti been waiting in that parking lot? Better to use the word *because* if you mean *because*.

### As

In the same way, some writers use *as* to mean *because*. Again, this risks a momentary miscue: Do you mean that two things are happening simultaneously? Or do you mean *because*? For example:

- Bruce drove carefully on the rocky road to the trailhead, as Bailey rode in the backseat.

Does this mean that Bruce drove while Bailey rode? Or does it

suggest that Bruce drove particularly carefully because Bailey was in the backseat? Again: *Because* conveys the meaning clearly. Why not use it?


### While

Do not use the word *while* when you mean *whereas*, *although*, or *but*. Only use *while* to indicate that two things are happening at the same time. For example:

- Mugsie put his head in the bowl while I was still pouring kibble, so you’ll probably find bits of kibble under the cabinet.
- Although (not *while*) I tried to keep him away from the bowl, he learned how to escape the playpen.<sup>2</sup>
- Whereas (not *while*) Moose waits patiently for his food, Petey and Mugsie rush the bowls.

Some grammar and usage experts sanction using *while* when you mean *whereas*, *although*, or *but*.<sup>3</sup> All of those experts caution against substituting *while* for these other words where the substitution could engender confusion. They leave it to you to anticipate whether your meaning might be ambiguous to your reader.

I’ve discussed this problem before in the context of the clarity<sup>4</sup> comma: often, meaning that seems clear to the author is not so clear to her reader, and this may be even more true for legal writers. We fall prey to “clarity psychosis,”<sup>5</sup> where a writer is so close to her work product that she cannot recognize potential ambiguities. Thus, it’s safer to err on the side of the more precise word.<sup>6</sup>

Effective legal writing communicates with precision. Although some of these miscue words might convey the intended meaning in many circumstances, and although experts may sanction their use, a careful writer will avoid the risk of ambiguity. 

### endnotes

1. Let’s not even talk about the abomination that is *due to the fact that*.
2. Mugsie learns quickly, but not that quickly.
3. Oh, Bryan Garner! I thought that I could count on you!
4. Also known as Oxford, also known as serial. See my April 2014 column.
5. You’ve heard of “trial psychosis”?
6. And use the clarity comma.



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