

## Postpositive Adjectives in Legal Language

### **Defining Words by Ordinary or Particular Meaning – It Depends**

According to Abraham Lincoln, “a lawyer’s time and advice are his stock in trade.” I would add that the tools of the lawyer’s trade are words. In some cases, millions of dollars have been “won” and “lost” in legal battles over the meaning of a single word. Therefore, it behooves a lawyer to use words precisely. However, most words are inherently imprecise, so attaining the requisite precision often requires a bit of artistry and finesse.

Consider, for example, how many words in the dictionary have multiple definitions. Some words can form more than one part of speech—noun, verb, adjective, etc.—and may even have more than one definition for each part of speech it can form. Such flexibility of a single word makes it possible for the following to be a grammatically correct sentence in the English language:

“Buffalo buffalo Buffalo buffalo buffalo buffalo Buffalo buffalo.”

Add to this conundrum the fact that we define words with other words, and you can see how parties can find themselves in a dispute over what their own words mean, which brings us to the topic du jour: the legal interpretation of words.

It has long been a rule of common law that words used in contracts and statutes are given their ordinary meaning unless a particular meaning is ascribed by the contract or statute. Because, as discussed above, the ordinary meaning of words can often be indistinct, this rule caused a proliferation of contracts and statutes that set out a plethora of definitions for purposes of the contract or statute, often with the definition portion exceeding the substantive portion.

However, sometimes such definitions create more problems than they solve. For example, sometimes the word being defined is used in the definition itself, such as “for purposes of this contract, the word ‘tree’ means a tree having a diameter of more than four inches when measured five feet from the ground.” Also, sometimes a limitation is imposed on the provided definitions, such as “unless the context otherwise requires, the following words shall have the following meanings.”

Sometimes, even determining if a particular definition is provided can be difficult. For example, many codes adopted by the Texas Legislature have a set of definitions applicable to the entire code, then a set applicable to a specific title, then a set applicable to a specific chapter, then subchapter, then section, then subsection, and even subpart. The word “child,” for example, is defined differently for Title 2 and for Title 3 of the Family Code.

Also, even when no particular definition of a word is provided anywhere in a specific code, the word may be given a definition by the Code Construction Act. Therefore, several words within the same statute may have definitions located in various places, and a lawyer must sometimes go on a sort of Easter egg hunt in order to properly interpret the statute.

Some words may have acquired a technical meaning in certain contexts; and, when evidence of a technical meaning is present, such words are given that meaning unless a



contrary intent is evident. Most often, technical meanings arise in statutes regulating specific industries or in contracts between merchants who share the same trade. Finally, some words are given their ordinary meanings, but the ordinary meaning has changed since the word was selected by the scrivener. In these cases, courts will often entertain evidence of the ordinary meaning of the word at the time it was written. This situation most often occurs in statutes and real estate documents because these writings are among the few who maintain their legal effect long enough for their language to become antiquated.

Given the wordsmithery matters discussed above, it is no wonder some lawyers can spend so much time writing so little.

Byron L. Brown

<http://www.igradyrandlepc.com/business-law/defining-words-ordinary-particular-meaning-depends/>



**POSTPOSITIVE ADJECTIVES** come after the nouns that they modify, generally because they follow Romance rather than Germanic (or English) syntax. They exist in English largely as a remnant of the Norman French influence during the Middle Ages, and especially in the century following the Norman Conquest. The French influence was most pronounced in the language of law, politics, religion, and heraldry.

In law as in these other fields, French phrases were adopted wholesale – syntax and all – and soon passed into the English language unchanged, though in English, adjectives almost invariably precede the nouns they modify.

To form the plural of these expressions it is generally the noun that is made plural, while the adjective remains unchanged (bodies corporate; conditions precedent/subsequent; consuls general; courts martial; heirs apparent; notaries public; secretaries general; sums certain, etc.)

At least two common English nouns, *things* and *matters*, often take postpositive adjectives that are ordinarily prepositive. Thus, we say that someone is interested in *things philosophical*, or *matters philological*. And the adjective *alive* is ALWAYS postpositive. Examples: Despite all of the difficulties, keep your *hopes alive*. If you like to fish, they have a *pool alive* with trout.

Sometimes a writer will attempt to create a prepositive adjectival phrase where properly the phrase would normally and most idiomatically be postpositive. The result is ungainly indeed: “*The complained of summaries* in this case are contained in the government’s exhibit.” It should read, “The summaries complained of...”

There is, however, a tendency in modern writing to make prepositive adjectival phrases out of what formerly would have been postpositive. Thus, instead of having *payments past due*, we just as often see *past-due payments*: “The precise issue is whether a bankruptcy court may decline to approve a Chapter 13 plan solely because a debtor proposes to pay off in installments during the term of the plan *past-due payments* on a promissory note.”

**A. Answer the following questions related to the texts.**

**Defining Words by Ordinary or Particular Meaning – It Depends**

1. What are the tools of a lawyer's trade? (one word)
2. It behooves a lawyer to use words \_\_\_\_\_. (one word)
3. It has long been a rule of \_\_\_\_\_ that words used in contracts and statutes are given their ordinary meaning unless a particular meaning is ascribed by the contract or statute. (two words)
4. One problem with definitions is that the \_\_\_\_\_ is used in the definition itself. (three words)
5. Another problem with definitions is that sometimes a \_\_\_\_\_ is imposed on the provided definitions. (one word)
6. Because some statutes may have definitions located in various places, a lawyer must sometimes go on an \_\_\_\_\_ in order to properly interpret the statute. (three words)
7. In certain contexts, some words may have acquired a \_\_\_\_\_ meaning. (one word)
8. Most often, technical meanings arise in statutes regulating \_\_\_\_\_ or in contracts between merchants who share the same trade. (two words)
9. A person who drafts legal instruments such as contracts and wills is a \_\_\_\_\_. (one word)
10. Statutes and \_\_\_\_\_ are among the few writings that maintain their legal effect long enough for their language to become antiquated. (three words)

**Postpositive Adjectives**

11. Postpositive adjectives come after the nouns that they modify, generally because they follow \_\_\_\_\_ rather than Germanic syntax. (one word)
12. The French influence was most pronounced in the language of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_. (four words)
13. To form the plural of these expressions it is generally the \_\_\_\_\_ that is made plural, while the adjective remains unchanged. (one word)
14. \_\_\_\_\_ and \_\_\_\_\_ are the two common English nouns that often take postpositive adjectives. (two words)
15. What one adjective is always postpositive? (one word)

Glenn P. Gipson



## Parts of "Adjectives Postpositive"

accounts, accounts, annuity, appearance, attorney, body, body, chattels, chattels, condition, condition, copyright, corporation, corporation, corporation, consul, court, date, decree, director easement, fee, fee, force, gap, heir, law, letters, letters, letters malice, malice, notary, parties', parties', persona, persons, president, secretary, sum, sum, twelve men

## Nouns

## Adjectives

absolute, aforethought, apparent, appurtenant, certain, certain, certain, certain, corporal, corporate, de facto, de jure, defendant, -elect, general, general, general, general, good and true, infringement, litigant, majeure, martial, merchant, non grata, patent, payable, personal, politic, precedent, prepense, public, real, receivable, rogatory (U.S.), simple, sole, subsequent, tail, testamentary, total, unknown

**B. Leaving the nouns in alphabetical order, match the nouns to the adjectives (or the adjectives to the nouns) and put them in the table below.**

1. accounts payable	15.	29.
2. accounts _____	16.	30.
3.	17.	31.
4.	18.	32.
5.	19.	33.
6.	20.	34.
7.	21.	35.
8.	22.	36.
9.	23.	37.
10.	24.	38.
11.	25.	39.
12.	26.	40.
13.	27.	41.
14.	28.	42.

**C. Match 20 of the noun phrases that you created above to their definitions on the next page.**

Noun Phrase	Definition
	a violation of the rights secured for a literary, musical, or artistic work
	an annuity that pays a specific amount on a monthly basis for a set amount of time
	the final judgement in divorce proceedings, which leaves the parties free to remarry
	someone who is unacceptable or unwelcome
	a body of precepts consisting of the recognized and customary commercial principles and practices of merchants rather than formal statutes and regulations.
	one who will inherit the ancestor's estate, title, or office as long as the ancestor does not exclude this individual in any will, and the individual survives the ancestor.
	A body of persons selected to decide a verdict in a legal case, based upon the evidence presented, after being given instructions on the applicable law.
	a writing (as from a sovereign) that confers on a designated person a grant in a form open for public inspection
	a debtor's accounts of money that is owed, normally arising from the purchase of products or services
	an organization that has been legally recognized even though it has not filed its Articles of Incorporation
	a condition that must be fulfilled before performance under a contract can become due, an estate can vest, or a right can become effective
	an organization that has fulfilled all the requirements mandated under the law and has been granted limited liability protection
	A person legally empowered to witness and authenticate documents, administer oaths, take affidavits and depositions, and engage in other activities established by local law.
	any property other than real property
	a formal written request by a court to a court in a foreign jurisdiction to summon and examine a witness in accordance with that jurisdiction's procedures
	a letter from a probate court that appoints or confirms the executor of an estate
	irresistible force or compulsion such as will excuse a party from performing his or her part of a contract; an act of God
	a military court that tries person subject to military law
	to be or come in person; physical, bodily presence
	an agreement between landowners that allows one landowner the right to limited use of a portion of the other landowner's property

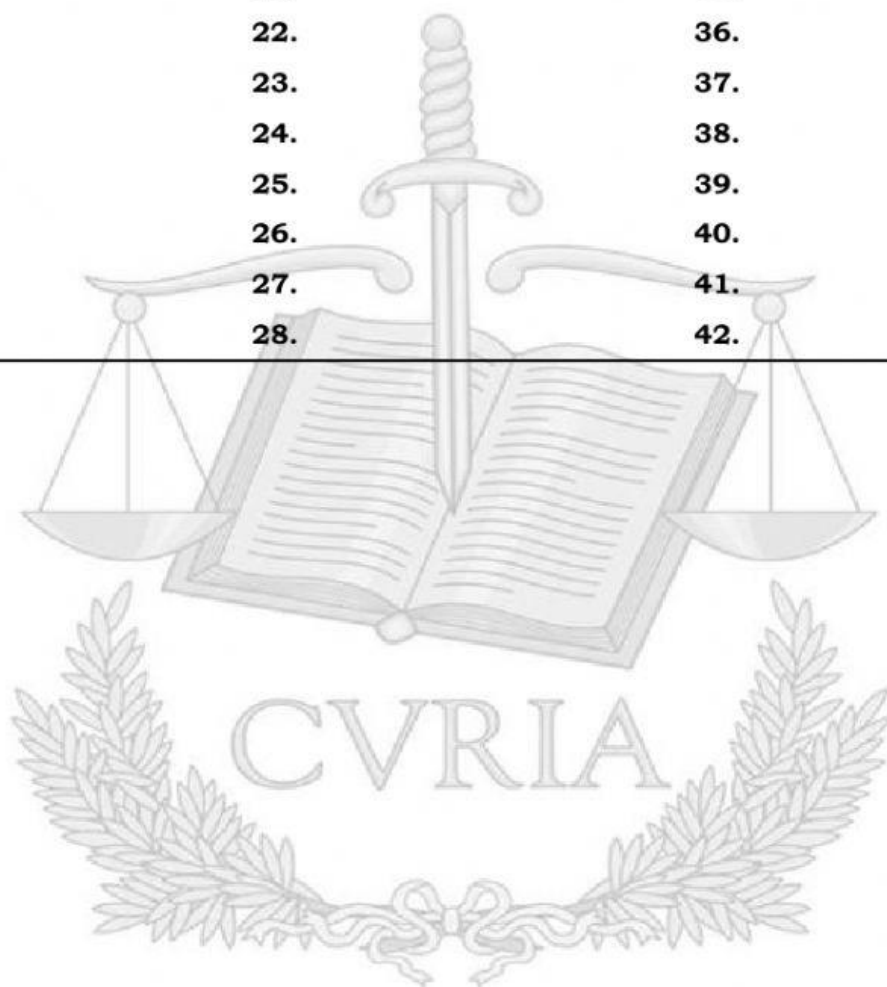


**D. Now use some of the noun phrases that you have created in the following sentences.**

1. \_\_\_\_\_ is mandatory of all parties and their council at the pre-trial hearing.
2. Because the new land owner had no access to the roadway, an \_\_\_\_\_ was established between the property owners and properly notarized.
3. We must get all of our paperwork properly submitted so that we will be in good standing from a legal perspective; we cannot operate forever as a \_\_\_\_\_.
4. Nonetheless, given the large uncertainties and the major risks involved, the provision for \_\_\_\_\_ must be retained.
5. The primary source of \_\_\_\_\_ in the United States are for proprietary rights for intellectual property and land.
6. Our attorneys advise me that all of our papers are in order, and we are now official a \_\_\_\_\_.
7. His delegation feared that it could be taken to mean *lex mercatoria* or \_\_\_\_\_ rather than State law.
8. English scientist James Lovelock has become \_\_\_\_\_ by saying that the ecosphere is so resilient that no amount of human malfeasance could end life.
9. However, exceptions are possible whereby creation and payment of contractual arrangements can be made directly through \_\_\_\_\_.
10. The respondent brought an application for divorce on the basis of three years separation, and a \_\_\_\_\_ was issued in 2003.
11. As a former soldier Brien was sentenced to death for high treason by a \_\_\_\_\_, but he escaped this penalty.
12. The \_\_\_\_\_ to the admissibility of the telephone conversation not having been shown, it follows that the intercepted communication was inadmissible.
13. The Law Society did not authorize \_\_\_\_\_ of the author's work by making photocopies available to users.
14. The appellant was tried before a judge and \_\_\_\_\_.
15. When referring to a kingdom, the \_\_\_\_\_ is typically the first-born son.
16. The transmission of \_\_\_\_\_ through the diplomatic channels is the main tool of mutual legal assistance.
17. \_\_\_\_\_ means a guaranteed number of payments (monthly, quarterly, semi-annually, or annually) for a certain number of years (five, ten, fifteen or twenty).
18. Any copy of a document submitted as evidence under this Annex must be certified as a true copy by a \_\_\_\_\_ or other similar person specified by the national administrator.
19. The court authorized the executor to proceed with the division of the estate by issuing \_\_\_\_\_.
20. Section 54 states that a wife is absolutely entitled to the \_\_\_\_\_ and half of the real property, that is when she has children, on the death of the husband.

**E. Make the phrases from Exercise B plural (if possible). Watch your spelling. Be on the lookout for uncountable nouns and *lingua Latina*.**

1.	15.	29.
2.	16.	30.
3.	17.	31.
4.	18.	32.
5.	19.	33.
6.	20.	34.
7.	21.	35.
8.	22.	36.
9.	23.	37.
10.	24.	38.
11.	25.	39.
12.	26.	40.
13.	27.	41.
14.	28.	42.



Glenn P. Gipson