Q: Please comment on lawyers’ frequent misuse of the adjective blatant when they mean flagrant.

A: I haven’t noticed that mistake, but the reader has, and The American Heritage Dictionary, Second College Edition (AHD), notes that the two adjectives are frequently confused. Both blatant and flagrant are pejorative, and they are close enough in meaning that they are easily mixed up. The adjective blatant means “obtrusive or brazenly obvious.” It might be used in the context, “blatant lies.” Blatant can also mean “tastelessly conspicuous,” as in “a blatant display of wealth.”

The adjective flagrant means “outrageous or notorious.” Conduct of that kind is “flagrant conduct.” The adjective flagrant also describes errors that are egregious or outrageous. Compare the legal phrase “flagrantly against evidence,” which describes a conclusion that shocks the conscience because it has obviously been reached despite the weight of evidence, thus indicating passion and prejudice on the part of the jury.

The root of flagrant is interesting; it comes from the Latin word flagrans, which means “burning.” Thus, the Latin phrase flagrante delicto (literally, “while the crime was blazing”) means “while the crime was being committed” or, more loosely, “in the act.”

The usage note in the AHD provides an interesting and perhaps helpful distinction. It says that although both adjectives convey the sense of outrageousness, blatant describes conduct that is both outrageous and egregious; on the other hand, flagrant emphasizes conduct that is glaring or notorious. Therefore, one who blunders may be guilty of a blatant, but not flagrant, error, but one who intentionally and ostentatiously violates a pledge commits a flagrant act. (You can see why the two adjectives are confused!)

Q: What is the exact meaning of the adjective moot?

A: The problem with moot is that it has no “exact” meaning. If you check Black’s Law Dictionary (7th ed.), you will find that Black’s labels “archaic” the first definition it gives for moot: “open to argument, debatable.” That label means that moot no longer has that meaning. Black’s then defines moot as “hypothetical or academic,” and courts have used it that way, one court holding that, “A case is moot when the issues presented are no longer alive or the parties lack a legally cognizable interest in the outcome of the lawsuit.”

But check the definition of moot in the AHD and you will find that its standard non-legal meaning is exactly what Black’s called “archaic.” The AHD defines moot as “subject to debate or arguable,” and gives, as an illustration, the phrase, “a moot question.” So the meaning of moot in the mind of the average non-lawyer is exactly the opposite of what his lawyer means when he uses the word. Not a happy state of affairs.

The public’s understanding of the meaning of moot is closer to the original legal meaning. It is derived from the Old English noun mot, which meant “meeting.” The first such meetings were attended by the citizens of a town to decide unresolved questions by public debate and discussion. That meaning then expanded to include “moot courts,” at which law students learned adversarial techniques by trying hypothetical cases. This usage then resulted in the public definition of a subject that is undecided as “moot.”

However, the legal and lay definitions of moot do share one meaning: Both mean “theoretical,” as opposed to “actual.” In lay usage a subject is arguable because it is theoretical; in legal usage, a subject is not arguable for the same reason!

Potpourri

On mangled metaphors, a favorite subject of some of the readers of this column, the sports editor of my local newspaper recently provided the following gem: “I know that our [basketball] team didn’t do itself any favor with another close game that allows the talking heads to pick away at the warts.” And here’s another, credited to Sen. Charles E. Schumer (D-N.Y.) after the destruction of the World Trade Center: “You can look at the trees and see many things that should have been done better or quicker. But if you look at the forest, it’s a large and unprecedented sum of money that’s basically being used in the way that it was needed and intended.”

And, on another subject—the expansion of the meaning of newly introduced words—students at this university are now saying, “I sub-primed it!” when they think they’ve failed an important test.

You may enjoy, as I did, the following comment by former Federal Court Judge Paul Cassell of Utah. Asked about life after resigning, he said, “One of the things I have found out is that nobody stands when I enter a room.”

Finally, for those who care about such things, the New Oxford American Dictionary’s 2007 Word of the Year is locavore, which is defined as “people who buy food from farmers’ markets or grow it themselves.”

That makes it a compound, probably composed of loca (local) plus vore from carnivore. That compound treats the last syllable of carnivore as if it were a suffix instead of an intrinsic part of the word itself. The same process created sbocabolic, which treats the ending bolic as if it were a suffix instead of an intrinsic part of the word alcoholic. TFL

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