Q: "What does the term *comprised* mean? When I was in high school, I was taught that it meant "consisted of" and was not a synonym of "composed of." Has that grammatical rule been changed?'"

A: That's a short question that deserves more than a yes-or-no answer. You are correct that the traditional rule is that the whole *comprises* the parts and the parts *compose* the whole. So you would have to use *comprised* in "This law office comprises five lawyers." Or you could say, "This law office is composed of five lawyers." What you could not say is "This law office *is comprised of* five lawyers." This rule has been in effect since the verb *comprise* entered Middle English around 1400.

Although the rule about *comprised* has never been fully observed, it has been in effect ever since. As late as in its 1996 edition, the *American Heritage Dictionary of the English Language* warns that 53 percent of its Usage Panel considers "is comprised of" unacceptable, although many good writers ignore the rule. But grammatical rules often change. The 2006 *Random House Unabridged Dictionary* lists three standard meanings for *comprise* and *compose*, but then adds that *comprise* can have a fourth meaning of "to be composed of."

One part of the old meaning of *comprise* that has not changed is that, when you define a group as "comprised of," the group is limited to exactly that number of members. For example, "The advisory board comprises six members," implies that there are no additional members.

A faithful correspondent from Chicago sent an e-mail about a recent case that was decided by the U.S. Appeals Court in September 2007 that turned completely around the legal meaning of *comprised* (at least in patent cases). "Comprised," the court said, is "a transition term" that has an "open-ended" meaning. It is "broader than *consist* because *comprising* does *not* exclude additional elements." (My emphasis.) Thus it may have the same meaning in patent claim interpretation as "including, having, containing, and even wherein."

Will this court decision cause the public to change the meaning of *comprise*? No, because much of the public has already expanded the meaning of *comprise* to include those listed in the court decision. The public seldom relies on court decisions to determine usage.

As a result, the lay meaning of many words differs from the legal meaning, causing legal clients to misinterpret what their legal consultant means. Last month in this space, I mentioned one word, *moot*, whose legal and lay meanings differ. Another is the word *consideration*, which the public understands to mean either "careful thought" or "concern for others," but whose legal meaning is "something of value sufficient to mean a promise legally binding."

To make matters more confusing to the legal client, the ordinary meaning of *consideration* "concern for others" is represented in legal parlance not by the word *consideration*, but by the word *duty*. In ordinary English, duty means "moral obligation," as in "parental *duty*." But legally, *duty* is the correlative of *right*. The difference in the two meanings of *duty* is enough to confuse the nonlawyer. The "duty" of reasonable care is the first part of a four-part definition of the tort of negligence, and judges and juries must decide whether a person acted as that legal construct, "a reasonable person," would act.

Who is that "reasonable person"? To all of us, it is ourselves, for—as Spinoza wrote long ago at the beginning of his legal treatise "Ethics"—each of us believes that, although others may be more intelligent or clever, we ourselves possess an amount of common sense as abundant as that of any other person.

If one somehow fails to exercise reason, that person may be liable for negligence. But what the legal system considers negligence differs from what the lay person considers negligence. To a lay person, *negligence* is carelessness, the antonym of *diligence*. Failing to stop at a stop sign, possibly causing harm to oneself or others, is negligence. However, that is only one part of the four-part legal definition of negligence. Part three of the legal definition of negligence is *proximate cause*, and that is the part that resembles most closely what the lay person thinks of as negligence. What is proximate cause? The average person almost never uses that phrase or the adjective *proximate* or the adverb *approximately*. The adjective relates to the noun *proximity*, which the public may know as "nearness." Proximate cause, as all lawyers know, does relate to nearness, but the legal phrase has more to do with causal connection than with spatial nearness, and the use of *proximate cause* can completely confuse a client.

The list could go on. Consider the difference between the lay and legal meanings of *perfection*, *facial*, *harmless*, *constructive*, and many more. Lawyers move easily from the legal to the lay meanings of these and other words, oblivious to their clients' misunderstanding. But even lawyers may be misled by the simple word *shall*, whose diverse meanings can fill a column. (See, for example, the definitions of *shall* and *may* in *Roger's International Thesaurus of English Words and Phrases,* 2006 Permanent Edition, Volume 39, pp. 183-228.)

For a good laugh, there's an article in a medical journal, supposedly written by a recent medical school graduate, detailing his experience as the client of a lawyer whose use of legal terminology so confused the graduate that he decided to reciprocate. Noticing a small blemish on the lawyer's neck, the medical school graduate began to suggest, using medical terminology, what it might be. You'll enjoy the article thoroughly—unless you have a blemish on your neck.

"The Law is carried on in a foreign language. ... [L]aw deals almost exclusively with the ordinary facts and occurrences of everyday business and government and living. But it deals with them in a jargon which completely baffles and befoozles the ordinary literate man." (Fred Rodell, *Woe Unto You, Lawyers!* (1939)). **TFL**

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