

# The Use of the Modal Verb *Shall* in Legal Texts

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## I. Introduction

Modal verbs constitute a very important topic in English grammar. They are commonly used for different reasons. When the bill is ordered in a restaurant, a modal verb is used. The customer will probably ask the following question: “*Can* I have the bill, please?” When a recommendation is given, *should* or *ought to* will probably be used. At school, when teachers want to highlight that doing the homework is not optional but compulsory, they utter a sentence like this one: “You *must* do the homework.” If parking is not allowed in a particular place, car drivers will probably find a sign which indicates that they *must not* park there. When weather forecasters want to indicate that there is a very low probability of rain, they may say that “it *might* rain.” In all those cases, modal verbs are present.

Thus, modal verbs do not constitute an abstract grammar topic. People constantly use them in their daily routines. However, *shall* is a modal verb which is not used so frequently in colloquial situations. The main purpose of this article is to analyze the use of *shall*, mainly in the legal context. Furthermore, it provides some strategies that may be followed by those readers interested in teaching this topic.

## II. Exploring the different uses of *shall*

*Shall* is associated with the future tense, but such modal verb is not usually used in that sense. Regarding this topic, Vince (1994) points out the following: “The use of *shall* for first person in future reference is generally

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considered to be restricted to British English and possibly declining in use. [...]. For some speakers, *shall* is used in formal speech and in written language" (p. 9).

However, Vince (1994) recognizes two other uses of *shall*. He gives the following explanation:

1 *Shall* can be used with all persons to emphasise something which the speaker feels is certain to happen or wants to happen.

*I shall definitely give up smoking this year.*

*We shall win!* (shall is stressed in this sentence)

2 Similarly, *shall* is used in formal rules and regulations.

*No player shall knowingly pick up or move the ball of another player* (p. 60).

The second context mentioned by Vince is related to the legal field. The example introduced by the negative ("*No player...*") includes the legal use of *shall*. Reference to this topic will be made in section 3 of this article ("The use of *shall* in the legal context").

The first entry of the word *shall* in *Collins COBUILD English Dictionary* (1995) offers the following explanation: "You use **shall** with 'I' and 'we' in questions in order to make offers or suggestions, or to ask for advice" (p. 1525).

The definition refers to the most typical uses of *shall* in the general English field. These uses tend to be formal. The use of *shall* is quite suitable to suggest something, to make an offer or to ask for some advice, mainly because in those situations a certain level of formality may be required to sound polite.

It is worthwhile mentioning that there are different structures that may be used in order to make a suggestion. Some of them tend to be colloquial. For example, if somebody wants to invite another person to the cinema, he or she may ask the following question: "What about going to the cinema tonight?" *What about* + verb with *ing* is a typical colloquial structure used to make a suggestion. Or perhaps she or he may ask this question: "Why don't we go to the cinema?" *Why don't* is also a colloquial structure. In fact, contractions imply a certain degree of informality. Formal texts do not contain contractions. For example, a legal document such as a contract does not contain contractions. Contractions are not generally found in an academic article or in a very formal letter either. Texts which include contractions tend to be informal. *Let's* is a structure that is commonly used

in order to persuade somebody to do something and it is also informal. Suggestions may be also made in a more formal way, for example, with the use of *would*: “Would you like to go to the cinema? Thus, *shall* and *would* are suitable for formal contexts while *what about*, *why don't*, and *let's* may be useful expressions in colloquial situations.

The second entry of *shall* in *Collins COBUILD English Dictionary* (1995) mentions the following use of such word: “You use **shall**, usually with ‘I’ and ‘we’, when you are referring to something that you intend to do, or when you are referring to something that you are sure will happen to you in the future” (p. 1525).

*Shall*, in this second use, is similar to *will*. However, *will* is the modal verb commonly used in that situation.

The third, fifth, sixth, seventh and eighth entries of *shall* in *Collins COBUILD English Dictionary* (1995, p. 1525) refer to very specific uses of such word. In fact, those uses are rather unusual. The third entry points out the following explanation: “You use **shall** with ‘I’ and ‘we’ during a speech or piece of writing to say what you are going to discuss or explain later”. Regarding the expression “you shall”, the fifth entry points out that *shall* may be used “... usually with ‘you’, when you are assuring someone that they will be able to do something or that something will happen”. The sixth entry refers to the formal use of *shall* “... with verbs such as ‘look forward to’ and ‘hope’ to say politely that you are looking forward to something or hoping to do something”. The seventh entry refers to the use of *shall* in order to indicate “... the likely result or consequence of a particular action or situation”. As for the eighth entry, it refers to the use of the expression “shall I say”.

As for the legal context, the fourth entry of the word *shall* in *Collins COBUILD English Dictionary* (1995) provides the following definition: “You use **shall** to indicate that something must happen, usually because of a rule or law. You use **shall not** to indicate that something must not happen” (p. 1525).

*Shall* frequently appears in legal texts meaning *must*. However, sometimes it is not easy to determine its meaning. In the legal context, *shall* may have other meanings. This topic will be explained more deeply in the next section.

### III. The use of *shall* in the legal context

The word *shall* has five entries in *Black's Law Dictionary* (2014). First entry: “1. Has a duty to; more broadly, is required to <the requester shall

send notice> <notice shall be sent>”. Second entry: “2. Should (as often interpreted by courts) <all claimants shall request mediation>”. Third entry: “3. May <no person shall enter the building without first signing the roster>”. Fourth entry: “4. Will (as a future-tense verb) <the corporation shall then have a period of 30 days to object>”. Fifth entry: “5. Is entitled to <the secretary shall be reimbursed for all expenses>” (p. 1585).

In the first entry *shall* is used to indicate an obligation and is equivalent to *must*. After providing the first entry, *Black’s Law Dictionary* (2014) includes the following comment: “This is the mandatory sense that drafters typically intend and that courts typically uphold” (p. 1585).

Thus, in the legal context, *shall* is usually used in the sense of *must*. Apart from expressing obligation, *shall* in that context may be used to declare or promise something and to refer to a future event (Krois-Lindner & TransLegal®, 2015).

*Shall* used in the sense of *should* may refer to a suggestion, and the structure “no person shall...” has the meaning of “nobody may/can perform an action”, like in the sentence mentioned by Vince (“No player shall...”, in the sense that they *cannot* perform that action). Other similar examples of this use of *shall* may be constituted by sentences using *nothing* or *neither*. Garner (2001) says that in almost all these cases there is not a sense of obligation. Furthermore, he mentions that courts have admitted that *shall* may be interpreted as *must*, *may*, future (*will*) or present simple (*is*).

Certain readers who are not familiarized with the legal jargon may feel that sometimes they are not sure about the meaning of *shall*. Thus, in this situation, they should pay attention to the context to be able to define the scope of its meaning. Translators specialized in legal texts frequently must determine the function of *shall* in specific documents.

How should *shall* be translated from English into Spanish in the legal context? Mariotto, in her book *Contratos Cíviles y Comerciales*, provides translations of different legal documents. I will focus on some parts of a sales contract to analyze the way Mariotto (1991) translates *shall* in such legal text. The original document in English reads: “... Seller shall deliver and Buyer shall receive and pay...” Mariotto translates that in the following way: “... el Vendedor entregará al Comprador, y éste recibirá y abonará...”. The original document reads “... the products to be delivered and accepted hereunder shall be such of such classes of products as Seller shall from time to time be selling to...”, and Mariotto translates it as follows: “... los productos a ser entregados y aceptados conforme al contrato serán

*de la misma especie que aquéllos que el Vendedor pueda vender periódicamente a...."* The original text states: "Quantities shall be as follows...", and Mariotto translates it in the following way: "*Se acuerdan las siguientes cantidades....*" The original text reads that "Buyer's distribution of products purchased hereunder shall not without Seller's written consent extend beyond the limits of the following territory...", and Mariotto translates it as follows: "*La plaza del Comprador para la distribución de la mercadería objeto del presente está comprendida en los límites territoriales que se fijan a continuación y no podrá excederlos sin el previo consentimiento por escrito del Vendedor....*" The original document states: "This contract shall not be binding on Seller unless...", and Mariotto translates it in the following way: "*El contrato no será obligatorio para el Vendedor salvo que....*" (pp. 68-72).

The five examples mentioned above are very useful to understand the function of *shall* in different contexts. In the first and fifth examples, Mariotto uses the future tense to translate *shall* into Spanish. In the second example, the first *shall* of the sentence is translated into Spanish in the same way, but the second *shall* is translated differently, in the sense of *may* ("*pueda*"). In the first example and in the case of the first *shall* in the second example, there is a sense obligation (*shall* means *must*). In the fourth example, Mariotto translates *shall not* into Spanish as "*no podrá*". The meaning of *shall* changes again. *Shall* means *cannot* in that context. In the third example, Mariotto uses the present simple in the Spanish translation ("*Se acuerdan....*"). In fact, in the original text *shall* is unnecessary, and the present simple may be used there. Thus, readers of legal texts should be aware that *shall* may have different scopes depending on the contexts.

#### IV. *Legalese vs. Plain English*

The use of *shall* in legal texts is connected with a discussion that has been taking place: Should legal language be plain so that everybody can understand it? *Legalese* is criticized by those who believe that legal language should be easy to understand. Alcaraz, Campos y Miguélez (2013) point out that people do not generally like bureaucratic and legal jargons. Regarding *legalese*, these authors also consider that it is believed that the legal jargon is often used by lawyers to give a particular image when performing their professional services so that clients can appreciate their work. On the other hand, the authors point out that lawyers and legal scholars say that technical words and expressions are necessary because they always have the same meaning and, therefore, guarantee certain legal security.

The use of *shall* is a typical example of *legalese*. Critics of *legalese* support a movement called *Plain English*. They consider, among other things, that

*shall* is used in an excessive way and that sometimes such modal verb is used without indicating an obligation and, therefore, this may lead to certain degree of uncertainty regarding its meaning. They believe that *must* should be used instead of *shall* in contexts in which an obligation is expressed (Krois-Lindner & TransLegal®, 2015)

Some public organizations, such as the *Securities and Exchange Commission*, have considered the possibility of simplifying the legal language (Alcaraz, Campos & Miguélez, 2013). According to Garner (2001) the use of *shall* in legal texts should be avoided. Regarding this topic, he points out, for example, the elimination of *shall* in the Federal Rules of Appellate Procedure and the Texas Rules of Appellate Procedure.

## V. Conclusions

One of the reasons why teaching legal English is a hard activity is that the vocabulary is very formal and the structures used tend to be complex. *Legalese* is an obstacle that readers of legal texts must overcome. Teaching the use of *shall* in the legal field is not an easy task. Students who study English are probably familiarized with the use of *shall* in general English, but when such students have to read legal texts, they may have certain doubts about its meaning, especially in the translation field.

Teachers may use certain teaching strategies so that students may understand the function of this modal verb. It is worthwhile mentioning that the first thing that teachers should do when teaching legal English is to draw the line between general English and legal English. Furthermore, they should show the different uses of *shall* in each area, that is to say, the uses of *shall* in general English and the different meanings of *shall* in the legal field. As it has been mentioned before, *shall* is commonly used in the legal field in the sense of obligation, in the sense of *must*. Teachers should lay emphasis on the fact that *shall* in the legal field may also have other meanings. This way students will become aware of this aspect and will consider the context carefully to determine if *shall* really means *must*.

Certain activities may be used by teachers to introduce the topic, as a warm-up activity. Teachers may give students some paragraphs or short sentences in which *shall* is used in different contexts. In this way, students could determine the function of *shall* in each case and the context in which the modal verb is used. Some examples will be provided:

Students should fill in the blanks:

a) Peter: "I think we could launch this product onto the market next month but it's late and we should assess certain situations before fixing the date of

the launch of the product." Somebody asks him: "Shall we have another meeting next week to decide the date?"

Function of *shall*: \_\_\_\_\_. Context: \_\_\_\_\_.

**Answer**

Function of *shall*: *making a suggestion*. Context: *probably a conversation between workmates in a brainstorming session*.

b) "It's cold here. Shall I close the window?"

Function of *shall*: \_\_\_\_\_. Context: \_\_\_\_\_.

**Answer**

Function of *shall*: *making an offer*. Context: *dialogue between two colleagues*.

c) "I have a toothache. Shall I go to the dentist?"

Function of *shall*: \_\_\_\_\_. Context: \_\_\_\_\_.

**Answer**

Function of *shall*: *asking for a suggestion*. Context: *dialogue in which somebody is asking for advice*.

d) "Seller shall deliver the goods on the date set forth in this agreement."

Function of *shall*: \_\_\_\_\_. Context: \_\_\_\_\_.

**Answer**

Function of *shall*: *indicating obligation*. Context: *legal context (a contract)*

Once students have managed to understand the different contexts and functions that *shall* may have in general and legal English, a more difficult exercise may be given to them. After reading paragraphs or short sentences in which *shall* is used, students could replace *shall* with other modal verbs to explain its scope in each context. For example:

a) "The seller *shall* deliver the goods and the buyer *shall* pay them."

**Answer**

Obligation. *Shall* can be replaced with *must*. Seller *must* deliver the goods and Buyer *must* pay them.

- b) “No employee *shall* use the conference room without authorization.”

### Answer

Prohibition (internal rule in a company). “No [...] *shall*” can be replaced with *cannot* or *must not*. Employees *cannot/must not* use the conference room without authorization.

Exercises like the ones mentioned above may be suitable for those students who are not familiarized with the use of *shall*. Despite the fact that there is a movement called *Plain English* which criticizes *legalese*, legal English still tends to be formal. *Legalese* may be found in contracts and other documents. Readers should be aware that the use of the modal verb *shall* is one of the characteristics of the legal jargon.

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