

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

Jorge Christian Curto*
 Universidad de Buenos Aires
 Universidad del Salvador

Abstract

Modal verbs constitute a relevant topic in English language teaching. Depending on the context, they may indicate a degree of probability, a degree of formality, ability, an obligation, a need, or a recommendation. *Shall* is one of the modal verbs. This article analyzes the different uses of *shall*, mainly in the legal texts.

Keywords: *legal texts, English language, shall, modal verbs.*

I. Introduction

Modal verbs constitute a very important topic in English grammar. They are commonly used for different reasons. When somebody orders the bill in a restaurant, he or she uses a modal verb. The customer will probably ask the following question: “*Can* I have the bill, please?” When a person wants to give a recommendation, he or she will probably use *should* or *ought to*. At school, when a teacher wants to highlight that doing the homework is not optional but compulsory, he or she may say 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 *mustn't* or *can't* park there. When the weather forecaster wants to indicate that there is a very low probability of rain, he or she may say that “it *might* rain”. In all those cases, modal verbs are present.

Thus, modal verbs do not constitute an abstract grammar topic. We are constantly using them in our daily routine. 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.

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, Michael Vince (1994, p. 9) says the following: “The use of *shall* for the first person in future reference is generally considered to be restricted in British English and possibly declining in use. [...]. For some speakers, *shall* is used in formal speech and in written language”.

But Michael Vince (1994, p. 60) 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.”

* **Jorge Christian Curto** is a Law graduate from Universidad de Buenos Aires. He also holds a degree in translation (English\leftrightarrowSpanish) from the same university. Currently, he is a lecturer in English in the Law degree course at the School of Law at Universidad de Buenos Aires and a junior lecturer in English at the School of Legal Sciences at Universidad del Salvador. He is also a teaching assistant in General Theory of Law at the School of Law at Universidad de Buenos Aires. He has written different articles on Legal English and legal and political matters. Contact: jorgecurto@derecho.uba.ar; curto.jorgechristian@usal.edu.ar

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."

The second context mentioned by Vince is related to the legal field. He gives an example using the negative ("*No player...*"). That is a specific use of *shall* in legal texts. I will refer to this topic in the 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, p. 1525) points out the following explanation: "You use **shall** with 'I' and 'we' in questions in order to make offers or suggestions, or to ask for advice".

The definition refers to the most typical uses of *shall* in the field of general English. 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 cannot be 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 and it is also informal. But suggestions may be 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*, *let's* may be useful expressions in colloquial situations.

The second entry of *shall* in *Collins COBUILD English Dictionary* (1995, p. 1525) 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".

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 entry seventh refers to the use of *shall* in order to indicate "... the likely result or consequence of a particular action or situation". As for the entry eighth, 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, p. 1525) points out 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".

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, p. 1585). 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>".

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

Thus, in the legal context *shall* is usually used in the sense of *must*. But 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, A. & Translegal, 2015:24).

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 Michael Vince ("No player shall...", in the sense that they *can't* perform an action). Other similar examples of this use of *shall* may be constituted by sentences using *nothing* or *neither*. Garner (2001, p. 105) says that in those 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 that case, 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.

But how should *shall* be translated from English into Spanish in the legal context? Liliana Bernardita Mariotto in her book *Contratos Civiles y Comerciales* provides translations of different legal documents. I will focus on some parts of a sales contract to analyze the way Mariotto (1991, pp. 68-72) translates *shall* in such legal text. The original document in English says: "... Seller shall deliver and Buyer shall receive and pay...". Mariotto translates that part of the text in the following way: "... el Vendedor entregará al Comprador, y éste recibirá y abonará...". The original document says: "... 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...". Mariotto translates: "... 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 says: "Quantities shall be as follows...". Mariotto translates: "Se acuerdan las siguientes cantidades..." The original text says: "Buyer's distribution of products purchased hereunder shall not without Seller's written consent extend beyond the limits of the following territory..." Mariotto translates: "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 says: "This contract shall not be binding on Seller unless...". Mariotto translates: "El contrato no será obligatorio para el Vendedor salvo que...".

The four examples mentioned above are very useful to understand the function of *shall* in different contexts. In the first, second and fifth examples, Mariotto uses the future tense to translate *shall* into Spanish. In the first and second examples, *shall* means *must* (indicating a sense of obligation). But in the fourth example, Mariotto translates *shall not* into Spanish as "no podrá". The

meaning of *shall* changes there. *Shall* means *can't* 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, the present simple may be used there. Thus, readers of legal texts should be aware that *shall* may have different scopes depending on the different 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, p. 91) refer to this topic in the following way: “Se llama *oficiales* a la jerga burocrática empleada por la Administración, y *legalese* a la utilizada por los juristas. Ninguno de estos dos sublenguajes es del agrado del ciudadano medio [...]. El término *legalese* posee, además, connotaciones negativas porque para muchos transporta un oscurantismo expresivo innecesario, que según se piensa es utilizado con frecuencia por los abogados para impresionar a sus clientes”.

Thus, the average citizen does not like *legalese*, which is the legal jargon. The use of *shall* is a typical example of *legalese*. Those who criticize *legalese* support a movement called *Plain English*. They consider 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 A. & Translegal, 2015, pp. 24-25).

Some public organisms, such as the *Securities Exchange Commission*, have considered the possibility of simplifying the legal language (Alcaraz, Campos & Miguélez, 2013, pp. 92-93). According to Bryan A. Garner (2001, p. 105) 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 (Garner, 2001, p. 106).

V. Conclusions

One of these reasons why teaching legal English or legal translation is a hard activity is that legal jargon 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 legal 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 I have mentioned before, *shall* is commonly used in the legal field in the sense of obligation, in the sense of *must*. But 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*.

In my opinion, 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 and the students could determine the function of *shall* in each case and the context in which the modal verb is used. I will provide some examples. 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 asked 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 people*.

- 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 been able 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. I will provide some examples:

- 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.

I think that exercises like the ones I have mentioned 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. For that reason, the purpose of this article has been to make readers aware of that aspect of the legal jargon.

VI. References

- Alcaraz, Enrique, Campos, Miguel Ángel & Miguélez, Cynthia (2013). *El inglés jurídico norteamericano*. Barcelona: Ariel.
- Black's Law Dictionary* (2014), 10th edition, Editor in Chief: Bryan A. Garner. St. Paul: Thomson Reuters.
- Collins COBUILD English Dictionary* (1995). London: HarperCollins Publishers.
- Garner, Bryan A. (2001). *Legal Writing in Plain English. A Text with Exercises*. Chicago: The University of Chicago Press.
- Krois-Lindner, Amy & Translegal (2015). *International Legal English* (second edition). Cambridge: Cambridge University Press.

- Mariotto, Liliana Bernardita (1991). *Contratos Civiles y Comerciales. Inglés-Castellano. Castellano-Inglés. Formularios*. Buenos Aires: Abeledo-Perrot.
- Vince, Michael (1994). *Advanced Language Practice*. Oxford: Heinemann.