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Shall and must

Use “must” not “shall” to impose requirements. “Shall” is ambiguous, and rarely occurs in everyday conversation. The legal community is moving to a strong preference for “must” as the clearest way to express a requirement or obligation.

1. “Shall” has three strikes against it.

First, lawyers regularly misuse it to mean something other than “has a duty to.” It has become so corrupted by misuse that it has no firm meaning.

Second—and related to the first—it breeds litigation. There are 76 pages in “Words and Phrases” (a legal reference) that summarize hundreds of cases interpreting “shall.”

Third, nobody uses “shall” in common speech. It’s one more example of unnecessary lawyer talk. Nobody says, “You shall finish the project in a week.”

For all these reasons, “must” is a better choice, and the change has already started to take place. The new Federal Rules of Appellate Procedure, for instance, use “must,” not “shall.”

Prof. Joe Kimble, Thomas Cooley Law School

2. “Must” is now being extensively used

in the legislation of... Australia and at least three Canadian provinces (British Columbia, Alberta and Manitoba) that have amended their Interpretation Acts to say that “must” is to be interpreted as imperative.”

Recommendation

“Must” may be used to create requirements and prohibitions. However, prohibitions should be drafted in the form of “X must not”, rather than “no X must”.

Drafters should not use “must” and “shall” together in the same Act or regulation. It could raise questions about whether different meanings are intended.”

Justice Canada’s Legislative Services Branch

3. Delete every shall.

“Shall” isn’t plain English. . . But legal drafters use “shall” incessantly. They learn it by osmosis in law school, and the lesson is fortified in law practice.

Ask a drafter what “shall” means, and you’ll hear that it’s a mandatory word—opposed to the permissive “may”. Although this isn’t a lie, it’s a gross inaccuracy. . . Often, it’s true, “shall” is mandatory. . . Yet the word frequently bears other meanings—sometimes even masquerading as a synonym of “may”. . . In just about every jurisdiction, courts have held that “shall” can mean not just “must” and “may”, but also “will” and “is”. Increasingly, official drafting bodies are recognizing the problem. . . Many . . . drafters have adopted the “shall-less” style. . . You should do the same.

Bryan Garner, Legal Writing in Plain English, 2001, pp 105-06.

For a good discussion of “shall” and “must”, see Bryan Garner, *A Dictionary of Modern Legal Usage* (2d ed. 1995), pages 939-942.