

MEMORANDUM

To: John A. C. Keith
Chairman, Boyd-Graves Conference

From: Committee on Using “Shall” in Legislative Drafting

Date: August 16, 2018

EXECUTIVE SUMMARY

This Committee was asked to study the use of the word “shall” in legislative drafting and to make appropriate recommendations.

We have unanimously concluded that *shall* is susceptible to significant ambiguity and that the better practice in legislative drafting would be to eliminate *shall* altogether and to use the more precise term intended—such as *must*, *may*, *will*, *should*, *is*, or *is entitled to*. This is the so-called “ABC Rule,” named for the Australian, British and Canadian scholars who strongly advocated it in the late 1980s. The ABC Rule has been recommended by the vast majority of modern scholars of legislative drafting and was adopted in the mid-1990s by the federal Standing Committee on Rules of Practice and Procedure. The alternative approach is the so-called “American Rule,” followed by most but not all States. Under the American Rule, the term *shall* is used only to indicate a mandatory duty or obligation. We are informed that the Division of Legislative Services generally tries to follow that rule as well. But the Committee agrees with the scholars and the federal Standing Committee on Rules of Practice and Procedure that, notwithstanding their best intentions, lawyers and legislative drafters have not used *shall* with sufficient consistency to warrant continued confidence in that approach. Our conclusion is confirmed by selected examples drawn from the Code of Virginia and from the Rules of Supreme Court of Virginia.

The Committee recognizes, however, that *shall* is used so frequently throughout the Virginia Code and in the Rules of Supreme Court of Virginia that it would be impractical to propose a sweeping statutory revision that eliminates the misused *shalls* or substitutes them with the better, more accurate replacement. **Accordingly, the Committee recommends that, if approved by the full Conference, the Chair (1) publicize the Conference’s recommendation to the bench and bar and (2) designate a working group to coordinate with the Division of Legislative Services, the Code Commission, and the Virginia Rules Advisory Committee to formulate a long-term plan to revise the Code and Rules to implement the ABC Rule.**

DISCUSSION

A. The Problem with *Shall*.

The Committee’s literature survey is attached as Exhibit 1.

Legal commentators and scholars have long recognized that the word *shall* is inherently ambiguous. It could mean something mandatory and obligatory (*must, is required to, is entitled to*), or something permissive (*may, should*). It could mean a statement of future action (*will*). Or it could mean simply the present tense (*is*).

The overwhelming majority of commentators and legal scholars eschew *shall* in legislative drafting. The word has been described as “the biggest troublemaker,” “slippery,” and the creator of “booby traps”;¹ “the most misused word in the legal vocabulary”;² and “flimsy.”³ Bryan Garner has provided a helpful synopsis of the headaches that *shall*’s ambiguity has created for courts:

In just about every jurisdiction, courts have held that *shall* can mean not just *must* and *may*, but also *will* and *is*. Even in the U.S. Supreme Court, the holdings on *shall* are major cause for concern. The Court has:

- held that a legislative amendment from *shall* to *may* had no substantive effect;
- held that if the government bears the duty, “the word ‘shall,’ when used in statutes, is to be construed as ‘may,’ unless a contrary intention is manifest”;
- held that *shall* means “must” for existing rights, but that it need not be construed as mandatory when a new right is created;
- treated *shall* as a “precatory suggestion”;
- acknowledged that “[t]hough ‘shall’ generally means ‘must,’ legal writers sometimes use, or misuse, ‘shall’ to mean ‘should,’ ‘will,’ or even ‘may’”;
- held that, when a statute stated that the Secretary of Labor “shall” act within a certain time and the Secretary didn’t do so, the “mere use of the word ‘shall’ was not enough to remove the Secretary’s power to act.”⁴

¹ Richard C. Wydick, *Plain English for Lawyers* 63-64 (5th ed. 2005).

² Joseph Kimble, *The Many Misuses of Shall*, 3 *Scribes J. Leg. Writing* 61, 70 (1992).

³ *Id.*

⁴ Bryan A. Garner, *Legal Writing in Plain English* 125-26 (2d ed. 2013) (footnotes and citations omitted).

Garner convincingly adds that “more than 100 pages of reported cases in *Words and Phrases*—a useful encyclopedia of litigated terms—show that the word *shall* is a mess. As Joseph Kimble, a noted drafting expert, puts it: ‘Drafters use it mindlessly. Courts read it any which way.’”⁵

B. The ABC and American Rules.

Two schools of thought have different recommendations for dealing with the inherent ambiguity of *shall*. The ABC rule (named after certain Australian, British and Canadian drafters who strongly advocated it in the late 1980s) “holds that legal drafters cannot be trusted to use the word *shall* under any circumstances. Under this view, lawyers are not educable on the subject of *shall*, so the only solution is complete abstinence. As a result, the drafter must always choose a more appropriate word: *must*, *may*, *will*, *is entitled to*, or some other expression.”⁶

By contrast, the American Rule holds out hope that lawyers and legislative drafters can get it right. It requires *shall* to be used only to connote a mandatory duty or obligation.⁷

The Committee’s survey of jurisdictions is attached as Exhibit 2. Consistent with its namesake, the American Rule appears to be recommended by the vast majority of legislative drafting authorities in sister States that have taken an official position. Minnesota, by contrast, admonishes drafters to “Limit Your Use of ‘Shall.’ The revisor’s office recommends using *must*, not *shall*, to impose duties.”⁸ The Illinois manual enjoins drafters to use *must* to denote a mandatory obligation or duty and *will* to convey a future obligation—not *shall*.⁹

The ABC Rule has gained more traction at the federal level. In the mid-1990s, the Standing Committee on Rules of Practice and Procedure (which reviews and approves the proposals of the five advisory committees on federal rules) “decided to abolish *shall*.”¹⁰ As the various sets of rules have been revised, the 500 *shalls* in the previous rules were weeded out. In those revisions, 375 *shalls* were converted to *musts* (25%), 50 were changed to present-tense verbs, 2 were changed to *will*, 14 were changed to *should*, 25 were changed to variations using *may*, and 35 were eliminated altogether by simply “tightening” the text.¹¹ One *shall* was left in

⁵ *Id.* at 106 (footnotes and citations omitted).

⁶ Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 953 (3d ed. 2011).

⁷ *Id.* at 952.

⁸ Minnesota Rule Drafting Manual with Styles and Forms (2013), <https://www.revisor.mn.gov/office/2013-Revisor-Manual.pdf>.

⁹ The Legislative Reference Bureau, Illinois Bill Drafting Manual, 226 (December 2012), <http://www.ilga.gov/commission/lrb/manual.pdf>.

¹⁰ Joseph Kimble, *Lessons in Drafting from the New Federal Rules of Civil Procedure*, 2008-09 Scribes Journal of Legal Writing 25, 79 (2008), http://www.uscourts.gov/sites/default/files/lessons_in_drafting.pdf.

¹¹ *Id.* at 79-84.

the summary judgment provisions of Rule 56 of the Federal Rules of Civil Procedure. The drafters could not agree whether, when the movant shows there are no material facts in dispute and is entitled to judgment as a matter of law, the court “should” or “must” enter summary judgment; so they decided to keep *shall* and live with the ambiguity.¹²

As the style consultant to the Standing Committee reiterated in 2005:

Banish *shall*. The restyled civil rules, like the restyled appellate and criminal rules, use *must* instead of *shall*. *Shall* is notorious for its misuse and slipperiness in legal documents. No surprise, then, that the Committee changed *shall* to *may* in several instances, to *should* in several other instances, and to the simple present tense when the rule involves no obligation or permission (*There is one form of action; this order controls the course of the action*).¹³

C. Examples from the Virginia Code and Virginia Rules.

There are many examples of the ambiguous use of *shall* in the Virginia Code and in the Rules of Supreme Court of Virginia. A particularly good example is Rule 1:8, providing for the liberal amendment of pleadings, where *shall* is used interchangeably in the same paragraph to mean *must*, *may*, *will*, and *should*:

Rule 1:8 Amendments [with suggested replacement terms for *shall*]

No amendments ~~shall~~ may be made to any pleading after it is filed save by leave of court. Leave to amend ~~shall~~ should be liberally granted in furtherance of the ends of justice. Unless otherwise provided by order of the court in a particular case, any written motion for leave to file an amended pleading ~~shall~~ must be accompanied by a properly executed proposed amended pleading, in a form suitable for filing. If the motion is granted, the amended pleading accompanying the motion ~~shall~~ will be deemed filed in the clerk’s office as of the date of the court’s order permitting such amendment. If the motion is granted in part, the court may provide for filing an amended pleading as the court may deem reasonable and proper. Where leave to amend is granted other than upon a

¹² *Id.* at 84-85.

¹³ Memorandum from Joseph Kimble, Style Consultant, to All Readers, Guiding Principles for Restyling the [Federal] Civil Rules xviii (Feb. 21, 2005), http://www.uscourts.gov/sites/default/files/guiding_principles.pdf. Various rules committees have noted the adoption of that recommendation in subsequent rule revisions. *See* Fed. R. Civ. P. 1 advisory committee’s note to 2007 amendment, https://www.law.cornell.edu/rules/frcp/rule_1; Fed. R. Evid. 101 advisory committee’s note to 2011 amendment, https://www.law.cornell.edu/rules/fre/rule_101.

written motion, whether on demurrer or oral motion or otherwise, the amended pleading ~~shall~~ must be filed within 21 days after leave to amend is granted or in such time as the court may prescribe. In granting leave to amend, the court may make such provision for notice thereof and opportunity to make response as the court may deem reasonable and proper.

Committee members found similar examples throughout the Virginia Code. Here's one near and dear to the hearts of Virginia lawyers:

§ 8.01-271.1. Signing of pleadings, motions, and other papers; oral motions; sanctions [with suggested replacement terms for *shall*].

Except as otherwise provided in §§ 16.1-260 and 63.2-1901, every pleading, written motion, and other paper of a party represented by an attorney ~~shall~~ must be signed by at least one attorney of record in his individual name, and the attorney's address ~~shall~~ must be stated on the first pleading filed by that attorney in the action. A party who is not represented by an attorney, including a person confined in a state or local correctional facility proceeding pro se, ~~shall~~ must sign his pleading, motion, or other paper and state his address. A minor who is not represented by an attorney must sign his pleading, motion, or other paper by his next friend. Either or both parents of such minor may sign on behalf of such minor as his next friend. However, a parent may not sign on behalf of a minor if such signature is otherwise prohibited by subdivision 6 of § 64.2-716.

. . . If a pleading, written motion, or other paper is not signed, it ~~shall~~ will be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

. . .

If a pleading, motion, or other paper is signed or made in violation of this rule, the court, upon motion or upon its own initiative, ~~shall~~ [may or must?] impose upon the person who signed the paper or made the motion, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper or making of the motion, including a reasonable attorney's fee.

In the last quoted paragraph, did the General Assembly intend that the court *must* impose sanctions on the lawyer or party who violates the rule, or that it *may* impose sanctions? The corresponding federal rule says that “the court *may* impose an appropriate sanction.” Fed. R. Civ. P. 11(c)(1) (emphasis added). That specificity eliminates the interpretative confusion.

The Code is riddled with countless other examples.

The Supreme Court of Virginia recently confronted an ambiguous *shall* in *Rickman v. Commonwealth*, 294 Va. 531, 808 S.E.2d 395 (2017). The convicted sex offender there claimed that he could not be civilly committed as a sexually violent predator because the circuit court failed to schedule his initial probable-cause hearing within 90 days of his release date. Code § 37.2-906(A)(ii) provides that “the circuit court *shall* . . . schedule a hearing within 90 days to determine whether probable cause exists to believe that the respondent is a sexually violent predator.” (Emphasis added). The Court, in an opinion by Justice Kelsey, held that the term *shall* should not be read to mean that the consequence of failing to comply with the 90-day provision was that the proceeding had to be dismissed. The Court distinguished between “mandatory” and “directory” statutes. Using *shall* in a mandatory statute “carries with it a specific, exclusive remedy—sometimes one that is wholly unconcerned with the presence or absence of prejudice or any resulting harm.” *Id.* at 537, 808 S.E.2d at 398. By contrast, “a ‘shall’ command in a directory statute carries no specific, exclusive remedy. Instead, it empowers the court to exercise discretion in fashioning a tailored remedy, if one is called for at all.” *Id.* Finding the Sexually Violent Predator Act to be directory, rather than mandatory, the Supreme Court ruled that the circuit court had discretion not to dismiss the civil commitment proceeding for failure to strictly comply with the 90-day requirement. *Id.* at 539-40, 808 S.E.2d at 399-400.

More careful legislative drafting, such as replacing *shall* with *should* in § 37.2-906(A)(ii), could have avoided the interpretative controversy in *Rickman*.

D. The Committee’s Recommendation.

The Committee concluded unanimously that the ABC Rule is far superior to the American Rule. Whether expressed as “[a]void *shall*,”¹⁴ “[b]anish *shall*,”¹⁵ or “abandon *shall*,”¹⁶ the advice is spot-on. It is no coincidence that legal scholars and commentators overwhelmingly favor it and that the federal Standing Committee on Rules of Practice and Procedure has embraced it. Eliminating *shall* as an option forces the drafter to use the more accurate term, such as *must*, *may*, *will*, *should*, *is*, or *is entitled to*, or to tighten the text to avoid using *shall* altogether. We agree that if lawyers “cannot be trusted to use the word *shall*,”¹⁷ it is not reasonable to expect legislative drafters to use *shall* exclusively in its mandatory sense, particularly in the hurly-burly of a short legislative session involving thousands of bills.

The Committee recognizes, however, that rewriting the Code and the Rules to apply the ABC Rule poses a Herculean task. The more prudent alternative is to apply the rule prospectively as new rules and legislation are drafted and existing Code provisions revised.

¹⁴ Bryan A. Garner, *The Redbook: A Manual of Legal Style* 543 (3d ed. 2013).

¹⁵ Kimble, *supra* note 13.

¹⁶ Michele M. Asprey, *Shall Must Go*, 3 Scribes J. Leg. Writing 79 (1992).

¹⁷ *Garner’s Dictionary of Legal Usage*, *supra* note 6, at 953.

Accordingly, we recommend that the Conference request the Chairman to publicize the recommendation to the bench and bar and designate a working group to coordinate with the Division of Legislative Services, the Code Commission, and the Virginia Rules Advisory Committee to formulate a long-term plan to revise the Code and the Rules of Court to implement the ABC Rule.

We believe that following the ABC Rule will lead to greater clarity, improve the readability of laws, and reduce litigation over ambiguous text.

Respectfully submitted,

Stuart A. Raphael, Chairman
W. Coleman Allen, Jr., Esq.
Victor O. Cardwell, Esq.
James J. Duane, Esq.
Hon. Lisa B. Kemler
Melissa G. Ray, Esq.
Benjamin Spencer, Esq.
John Tracy Walker, IV, Esq.

Exhibit 1—Survey of Secondary Sources: Use of “Shall” in Legislative Drafting

| No. | Citation | Text | A m | A B C |
|-----|--|---|--------|-------------|
| 1. | Garner, Bryan A., <i>The Redbook: a Manual of Legal Style</i> 542-43 (3d ed. 2013) | <i>Mandatory vs. permissive.</i> Select words of authority that plainly express whether something is mandatory or permissive. For duties and requirements, preferably use <i>must</i> (<i>is required to</i>) or <i>must not</i> (<i>is required not to</i>). To indicate a choice, use <i>may</i> (<i>has discretion to, is permitted to, has a right to</i>). To express a right, use <i>is entitled to</i> or <i>has a right to</i> . For a directory, precatory, or aspirational provision, use <i>should</i> . And for a future contingency, use <i>will</i> . Avoid <i>shall</i> . Even though it is traditional, its multihued meanings cause many interpretive problems. For the rationale explaining these words of authority and examples of their uses and misuses in drafting, see <i>Garner’s Dictionary of Legal Usage</i> 952-55 (3d ed. 2011); Garner, <i>Legal Writing in Plain English</i> 125-26 (2d ed. 2013). | | 1 |
| 2. | Garner, Bryan A., <i>Legal Writing in Plain English</i> 125-26 (2d ed. 2013) | <p>§ 35. Delete every shall.</p> <p><i>Shall</i> isn’t plain English. Chances are it’s not a part of your everyday vocabulary, except in lighthearted questions that begin, “Shall we ... ?” But legal drafters use <i>shall</i> incessantly. They learn it by osmosis in law school, and law practice fortifies the habit. Ask a drafter what <i>shall</i> means, and you’ll hear that it’s a mandatory word—opposed to the permissive <i>may</i>. Although this isn’t a lie, it’s a gross inaccuracy. And it’s not a lie only because the vast majority of drafters don’t know how shift the word is.</p> <p>Often, it’s true, <i>shall</i> is mandatory:</p> <p style="padding-left: 40px;">Each corporate officer in attendance <i>shall</i> sign the official register at the annual meeting.</p> <p>Yet the word frequently bears other meanings—sometimes even masquerading as a synonym of <i>may</i>. Remember that <i>shall</i> is supposed to mean “has a duty to,” but it almost never does mean this when it’s preceded by a negative word such as nothing or neither:</p> <ul style="list-style-type: none"> • Nothing in this Agreement <i>shall</i> be construed to make the Owners partners or joint venturers. • Neither the Purchaser nor any Employer <i>shall</i> discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, national origin, ancestry; age, handicap or disability; sexual orientation, military-discharge status, marital status, or parental status. • Neither party <i>shall</i> assign this Agreement, directly or indirectly, without the prior written consent of the other party. <p>Does that last example really mean that neither party has a duty to assign the agreement? No. It means that neither party is allowed to (that is, <i>may</i>) assign it.</p> | | 1 |

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| | | <p>In just about every jurisdiction, courts have held that <i>shall</i> can mean not just <i>must</i>¹ and <i>may</i>,² but also <i>will</i>³ and <i>is</i>.⁴ Even in the U.S. Supreme Court, the holdings on <i>shall</i> are major cause for concern. The Court has:</p> <ul style="list-style-type: none"> • held that a legislative amendment from <i>shall</i> to <i>may</i> had no substantive effect;⁵ • held that if the government bears the duty, “the word ‘shall,’ when used in statutes, is to be construed as ‘may,’ unless a contrary intention is manifest”;⁶ • held that <i>shall</i> means “must” for existing rights, but that it need not be construed as mandatory when a new right is created;⁷ • treated <i>shall</i> as a “precatory suggestion”;⁸ • acknowledged that “[t]hough ‘shall’ generally means ‘must,’ legal writers sometimes use, or misuse, ‘shall’ to mean ‘should,’ ‘will,’ or even ‘may’”;⁹ • held that, when a statute stated that the Secretary of Labor “shall” act within a certain time and the Secretary didn’t do so, the “mere use of the word ‘shall’ was not enough to remove the Secretary’s power to act.”¹⁰ <p>These examples, which could be multiplied, show only a few of the travails that <i>shall</i> routinely invites. And the more than 100 pages of reported cases in <i>Words and Phrases</i>—a useful encyclopedia of litigated terms—show that the word <i>shall</i> is a mess.¹¹ As Joseph Kimble, a noted drafting expert, puts it: “Drafters use it mindlessly. Courts read it any which way.”¹²</p> <p>Increasingly, official drafting bodies are recognizing the problem. For example, most sets of the federal Rules—Civil, Criminal, Appellate, and Evidence—have recently been revamped to remove all <i>shalls</i>.¹³ (In stating requirements, the rules use the verb <i>must</i>.) The improved clarity is remarkable. Meanwhile, many transactional drafters have adopted the <i>shall</i>-less style, with the same effect. (In stating contractual promises, they typically use either <i>will</i> or <i>agrees to</i>.) You should do the same.</p> <p>1. See, e.g., <i>Bell Atlantic-N.J., Inc. v. Tate</i>, 962 F. Supp. 608 (D.N.J. 1997). 2. See, e.g., <i>Northwestern Bell Tel. Co. v. Wentz</i>, 103 N.W.2d 245 (N.D. 1960). 3. See, e.g., <i>Cassan v. Fern</i>, 109 A.2d 482(N.J. Super. 1954).</p> | | |

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| | | <p>4. See, e.g., <i>Local Lodge No. 1417, Int’l Ass’n of Machinists. AFL-CIO v. NLRB</i>, 296 F.2d 357(D.C. Cir. 1961).</p> <p>5. <i>Moore v. Illinois Cent. Ry.</i>, 312 U.S. 630, 635 (1941).</p> <p>6. <i>Railroad Co. v. Hecht</i>, 95 U.S. 168, 170 (1877).</p> <p>7. <i>West Wis. Ry. v. Foley</i>, 94 U.S. 100, 103 (1876).</p> <p>8. <i>Scott v. United States</i>, 436 U.S. 128, 146 (1978) (Brennan, J., dissenting).</p> <p>9. <i>Gutierrez de Martinez v. Lamagno</i>, 515 U.S. 417, 434 n.9 (1995) (adding that “certain of the Federal Rules use the word ‘shall’ to authorize, but not to require, judicial action,” citing Fed. R. Civ. P. 16(e) and Fed. R. Crim. P. 11(b)).</p> <p>10. <i>United States v. Montalvo-Murillo</i>, 495 U.S. 708, 718 (1990).</p> <p>11. <i>39 Words and Phrases</i> 111-96 (1953), plus 41 pp. in 1999 pocket part.</p> <p>12. Joseph Kimble, <i>The Many Misuses of “Shall,”</i> 3 Scribes J. Legal Writing 61, 71 (1992).</p> <p>13. See Garner, <i>Guidelines for Drafting and Editing Court Rules</i> § 4.2(A), at 29 (1996).</p> | | |
| 3. | Garner, Bryan A., <i>Garner’s Dictionary of Legal Usage</i> 952-54 (3d ed. 2011) | <p>This word [<i>shall</i>] runs afoul of several basic principles of good drafting. The first is that a word used repeatedly in a given context is presumed to bear the same meaning throughout. (<i>Shall</i> commonly shifts its meaning even in midsentence.) The second principle is strongly allied with the first: when a word takes on too many senses and cannot be confined to one sense in a given document, it becomes useless to the drafter. (Depending on how finely you slice the semantic nuances, <i>shall</i> can bear five to eight senses even in a single document. Black’s Law Dictionary (9th ed. 2009) lists five main senses.) The third principle has been recognized in the literature on legal drafting since the mid-19th century: good drafting generally ought to be in the present tense, not the future. (<i>Shall</i> is commonly used as a future-tense modal verb.) In fact, the selfsame quality in <i>shall</i>—the fact that it is a CHAMELEON-HUED WORD—causes it to violate each of those principles.</p> <p>How can <i>shall</i> be so slippery, one may ask, when every lawyer knows that it denotes a mandatory action? Well, perhaps every lawyer has heard that it’s mandatory, but very few consistently use it in that way. And as a result, courts in virtually every English-speaking jurisdiction have held—by necessity—that <i>shall</i> means <i>may</i> in some contexts, and vice versa. These holdings have been necessary primarily to give</p> | | 1 |

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| | | <p>effect to slipshod drafting.</p> <p>...</p> <p>One solution to the problem that <i>shall</i> poses is to restrict it to one sense. This solution—called the “American rule” because it is an approach followed by some careful American drafters—is to use <i>shall</i> only to mean “has a duty to”</p> <p>Another solution is the “ABC rule” so called because, in the late 1980s, it was most strongly advocated by certain Australian, British, and Canadian drafters. The ABC rule holds that legal drafters cannot be trusted to use the word <i>shall</i> under any circumstances. Under this view, lawyers are not educable on the subject of <i>shall</i>, so the only solution is complete abstinence. As a result, the drafter must always choose a more appropriate word: must, may, will, is entitled to, or some other expression.</p> <p>This view has much to be said for it. American lawyers and judges who try to restrict <i>shall</i> to the sense “has a duty to” find it difficult to apply the convention consistently. Indeed, few lawyers have the semantic acuity to identify correct and incorrect <i>shalls</i> even after a few hours of study. That being so, there can hardly be much hope of the profession’s using <i>shall</i> consistently.</p> <p>Small wonder, then, that the ABC rule has fast been gaining ground in the U.S. For example, the federal government’s Style Subcommittee—part of the Standing Committee on Rules of Practice and Procedure—a subcommittee that since 1991 has worked on all amendments to the various sets of federal court rules, adopted the approach of disallowing <i>shall</i> in late 1992. (This came after a year of using <i>shall</i> only to impose a duty on the subject of the verb.) As a result, the rules have become sharper because the drafters are invariably forced into thinking more clearly and specifically about meaning.</p> <p>There is, of course, a third approach: to allow <i>shall</i> its traditional promiscuity while pretending, as we have for centuries, that preserving its chastity is either hopeless or unimportant. Of course, that approach breeds litigation, as attested in more than 120 pages of small-type cases reported in <i>Words and Phrases</i>, all interpreting the word <i>shall</i>. As long as the mass of the profession remains unsensitized to the problems that <i>shall</i> causes, this appears to be the most likely course of inaction.</p> | | |
| 4. | Garner, Bryan A., <i>Garner on Language and Writing</i> 175-76 | [Very similar to <i>Garner’s Dictionary of Legal Usage</i> 952-54 (3d ed. 2011), above] | | 1 |

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| | (2009) | | | |
| 5. | Kimble, Joseph, <i>Lessons in Drafting from the New Federal Rules of Civil Procedure</i> , 2008-09 Scribes J. Leg. Writing 25, 78-79 (2008) | The word [<i>shall</i>] has been so corrupted by misuse that it has become inherently ambiguous. It should mean “must,” but too often it’s used to mean or interpreted to mean “should” or “may” — not to mention those instances in which, because no requirement <i>or</i> permission is intended, the simple present tense of the verb is called for. No wonder, then, that <i>Words and Phrases</i> online cites more than 1,600 appellate cases interpreting <i>shall</i> . | | 1 |
| 6. | Adams, Kenneth A., <i>A Manual of Style for Contract Drafting</i> 32-34 (2d ed. 2008) | <p>USING “SHALL” TO MEAN “HAS A DUTY TO”</p> <p>2.25 In the example in table 2, Acme is the subject of the sentence. To indicate that Acme has a duty to purchase the Shares from Doe, use <i>shall</i>, as in [2-1]. And this manual recommends that in contract drafting you should not use shall for any other purpose.</p> <p>TABLE 2 • LANGUAGE OF OBLIGATION IMPOSED ON SUBJECT OF SENTENCE</p> <p>[2-1] Acme shall purchase the Shares from Doe.</p> <p>...</p> <p>ELIMINATING “SHALL”?</p> <p>2.35 One way to address overuse of shall is through more disciplined use of the word, hence the recommendation in 2.25.</p> <p>2.36 But some commentators on legal writing—the most vocal among them perhaps being Bryan Garner—advocate doing away with shall entirely because it’s too prone to misuse and is inconsistent with general English usage. As Garner says in <i>A Dictionary of Modern Legal Usage</i> 940, “few lawyers have the semantic acuity to identify correct and incorrect <i>shalls</i> even after a few hours of study. That being so, there can hardly be much hope of the profession’s using shall consistently.” A useful statement of the anti-shall view, albeit from an Australian perspective, can be found in Michele M. Asprey, <i>Plain Language for Lawyers</i> (3d ed. 2003).</p> <p>2.37 It would in fact be a good idea to eliminate shall from court rules, statutes, and consumer contracts. But there’s no reason to automatically apply that approach to business contracts—they serve a different function and address a different audience.</p> <p>2.38 And as explained below, the notion of purging business contracts of shall is problematic in a number</p> | | 1 |

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| | | of respects. | | |
| 7. | Wydick, Richard C., <i>Plain English for Lawyers</i> 63-64 (5th ed. 2005) | <p>The biggest troublemaker is <i>shall</i>. Sometimes lawyers use it to impose a duty: “The defendant <i>shall</i> file an answer within 30 days ... “Other times lawyers use it to express a future action (“the lease shall terminate ...”) or even an entitlement (“the landlord shall have the right to inspect .. .”) Drafting experts have identified several additional shades of meaning <i>shall</i> can carry.¹⁴ To make matters worse, many lawyers do not realize how slippery <i>shall</i> is, so they use it freely, unaware of the booby traps it creates.</p> <p>The legislative drafters in some jurisdictions in the United States try to tame <i>shall</i> by using it only in its command sense: <i>shall</i> imposes a duty to do something.¹⁵ In recent years, however, many U.S. drafting authorities have come around to the British Commonwealth view: don’t use <i>shall</i> for any purpose—it is simply too unreliable.¹⁶</p> <p>Throwing out <i>shall</i> leaves us with a fairly well-behaved roster of words to express duty, permission, discretion, entitlement, and the like. These words should be used consistently with the meanings stated below:¹⁷</p> <ul style="list-style-type: none"> must = is required to must not = is required not to; is disallowed may = has discretion to; is permitted to may not = is not permitted to; is disallowed from is entitled to = has a right to should = ought to will = [one of the following:] <ul style="list-style-type: none"> a. (to express a future contingency) b. (in an adhesion contract, to express the strong party’s obligations) c. (in a delicate contract between equals, to express both parties’ obligations) | | 1 |
| 8. | Asprey, Michele M., <i>Shall Must Go</i> , 3 Scribes J. Leg. Writing 79 (1992) | <i>Shall Must Go</i> Why? | | 1 |

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| | | <p>For several years I have advocated that lawyers abandon <i>shall</i>. My reasons are:</p> <p>(1) The word is hardly ever used outside the legal community, and consequently:</p> <ul style="list-style-type: none"> * Using <i>shall</i> puts lawyers out of step with the language of the general community; * Nonlawyers don’t understand the special way lawyers use <i>shall</i> in documents and laws; and <p>(2) Lawyers misuse it. They confuse the imperative <i>shall</i> with the future tense and fail to distinguish between the various senses of shall in their documents. The distinctions drawn between these senses by commentators such as Reed Dickerson and Elmer Driedger are difficult to understand and apply, and have been ignored by most lawyers, who continue to misuse <i>shall</i>.</p> <p><i>In Place of Shall...</i></p> <p>My suggestion is to abandon shall altogether and, in its place, use:</p> <ul style="list-style-type: none"> * <i>Must</i> for the imperative shall - whether we want to impose an obligation or a duty, or make a direction, whether or not we do it by contract or statute, and regardless of what the penalty is; * <i>Will</i> for the simple future; and * The present tense for just about everything else - for a statement of fact, legal result or agreement (the law or contract always speaking) <p><i>Id.</i> at 82-83: Getting rid of shall and choosing between one of the three alternatives listed above (<i>must</i>, <i>will</i>, or the present tense) forces you to decide what you really mean: an obligation, the future tense, or the present tense to signify a statement of fact, a legal result or agreement, or a condition. Strangely enough, in my experience it’s usually very easy to choose the word you need, and you don’t have to go through a legal analysis of modalities. The right word just looks right. The issues are clearer. The drafting comes more easily.</p> <p>. . .</p> <p>Most nonlawyers abandoned <i>shall</i> long ago. Its time has long passed. Let’s let it go.</p> | | |
| 9. | Kimble, Joseph, <i>The Many Misuses of Shall</i> , 3 Scribes J. Leg. Writing 61, 70-73 (1992) | First, <i>shall</i> is the most important word in the world of legal drafting—contracts, wills, trusts, and the many forms of public and private legislation (from statutes to court rules to corporate bylaws). <i>Shall</i> is | 1 | 1 |

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| | | <p>the very word that is supposed to create a legal duty.</p> <p>Second, <i>shall</i> is the most misused word in the legal vocabulary.</p> <p>Third, this perpetual misuse reflects the sickening failure of most law schools to teach legal drafting.</p> <p>Fourth, a good case can be made for abandoning <i>shall</i> entirely. That would at least end the misuses. And it would take us another step closer to plain language.</p> <p>Finally, though, the best solution may not always be that neat.</p> <p>In some documents, the best solution may be to define <i>shall</i> and <i>must</i> and <i>may</i>—the terms of authority. That way, drafters can make clear the degree of duty they intend and the possible consequences of a breach.</p> <p>...</p> <p><i>Shall</i> has indeed become a flimsy word. I doubt, however, that simply replacing it with <i>must</i> would make a big difference in the amount of litigation. At the same time, I do understand the argument that, having been so thoroughly watered down over such a long period, <i>shall</i> has lost its force.</p> <p>Two other arguments for <i>must</i> are made by leading writers: <i>shall</i> is archaic; and lawyers are prone to misuse it, confusing it with future tense.³ Both arguments are valid. Then again...</p> <p><i>Shall</i> is not as easy to dismiss as most legal jargon and legal mannerisms. It has produced volumes of litigation. It is a critical word. If it can be replaced with <i>must</i>; fine. But we do give up a potentially useful distinction, or at least we have to make the distinction in other ways.</p> <p>...</p> <p>At most, <i>shall</i> creates a presumption that the provision is mandatory or the duty absolute. Courts have found many ways to overcome the presumption:</p> <ol style="list-style-type: none"> (1) Mandatory <i>shall</i> would defeat the legislative intent³⁸ (2) The provision merely guides the conduct of officials or specifies the time for performing an official duty.³⁹ (3) The official’s conduct is not prescribed in order to safeguard someone’s rights.⁴⁰ | | |

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| | | <p>(4) The provision does not go to the essence of the statutory purpose.⁴¹</p> <p>(5) The provision does not set out consequences for a violation.⁴²</p> <p>(6) Mandatory <i>shall</i> would infringe on the separation of powers.⁴³</p> <p>We could easily expand the list. In every jurisdiction, we find exceptions and qualifications.</p> <p>38. <i>Andrews v. Foxworthy</i>, 373 N.E.2d 1332, 1335 (Ill. 1978).</p> <p>39. <i>Id.</i></p> <p>40. <i>Id.</i></p> <p>41. <i>Hancock County Rural Elec. Membership Corp. v. City of Greenfield</i>, 494 N.E.2d 1294, 1296 (Ind. Ct. App. 1986).</p> <p>42. <i>Id.</i></p> <p>43. <i>People v. Davis</i>, 442 N.E.2d 855, 858 (Ill. 1982).</p> | | |
| 10. | Bennett, J.M., <i>Final Observations on the Use of Shall</i> , 64 Austl. L.J. 168, 169 (1990) | Precisely because “shall” may be construed, as your contributors put it, “any which way” (or, in plain English, “flexibly”), it is a valuable word that adapts itself to the practical requirements of its circumstances and context - for example, <i>see Havenbar Pty Ltd v Butterfield</i> ((1974) 133 CLR 449 at 455). “Must”, if construed literally, could not do so and would be likely to work great hardship until rectified (as could well be the case in the equitable charge example previously discussed). | | |
| 11. | Main, Jim, <i>Must Versus Shall</i> , 63 Austl. L.J. 860 (1989) | <p>I was much impressed with the logic in the article by Professor Eagleson and Miss Asprey in the February 1989 issue of the Journal (at p 75).</p> <p>Since reading the article I have banned the use of “shall” in all my documents. The effect has been, I think, quite significant. In considering what words to use where previously I used “shall” I have come to realise how many different meanings the word has. I am positive the documents prepared without the word are much clearer than those prepared previously.</p> | | 1 |
| 12. | Eagleson, Robert, and Asprey, Michelle, <i>We must abandon “shall,”</i> 63 Austl. L.J. 726, 727-28 (1989) | <p>Mr Bennett now adds to the evidence we had provided by drawing attention to fresh cases and reminding us that Stroud’s Judicial Dictionary needs some nine pages to cope with the vagaries of legal practice with “shall” since 1601.</p> <p>...</p> <p>With due respect, Mr Bennett misunderstands the point of our comments on the misuse of “shall”. We do not suggest that using “must” instead of “shall” cures all poor and imprecise drafting. But it will improve</p> | | 1 |

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| | | one area in which lawyers consistently fail to make themselves clear. If one has to resort to such extremities as the demonstration examples of Mr Bennett in order to justify “shall”, then we must abandon it at once. | | |
| 13. | Bennett, J.M., <i>In Defence of “Shall,”</i> 63 Austl. L.J. 522, 523 (1989) | Old legal authorities are usually venerated, as those concerning the interpretation of “shall” and “may” certainly should be. The 5th edition of Stroud’s Judicial Dictionary (London, 1986) has nine pages of matter relating to “shall” and cognate expressions. The cited authorities go back to 1601. What lawyer, acting reasonably, will imperil the interests of his client or employer by casting aside centuries of judicial guidance and by preferring some experimental novelty? The price for the failure of the experiment could be high. | | |
| 14. | Eagleson, Robert, and Asprey, Michelle, <i>Must we continue with “shall,”</i> 63 Austl. L.J. 75, 67, 78 (1989) | Not only will the change to “must” benefit the general community; it will also save members of the legal profession from confusion and imprecision. Experts in legal drafting from at least the middle of the last century have complained about the misuse of “shall” in legal documents. Among these commentators are such notable ones as Coode (1852), Dickerson (1965), Dick (1972), Robinson (1973), Callaway (1974-5), Driedger (1976), Piesse (1987) and Thornton (1987). ... In the interests of our clients and ourselves, we must stop using “shall”. | | 1 |
| 15. | Sutton, Dale E., <i>Use of Shall in Statutes</i> , 4 J. Marshall L. Quarterly 204, 204, 217 (1938) | “Shall”, as used in statutes, is not only, in many cases, superfluous from the standpoint of good writing, but has too many meanings to make its unnecessary use safe. The courts, in following their well-defined policy of looking to the intent, rather than to the language, have variously held that “shall” is imperative, is directory, means “may”, expresses a mandate, either permissive or preemptory, applies to the past, to the future, and to the present. ... There is no broad and easy way out. More sparing use of “shall” and more careful draftsmanship are the first requisites. | 1 | |

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| 1. | Memorandum from Joseph Kimble, Style Consultant, to All Readers, Guiding Principles for Restyling the [Federal] Civil Rules xviii (Feb. 21, 2005) | <p>http://www.uscourts.gov/file/document/guiding-principles-restyling-civil-rules:</p> <p>“Banish <i>shall</i>. The restyled civil rules, like the restyled appellate and criminal rules, use <i>must</i> instead of <i>shall</i>. <i>Shall</i> is notorious for its misuse and slipperiness in legal documents. No surprise, then, that the Committee changed <i>shall</i> to <i>may</i> in several instances, to <i>should</i> in several other instances, and to the simple present tense when the rule involves no obligation or permission (<i>There is one form of action; this order controls the course of the action</i>).”</p> | | 1 |
| 2. | Fed. R. Civ. P. 1 advisory committee’s note to 2007 amendment | <p>https://www.law.cornell.edu/rules/frcp/rule_1:</p> <p>“The restyled rules minimize the use of inherently ambiguous words. For example, the word “shall” can mean “must,” “may,” or something else, depending on context. The potential for confusion is exacerbated by the fact the word “shall” is no longer generally used in spoken or clearly written English. The restyled rules replace “shall” with “must,” “may,” or “should,” depending on which one the context and established interpretation make correct in each rule.”</p> | | 1 |
| 3. | Fed. R. Evid. 101 advisory committee’s note to 2011 amendment | <p>https://www.law.cornell.edu/rules/fre/rule_101:</p> <p>“The restyled rules minimize the use of inherently ambiguous words. For example, the word “shall” can mean “must,” “may,” or something else, depending on context. The potential for confusion is exacerbated by the fact the word “shall” is no longer generally used in spoken or clearly written English. The restyled rules replace “shall” with “must,” “may,” or “should,” depending on which one the context and established interpretation make correct in each rule.”</p> | | 1 |
| 4. | Legislative Reference Service Drafting Style Manual (Alabama) | <p>http://lrs.state.al.us/style_manual/style_manual.html at Rule 8:</p> <p>Rule 8. Use of “Shall,” “May,” and “Must”</p> <p>(a) A duty, obligation, requirement, or condition precedent is best expressed by “shall” rather than “must.” In no event should “shall” and “must” be used interchangeably in the same bill.</p> <p>(b) Use “may” to confer a power, privilege, or right.</p> <p><i>Examples:</i> “The applicant ‘may demand’ (power) an extension of time.” “The applicant ‘may renew’</p> | 1 | |

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| | | <p>(privilege) the application.” “The applicant ‘may appeal’ (right) the decision.” Do not use substitute phrases for “may” such as “is authorized and empowered to.”</p> <p>(c) Use “may not” to express a prohibition.</p> <p>(d) Avoid using hortatory qualifiers, such as “will,” “should,” and “ought” in the text of a bill.</p> | | |
| 5. | Legislative Affairs Agency, Manual of Legislative Drafting (Alaska 2017) | <p>http://w3.legis.state.ak.us/docs/pdf/DraftingManual.pdf at 65:</p> <p>(h) “<u>May</u>,” “<u>shall</u>,” “<u>must</u>.” Use the word “shall” to impose a duty upon someone. The Alaska Supreme Court has stated that the use of the word “shall” denotes a mandatory intent. <i>Fowler v. Anchorage</i>, 583 P.2d 817 (Alaska 1978).</p> <p>Use the word “must” when describing requirements related to objects such as forms or criteria. (Use “must” sparingly, however, because most sentences using it can probably be written more clearly to impose a duty on a person, in which case “shall” would be the proper word.) Use the word “may” to grant a privilege or discretionary power. <i>Rutter v. State, Alaska Board of Fisheries</i>, 963 P .2d 1007 (Alaska 1998), p. 5. Use the words “may not” to impose a prohibition upon someone. For a further discussion, see Martineau, <i>Drafting Legislation and Rules in Plain English</i> (1991), pp. 81 - 82. For example:</p> <p style="padding-left: 40px;">The commissioner <u>shall</u> issue a license ... , i.e., it is the commissioner’s duty to do so.</p> <p style="padding-left: 40px;">The information on the form <u>must</u> include ... , i.e., the form is required to have something in particular on it.</p> <p style="padding-left: 40px;">The commissioner <u>may</u> inspect records ... , i.e., the commissioner may if it is necessary or proper, but the commissioner is not obligated to do so.</p> <p style="padding-left: 40px;">The commissioner <u>may not</u> issue a license ... , i.e., under the defined circumstances, it is beyond the power of the commissioner to issue the license.</p> | 1 | |

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| | | <p>A person <u>may not</u> operate a ... without a license ... , i.e., under the circumstances, a person is not permitted to do the specified act without a license.</p> <p>Do not use “must not” or “shall not.” Also, do not use the “No ... may” construction; use “may not.” For instance, avoid “No fish trap may be ... ,” and use “A fish trap may not be ... “ When drafting a constitutional provision, however, follow the style of the provision you are amending.</p> | | |
| 6. | Arizona Legislative Council The Arizona Legislative Bill Drafting Manual (2017-2018) | <p>https://leg.colorado.gov/sites/default/files/drafting-manual-20170119.pdf at 100:</p> <p>5.34 USE OF “SHALL,” “MAY,” “MAY NOT” AND “SHALL NOT”</p> <p style="text-align: center;"><u>Shall</u></p> <p>“Shall” is properly used to indicate that something is mandatory. Use “shall” to prescribe a duty to act, rather than to declare a legal result. Do not say “THE EQUIPMENT SHALL REMAIN THE PROPERTY OF THE UNITED STATES.” Instead use: “THE EQUIPMENT REMAINS....” Avoid using “shall” to confer a right, as with “the director shall receive compensation.” Instead use “THE DIRECTOR’S COMPENSATION IS” or “THE DIRECTOR IS ELIGIBLE TO RECEIVE COMPENSATION.”</p> <p>If “shall be” can be replaced with “is” or “are,” do so. See §§ 5.14 and 5.15 for examples of the improper use of “shall.”</p> <p style="text-align: center;"><u>May</u></p> <p>“May” is permissive and confers a privilege or power. Normally, the use of “may” implies discretion or permission. Use “may” when giving a person or entity the <u>option</u> to act or not act.</p> <p style="text-align: center;"><u>May not and shall not</u></p> <p>“May not” prohibits an action. “Shall not” literally imposes a <u>duty</u> not to act. These phrases are often viewed as equivalent expressions of prohibition, but the drafter is strongly encouraged to use “may not” to</p> | 1 | |

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| | | <p>prohibit an action.</p> <p style="text-align: center;"><u>Incorrect use with a negative subject</u></p> <p>Avoid the negative subject with affirmative “SHALL” as in “NO PERSON SHALL....” Literally, this means that no one is required to act. It negates the obligation but not the permission to act. However, “NO PERSON MAY” negates the permission also and is in reality the stronger proscription. Strict rules of drafting suggest the desirability of reversing subject and verb. The legal subject should be stated affirmatively and preferably in the singular form, as “A PERSON MAY NOT....”</p> <p style="text-align: center;"><u>Consequences of inconsistent or inaccurate use</u></p> <p>A prime drafting concern is to preserve the distinction between mandatory and permissive directives. The inconsistent or inaccurate use of “shall” and “may” has occasionally allowed judicial selection rather than legislative direction to determine the applicable verb form in laws. Additionally, even if “may” is used, the courts have imposed an affirmative duty if the object of the statute shows such a legislative intent. <u>Pioneer Mutual Benefit Ass’n. v. Corp. Commission</u>, 59 Ariz. 112, 123 P.2d 828 (1942).</p> | | |
| 7. | Bureau of Legislative Research Legislative Drafting Manual (Arkansas, November 2010) | <p>http://www.arkleg.state.ar.us/bureau/legal/Publications/2010%20Legislative%20Drafting%20Manual.pdf at pp. 56-57:</p> <p>(4) “Can”, “may”, “must”, “shall”, “should”, “will”, and “would”.</p> <p>(A) Can.</p> <ul style="list-style-type: none"> • “Can” refers to capability. • Do not use “can” to grant permission. <p>(B) May.</p> <ul style="list-style-type: none"> • “May” refers to permission. • Permission or the grant of a power or privilege is best expressed by “may”. | 1 | |

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| | | <p>(C) Must.</p> <ul style="list-style-type: none"> • Do not use “must” when “shall” is meant. <p>(D) Shall.</p> <ul style="list-style-type: none"> • A duty or obligation is best expressed by “shall.” • Instead of using “shall be”, use “is”. • Avoid using a negative subject with an affirmative “shall”: <p style="padding-left: 40px;">Example:</p> <p style="padding-left: 80px;">No person shall... (This means that no one is required to act. It negates the obligation, but not the permission to act.)</p> <ul style="list-style-type: none"> • Use of “A person may not ...” negates the obligation and the permission. <p>“Shall not” should be used only to mean “has a duty not to”</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p><u>Do Not Use A Future Tense Verb:</u></p> <p>if a member shall resign</p> <p>it shall be unlawful</p> <p>no person shall be entitled</p> <p>no person shall be guilty</p> <p>no person shall be deemed guilty</p> <p>the property shall remain</p> <p>this section shall not be construed to</p> <p>who shall serve</p> <p>who shall violate</p> </td> <td style="width: 50%; vertical-align: top;"> <p><u>Use A Present Tense Verb:</u></p> <p>if a member resigns</p> <p>it is unlawful</p> <p>no person is entitled</p> <p>no person is guilty</p> <p>no person is guilty</p> <p>the property remains</p> <p>this section does not</p> <p>who serves</p> <p>who violates</p> </td> </tr> </table> | <p><u>Do Not Use A Future Tense Verb:</u></p> <p>if a member shall resign</p> <p>it shall be unlawful</p> <p>no person shall be entitled</p> <p>no person shall be guilty</p> <p>no person shall be deemed guilty</p> <p>the property shall remain</p> <p>this section shall not be construed to</p> <p>who shall serve</p> <p>who shall violate</p> | <p><u>Use A Present Tense Verb:</u></p> <p>if a member resigns</p> <p>it is unlawful</p> <p>no person is entitled</p> <p>no person is guilty</p> <p>no person is guilty</p> <p>the property remains</p> <p>this section does not</p> <p>who serves</p> <p>who violates</p> | | |
| <p><u>Do Not Use A Future Tense Verb:</u></p> <p>if a member shall resign</p> <p>it shall be unlawful</p> <p>no person shall be entitled</p> <p>no person shall be guilty</p> <p>no person shall be deemed guilty</p> <p>the property shall remain</p> <p>this section shall not be construed to</p> <p>who shall serve</p> <p>who shall violate</p> | <p><u>Use A Present Tense Verb:</u></p> <p>if a member resigns</p> <p>it is unlawful</p> <p>no person is entitled</p> <p>no person is guilty</p> <p>no person is guilty</p> <p>the property remains</p> <p>this section does not</p> <p>who serves</p> <p>who violates</p> | | | | | |

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| | | <p>A common problem in legislative drafting is that the word “shall” is often used to indicate a legal result rather than a command. This is known as a false imperative.</p> <p>Incorrect:</p> <p>The committee shall consist of the Director of the Arkansas Crime Information Center, the Director of the Department of Arkansas State Police, and the Director of the Department of Health.</p> <p>Correct:</p> <p>The committee consists of the Director of the Arkansas Crime Information Center, the Director of the Department of Arkansas State Police, and the Director of the Department of Health.</p> <p style="text-align: center;"><u>OR</u></p> <p>The members of the committee are the Director of the Arkansas Crime Information Center, the Director of the Department of Arkansas State Police, and the Director of the Department of Health.</p> <p>(E) Should.</p> <ul style="list-style-type: none"> • Do not use “should” to state an obligation or duty. <p>(F) Will.</p> <ul style="list-style-type: none"> • Do not use “will” when “shall” is meant. <p>(G) Would.</p> <ul style="list-style-type: none"> • Do not use “would” when “shall” is meant. | | |
| 8. | Office of Legislative Legal Services Colorado Legislative Drafting Manual (January 17, 2017) | https://leg.colorado.gov/sites/default/files/drafting-manual-20170119.pdf at F-49: Guidelines for the Use of “Shall” and “Must” The easiest way to approach this word choice is to first try following the drafting manual | 1 | |

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| | | <p>regarding the use of “shall”. If using the phrase “has a duty to” doesn’t make sense (considering the exception for the use of the passive voice), then don’t use “shall”. “Must” is a possibility, but you should consider whether you really need to use an authority verb.</p> <p>Excerpt from Drafting Manual</p> <p>If the words in quotes from the right-hand column below convey your intended meaning, then use the word or words from the left-hand column.</p> <p style="padding-left: 40px;">shall = a person “has a duty to” (<i>but see</i> paragraph (a)(I)(C) below regarding the passive voice)</p> <p style="padding-left: 40px;">must = a thing or person “is required to” meet a condition for a consequence to apply. “Must” does not mean that a person has a duty.</p> <p style="padding-left: 40px;">(a) (I) (C) <i>In the passive voice.</i> . . . If you use the passive voice (because the actors are unknown, unmistakable, or too numerous to list) and the context indicates a legislative intent that a person has a duty, use “shall”, not “must”, even though the subject of the sentence is a thing. . . .</p> <p>Step-by-step Analysis</p> <ol style="list-style-type: none"> 1. Figure out whether the subject of your sentence is a person or a thing (remember that the statutory definition of “person”, §2-4-401 (8), C.R.S., includes entities). 2. Figure out whether there is or should be a duty or only a condition. <ol style="list-style-type: none"> a. Things can’t have duties, only people can. b. A duty is something that a court will enforce, for instance, by applying a penalty or entering an injunction. c. A condition is simply a prerequisite for a consequence to apply. A court will not apply a penalty or enter an injunction to require a person or thing to meet the condition, but may determine that a consequence does or doesn’t apply. 3. If the subject is a person and: <ol style="list-style-type: none"> a. There is a duty, use “shall”. b. There is not a duty, use “must” or another present-tense verb. Think outside the box: is this even an authority verb issue? Can I express this better with another present-tense | | |

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| | | <p style="text-align: center;">verb?</p> <p>4. If the subject is a thing:</p> <p style="margin-left: 20px;">a. First, figure out whether your sentence is active or passive voice (try to use active voice).</p> <p style="margin-left: 20px;">b. In the active voice, “shall” is not an option because a thing can’t have a duty. Use “must” or another present-tense verb.</p> <p style="margin-left: 20px;">c. In the passive voice, if the object of the sentence is a person who has a duty, use “shall”.</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <thead> <tr> <th colspan="2">Person</th> <th colspan="2">Thing</th> <th></th> </tr> <tr> <th colspan="2">Is There a Duty?</th> <th colspan="2">Is There a Duty?</th> <th></th> </tr> <tr> <th>No</th> <th>Yes</th> <th>No</th> <th>Yes</th> <th>Voice</th> </tr> </thead> <tbody> <tr> <td rowspan="2" style="text-align: left;">Don't use "shall" Maybe use "must"</td> <td rowspan="2" style="text-align: center;">Use "shall"</td> <td rowspan="2" style="text-align: left;">Don't use "shall" Maybe use "must"</td> <td style="text-align: center;">Use "shall"</td> <td style="text-align: center;">Passive</td> </tr> <tr> <td style="text-align: center;">(Can't be a duty) Don't use "shall" Maybe use "must"</td> <td style="text-align: center;">Active</td> </tr> </tbody> </table> | Person | | Thing | | | Is There a Duty? | | Is There a Duty? | | | No | Yes | No | Yes | Voice | Don't use "shall" Maybe use "must" | Use "shall" | Don't use "shall" Maybe use "must" | Use "shall" | Passive | (Can't be a duty) Don't use "shall" Maybe use "must" | Active | | |
| Person | | Thing | | | | | | | | | | | | | | | | | | | | | | | | |
| Is There a Duty? | | Is There a Duty? | | | | | | | | | | | | | | | | | | | | | | | | |
| No | Yes | No | Yes | Voice | | | | | | | | | | | | | | | | | | | | | | |
| Don't use "shall" Maybe use "must" | Use "shall" | Don't use "shall" Maybe use "must" | Use "shall" | Passive | | | | | | | | | | | | | | | | | | | | | | |
| | | | (Can't be a duty) Don't use "shall" Maybe use "must" | Active | | | | | | | | | | | | | | | | | | | | | | |
| 9. | Legislative Commissioners’ Office of the Connecticut General Assembly Manual for Drafting Regulations (Ct. 2015) | <p>http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf at pp. 41-42:</p> <ul style="list-style-type: none"> • When introducing a defined term, avoid using the word “shall”. <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <thead> <tr style="background-color: #333; color: white;"> <th style="width: 50%;">YES:</th> <th style="width: 50%;">NO:</th> </tr> </thead> <tbody> <tr> <td style="text-align: left;">... means ...</td> <td style="text-align: left;">... shall mean ...</td> </tr> <tr> <td style="text-align: left;">... has the same meaning as...</td> <td style="text-align: left;">... shall have the same meaning as...</td> </tr> <tr> <td style="text-align: left;">... includes ...</td> <td style="text-align: left;">... shall include ...</td> </tr> <tr> <td style="text-align: left;">... does not include ...</td> <td style="text-align: left;">... shall not include ...</td> </tr> </tbody> </table> <p>“Shall” vs. “Must” vs. “Will”</p> | YES: | NO: | ... means ... | ... shall mean ... | ... has the same meaning as... | ... shall have the same meaning as... | ... includes ... | ... shall include ... | ... does not include ... | ... shall not include ... | 1 | | | | | | | | | | | | | |
| YES: | NO: | | | | | | | | | | | | | | | | | | | | | | | | | |
| ... means ... | ... shall mean ... | | | | | | | | | | | | | | | | | | | | | | | | | |
| ... has the same meaning as... | ... shall have the same meaning as... | | | | | | | | | | | | | | | | | | | | | | | | | |
| ... includes ... | ... shall include ... | | | | | | | | | | | | | | | | | | | | | | | | | |
| ... does not include ... | ... shall not include ... | | | | | | | | | | | | | | | | | | | | | | | | | |

Exhibit 2—Survey of Jurisdictions: Use of “Shall” in Legislative Drafting

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|---|--|---|--------|-------------|---------------|--------------|---|----------------------|--|---|---|--|---|--|--|--|
| | | <ul style="list-style-type: none"> In keeping with the Regulation Review Committee’s directive to agencies regarding mandates, use “shall” when the agency seeks to impose a mandate and does not confer any discretion in carrying out the action so directed. Never use “must”. Avoid using “may not”. Instead, use “shall not” or “no person shall”. Use “will” to denote something that will happen in the future, <i>not</i> to denote a requirement. <div style="border: 1px solid black; padding: 5px; margin: 10px 0; width: fit-content;"> <p>... The seller <i>shall</i> maintain such food under conditions that <i>will</i> inhibit the growth of bacteria ...</p> </div> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr style="background-color: black; color: white;"> <th style="width: 50%;">YES:</th> <th style="width: 50%;">NO:</th> </tr> </thead> <tbody> <tr style="background-color: #cccccc;"> <td>... shall ...</td> <td>... must ...</td> </tr> <tr style="background-color: #cccccc;"> <td>No person shall ... OR A person shall not ...</td> <td>A person may not ...</td> </tr> <tr style="background-color: #cccccc;"> <td>The billing provider shall update the billing provider agreement annually.</td> <td>The billing provider must update the billing provider agreement annually.</td> </tr> <tr style="background-color: #cccccc;"> <td>Medicaid shall reimburse a provider for SBCH services, provided the following requirements are met: ...</td> <td>Medicaid will reimburse a provider for SBCH services, provided the following requirements are met: ...</td> </tr> <tr style="background-color: #cccccc;"> <td>Small water and sewerage companies shall not be required to comply with section 16-1-56 of the Regulations of Connecticut State Agencies. OR Small water and sewerage companies are not required to comply with section 16-1-56 of the Regulations of Connecticut State Agencies.</td> <td>Small water and sewerage companies will not be required to comply with section 16-1-56 of the Regulations of Connecticut State Agencies.</td> </tr> </tbody> </table> | YES: | NO: | ... shall ... | ... must ... | No person shall ... OR A person shall not ... | A person may not ... | The billing provider shall update the billing provider agreement annually. | The billing provider must update the billing provider agreement annually. | Medicaid shall reimburse a provider for SBCH services, provided the following requirements are met: ... | Medicaid will reimburse a provider for SBCH services, provided the following requirements are met: ... | Small water and sewerage companies shall not be required to comply with section 16-1-56 of the Regulations of Connecticut State Agencies. OR Small water and sewerage companies are not required to comply with section 16-1-56 of the Regulations of Connecticut State Agencies. | Small water and sewerage companies will not be required to comply with section 16-1-56 of the Regulations of Connecticut State Agencies. | | |
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| ... shall ... | ... must ... | | | | | | | | | | | | | | | |
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| 10. | Legislative Council Division of Research Delaware Legislative Drafting Manual (January 2017) | <p>http://legis.delaware.gov/LawsOfDE/BillDraftingManual at p. 88-91:</p> <p>Rule 11. Use of “Shall”, “Must”, “May”, and Substitutes.</p> <p>(a) “Shall” means that a person has a duty. Consider the following when using “shall”:</p> <p style="padding-left: 40px;">(1) Use “shall” if the verb it qualifies is a transitive verb in the active voice and the subject is animate.</p> <p style="padding-left: 40px;">(2) A transitive verb is a verb that takes, or precedes, a direct object. In sentences in the active voice, a direct object is the part of the sentence receiving the transitive verb’s action. For a discussion of the active voice, see Drafting Rule 6.</p> <p style="padding-left: 40px;">(3) A subject is animate when it can respond to a statutory command. For example, an individual, a corporation, and a court are animate.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>Example of the proper use of “shall”: The court shall enforce the collection of a tax judgment.</p> </div> <p>(b) “Must” means that a person or thing is required to meet a condition for a consequence to apply. “Must” does not mean that a person has a duty. Consider the following when using “must”:</p> <p style="padding-left: 40px;">(1) Use “must” if the verb it qualifies is an active verb in the passive voice, or is an inactive verb, or if the subject is inanimate.</p> <p style="padding-left: 40px;">(2) An active verb expresses meaning more emphatically and vigorously than its weaker counterpart, an inactive verb. Furthermore, an active verb is “in the passive voice” when it is preceded by a form of the verb “be”, examples of which include “is”, “was”, “has been”, “had been”, and “will have been”.</p> <p style="padding-left: 40px;">(3) An inactive verb is one that expresses no action, but simply expresses a state of being. Inactive verbs are also known as “linking verbs”. Some of the most common inactive verbs are: “is”, “are”, “was”, “were”, “am”, “be”, “being”, “been”, “became”, “become”, “remains”, “appears”, or “seems”.</p> | 1 | |

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| 11. | Legislative Reference Bureau Hawaii Legislative Drafting Manual, Tenth Edition (2012) | http://lrbhawaii.info/reports/legprts/lrb/2012/legdftman12.pdf at p. 23: c. Use “may” to express authority, power, or privilege; use “shall” to express a duty, obligation, or requirement; use “may not” to express prohibition. Use the “comptroller <i>may</i> ” instead of “the comptroller is hereby authorized”; “the governor <i>may</i> ” instead of “it shall be lawful for the governor to ...” Use “shall” instead of the phrases “is hereby authorized and directed,” or “it is the duty.” Use “will” to express future tense, but not as a substitute for “shall.” Do not use “must” when meaning “shall.” Avoid the use of “should” as a step between “may” and “shall” –there is no middle ground. | 1 | |
| 12. | Legislation Drafting Manual Concise Version Research & Legislation, LSO (Idaho) | https://legislature.idaho.gov/wp-content/uploads/research/draftingmanual.pdf at p. 26: GUIDELINES FOR THE USE OF “SHALL” AND “MUST” The easiest way to approach this word choice is to first try following the drafting manual regarding the use of “shall”. If using the phrase “has a duty to” doesn’t make sense (considering the exception for the use of the passive voice), then don’t use “shall”. “Must” is a possibility, but you should consider whether you really need to use an authority verb. Excerpt from Drafting Manual If the words in quotes from the right-hand column below convey your intended meaning, then use the word or words from the left-hand column. <div style="margin-left: 40px;"> shall = a person “has a duty to” (<i>but see</i> paragraph (a)(1)(C) below regarding the passive voice) must = a thing or person “is required to” meet a condition for a consequence to apply. “Must” does not mean that a person has a duty. </div> (a)(1)(C) <u>In the passive voice</u> ... If you use the passive voice (because the actors are unknown, unmistakable, or too numerous to list) and the context indicates a legislative intent that a person has a duty, use “shall”, not “must”, even though the subject of the sentence is a thing ... | 1 | |

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| | | <p>Step-by-step Analysis</p> <ol style="list-style-type: none"> 1. Figure out whether the subject of your sentence is a person or a thing (remember that the statutory definition of “person”, §2-4-401 (8), C.R.S., includes entities). 2. Figure out whether there is or should be a duty or only a condition. <ol style="list-style-type: none"> a. Things can’t have duties, only people can. b. A duty is something that a court will enforce, for instance, by applying a penalty or entering an injunction c. A condition is simply a prerequisite for a consequence to apply. A court will not apply a penalty or enter an injunction to require a person or thing to meet the condition, but may determine that a consequence does or doesn’t apply. 3. If the subject is a person and: <ol style="list-style-type: none"> a. There is a duty, use “shall”. b. There is a duty, use “must” or another present-tense verb. Think outside the box: is this even an authority verb issue? Can I express this better with another present-tense verb? 4. If the subject is a thing: <ol style="list-style-type: none"> a. First, figure out whether your sentence is active or passive voice (try to use active voice). b. In the active voice, “shall” is not an option because a thing can’t have a duty. Use “must” or another present-tense verb. c. In the passive voice, if the object of the sentence is a person who has a duty, use “shall”. | | |

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| | | <table border="1" style="margin: auto; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center;">Person</td> <td colspan="2" style="text-align: center;">Thing</td> <td></td> </tr> <tr> <td colspan="2" style="text-align: center;">Is There a Duty?</td> <td colspan="2" style="text-align: center;">Is There a Duty?</td> <td></td> </tr> <tr> <td style="text-align: center;">No</td> <td style="text-align: center;">Yes</td> <td style="text-align: center;">No</td> <td style="text-align: center;">Yes</td> <td style="text-align: center;">Voice</td> </tr> <tr> <td rowspan="2" style="text-align: center;">Don't use "shall" Maybe use "must"</td> <td rowspan="2" style="text-align: center;">Use "shall"</td> <td rowspan="2" style="text-align: center;">Don't use "shall" Maybe use "must"</td> <td style="text-align: center;">Use "shall"</td> <td style="text-align: center;">Passive</td> </tr> <tr> <td style="text-align: center;">(Can't be a duty) Don't use "shall" Maybe use "must"</td> <td style="text-align: center;">Active</td> </tr> </table> | Person | | Thing | | | Is There a Duty? | | Is There a Duty? | | | No | Yes | No | Yes | Voice | Don't use "shall" Maybe use "must" | Use "shall" | Don't use "shall" Maybe use "must" | Use "shall" | Passive | (Can't be a duty) Don't use "shall" Maybe use "must" | Active | | |
| Person | | Thing | | | | | | | | | | | | | | | | | | | | | | | | |
| Is There a Duty? | | Is There a Duty? | | | | | | | | | | | | | | | | | | | | | | | | |
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| Don't use "shall" Maybe use "must" | Use "shall" | Don't use "shall" Maybe use "must" | Use "shall" | Passive | | | | | | | | | | | | | | | | | | | | | | |
| | | | (Can't be a duty) Don't use "shall" Maybe use "must" | Active | | | | | | | | | | | | | | | | | | | | | | |
| 13. | The Legislative Reference Bureau, Illinois Bill Drafting Manual (December 2012) | http://www.ilga.gov/commission/lrb/manual.pdf at p. 226 SHALL, WILL Use “will” to express simple futurity. Do not use “shall” for that purpose. An example follows: The clerk must send a notice that the hearing will (futurity; Not: shall) be held on a specified date. Do not use “will” to express a duty or obligation. An example follows: The Director must (duty; Not: will) file the report with the General Assembly. | | 1 | | | | | | | | | | | | | | | | | | | | | | |
| 14. | Office of Code Revision Legislative Services Agency Drafting Manual for the Indiana General Assembly (December 19, 2012) | http://iga.in.gov/legislative/2014/publications/handbooks/ p. 11-12: (12) Commanding, Authorizing, Forbidding, and Negating To create a right, say “is entitled to”. For example, “A member is entitled to reimbursement for expenses” means that the member has a right to receive the reimbursement. To create discretionary authority, say “may”. For example, “A member may seek reimbursement for expenses” means that the member, at the member’s discretion, is permitted or allowed to seek recovery of the reimbursement. To create a duty, say “shall”. | 1 | | | | | | | | | | | | | | | | | | | | | | | |

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| | | <p>For example, “A member shall seek reimbursement for expenses” means that the member is commanded or directed to seek recovery of the reimbursement.</p> <p>To create a condition precedent, say “must”.</p> <p>For example, “To receive reimbursement, a member must submit a form for expenses” means that the member is obliged or required to submit the form to recover the reimbursement.</p> <p>To negate a right, say “is not entitled to”.</p> <p>For example, “A member is not entitled to seek reimbursement for expenses” means that the member has no right to seek recovery of the reimbursement.</p> <p>To negate discretionary authority, say “may not”.</p> <p>For example, “A member may not seek reimbursement for expenses” means that the member is not permitted or allowed to seek recovery of the reimbursement.</p> <p>To negate a duty or a condition precedent, say “is not required to”.</p> <p>For example, “A member is not required to seek reimbursement for expenses” means that the member may, but does not have to, seek recovery of the reimbursement.</p> <p>To create a duty not to act, say “shall not”.</p> <p>For example, “A member shall not seek reimbursement for expenses” means that the member is commanded or directed to not seek recovery of the reimbursement.</p> <p>[The guidelines above are taken from: Dickerson, F.R., Legal Drafting, West Publishing Company (1981), p.182.]</p> <p>Avoid false imperatives.</p> <p>A false imperative attempts to create a duty but does not specify to whom the duty belongs or the consequences of the failure. Consider the following by Jerry Payne of <i>The Legislative Lawyer</i>:</p> <p><i>The solution to avoiding the false imperative is to substitute a short definition in place of the imperative to determine if it makes sense. If the drafter would make the following mental substitutions, then the language will remain logical:</i></p> <p style="text-align: center;"><i>shall: has a duty to</i></p> | | |

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| | | <p style="text-align: center;"><i>shall not: has a duty not to</i></p> <p><i>If the drafter is considering using “shall” or “shall not,” the drafter need merely substitute the definition and consider whether the definition makes sense. For example, “The commission shall keep a cash reserve,” reads “The commission has a duty to keep a cash reserve.” If the substitute phrase makes sense, then the use is proper. Here is another example, “Service shall be made on the parties,” reads “Service has a duty to be made on the parties.” This is nonsense. Service does not have volition. Service cannot even exist until it is made. Therefore, it is a command that service bring itself into existence. This provision needs to be rewritten.</i></p> <p>[Payne, Jerry. “The False Imperative.” <i>The Legislative Lawyer</i>. National Conference of State Legislatures, 18 Dec. 2010. Web. 26 June 2012. <www.ncsl.org>]</p> <p>Avoid using hortatory qualifiers.</p> <p>Hortatory qualifiers include terms such as “will”, “should”, “ought”, and “want”. Hortatory language urges a particular course of action or conduct. Rather than conveying information, it generally presents an argument for or against something and is better suited for use in documents and speeches intended to inspire or incite the audience. Note, however, that the use of “will” is acceptable when the future tense is appropriate. (See Tense, page 9.)</p> | | |
| 15. | Bill Drafting Manual Kentucky General Assembly (2011) | <p>http://www.lrc.ky.gov/lrcpubs/ib117.pdf at p. 23-24:</p> <p>Sec. 303. Use of “Shall” and “May”</p> <p>A duty, obligation, or prohibition is best expressed by “shall,” and a power or privilege is best expressed by “may.” “Shall” should never be used to express the future. Its proper function is mandatory, and generally its use is permissible only when “must” or “has a duty to” could be substituted. In statutory usage “shall” does not denote the future tense any more than “may” does.</p> <p>Sec. 804. Format for a Bill Summary</p> <p>The general rule for preparation of narrative bill summaries is to begin each segment in your summary with a root verb. The action in the bill is in process of being accomplished. Say “create a board . . .” rather than “creates a board...” or “a board is created. . .” The following words are most useful for beginning your segments: authorize, enable or permit, create or establish, direct or require, grant, appropriate, limit, exempt, prohibit or forbid, increase or decrease, change, reclassify (for cities), include or exclude,</p> | 1 | |

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| | | <p>redefine, add, amend, repeal.</p> <p>In segments dealing with amendments to existing statutes, if the description of the subject of the action necessarily falls near the end of the segment, use the term “relating to” immediately after the number of the section amended. For example, say: “Amend KRS 287.215, relating to the State Board of Podiatry, to redefine the terms, compensation, selection, and qualifications of members.”</p> <p>End each segment except the last with a semicolon. Please use articles. Try not to use the term “the Act” or “this Act” in a summary. Do not use the words “shall” or “may.” In mandatory legislation, the language “shall” is expressed in a summary by saying “require” or “direct.” Permissive language is expressed in the summary by the terms “authorize” or “permit.” Avoid the words “specify,” “provide,” and “stipulate” as segment openers unless absolutely necessary. Each segment but the first begins with a lowercase letter.</p> <p>Use Arabic numerals if possible. Omit severability clauses in summarizing. Emergency clauses, however, must be indicated in the summary: simply say “EMERGENCY” as the final word in the summary. The emergency clause, if any, customarily is placed at or near the end of the bill and is preceded by a “Whereas.” If the effective date is extraordinary, say “EFFECTIVE XXXXX XX, 2012” as your last segment. All such effective date and emergency segments should appear in all capital letters.</p> <p>Appropriations must be in the summary, in their exact dollar amounts, expressed in Arabic numerals.</p> <p>Any taxation provisions made by the bill must also be in the summary.</p> | | |
| 16. | House Legislative Services Drafting Style and Usage Manual (Louisiana, November 2015) | <p>http://www.ncsl.org/Portals/1/Documents/relacs/manuals/2016LAHouseDraftingManual.pdf at p. 4-3; 4-7; 5-7; 5-8</p> <p><i>B. Present tense</i></p> <p>Present tense is a grammatical tense the principal function of which is to locate a situation or event in present time. The law is regarded as always speaking, so use present tense when drafting. In most drafting situations this is easy and natural.</p> | 1 | |

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| | | <div data-bbox="606 318 1465 391" style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>A significant change in employment status constitutes an adverse employment action under Title VII.</p> </div> <p>There are two other verb tenses a drafter might be tempted to use but should avoid:</p> <p>The first is the conditional future, as in “If the petition shall have been filed prior to...”. While we do see this verb tense in some older statutes, it sounds so antiquated that contemporary drafters are not likely to use it.</p> <p>The second is the use of “shall” as a helping verb, which changes the tense of the verb to future. In his comments “Legislative Bill Drafting”, which accompany the Louisiana Revised Statutes of 1950, Carlos Lazarus says “It is always preferable to say: ‘This Section does not apply to minors or interdicts’ than it is to say: ‘This Section shall not apply to minors or interdicts.’ ‘Shall’ should only be used to denote requirements or prohibitions.”</p> <p><i>C. Singular and plural</i></p> <p>R.S. 1:7 provides that words used in the singular include words used in the plural and the plural the singular. The singular should be used whenever possible, as sentences written in the plural can become even more convoluted when amended. Some words to consider using when drafting in the singular are each, every, any, and a person.</p> <p>The following example is written in the plural. Note how confusing it can become:</p> <div data-bbox="606 1175 1493 1305" style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>A. All employees who in good faith believe that their employer is in violation of this Chapter shall submit written notice of the alleged violation to their employers. Employers who receive such written notice from their employees shall have sixty days from receipt of the notice to investigate the matter and remedy any violation of this Chapter.</p> </div> | | |

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| | | <p>Alternatively, see the original sentence written in the singular:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>A. An employee who in good faith believes that his employer is in violation of this Chapter shall submit written notice of the alleged violation to the employer. An employer who receives such written notice from an employee shall have sixty days from receipt of the notice to investigate the matter and remedy any violation of this Chapter.</p> </div> <p>In the following example, “provided that” is used for no other reason than to glue together two distinct requirements:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>School board members shall not be paid for more than one hundred forty-four days in any one year; provided that no member shall be compensated for more than twelve meetings per month.</p> </div> <p>If the preceding example is read literally and the “provided that” establishes a proviso, this sentence means that if a member is paid for more than twelve meetings in a month, then he may be paid for more than one hundred forty-four meetings in a year. Using a semicolon alone will suffice.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>School board members shall not be paid for more than one hundred forty-four days in any one year; no member shall be compensated for more than twelve meetings per month.</p> </div> <p>4.3 SIMPLIFY, SIMPLIFY, SIMPLIFY</p> <p><i>A. Buried verbs</i></p> <p>One way to make writing unnecessarily complex is to use a weak verb in combination with the noun form of a verb rather than using the intended verb itself. Because drafters should endeavor not to make drafting unnecessarily complex, use the intended verb. For example:</p> | | |

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| | | <ul style="list-style-type: none"> ❖ "decide" rather than "make a decision" ❖ "rebut" rather than "offer a rebuttal" ❖ "indemnify" rather than "provide an indemnification to" <ul style="list-style-type: none"> ❖ "resolve" rather than "reach a resolution" ❖ "apply" rather than "submit an application" ❖ "determine" rather than "make a determination" <p><i>B. Unacceptable substitutes for "shall" or "may"</i></p> <p><i>Do not use "must" as a substitute for "shall".</i></p> <p>Do not use legalese substitutes, such as the following, for "shall" or "may":</p> <ul style="list-style-type: none"> ❖ is directed to ❖ must ❖ has the duty to ❖ is hereby authorized to ❖ is required to ❖ shall have the power to ❖ is entitled to ❖ is lawful to ❖ is empowered to <p>5.3 THE BODY OF THE BILL; THE SUBSTANTIVE SIDE</p> <p><i>A. Ironing out the substance of the bill</i></p> <p>As discussed in Chapter 1, Steps in Drafting, a drafter must analyze a member’s request to determine the issue or problem that needs to be addressed. In doing so, the drafter must think through the issue from beginning to end to ensure proper drafting and placement in the laws. To achieve this, the drafter may want to give consideration to the following:</p> <ul style="list-style-type: none"> ❖ What is the bill’s purpose? Will the bill create a duty or an obligation? <p>Statutory sentences are written to do one or more of the following:</p> <ol style="list-style-type: none"> 1) Require, authorize, or prohibit. | | |

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| | | <p>2) Set conditions, procedures, or consequences relative to No. 1. 3) Create and otherwise provide for the purpose and structure of a public entity.</p> <ul style="list-style-type: none"> ❖ Who are the actors involved? Who will be affected by what the bill does? ❖ Are there any procedures needed to implement the purpose of the bill? How will those procedures be implemented? Who will implement those procedures? ❖ How will the bill’s purpose be enforced? Who will be responsible for enforcement? ❖ What will be the consequences for failure to follow the bill’s purpose? Will there be any penalties? ❖ Are there any special conditions? Will there be any exemptions or exceptions in the application of the new law? <p>Once the drafter has considered the previous questions in relation to a member’s request, the drafter should use those answers to ensure that all provisions necessary to accomplish the member’s goal are included in the bill draft. It may be helpful for the drafter to review similar provisions of law for guidance and example.</p> <p><i>B. Using shall and may</i></p> <p>In considering the aforementioned guidelines, a drafter will need to determine the appropriate use of “shall” or “may”.</p> <p>According to R.S. 1:3, the word "shall" is mandatory and the word "may" is permissive. This seems straightforward, but there are many complicating factors.</p> <p><i>1) Shall.</i> "Shall" indicates that a person or entity has a duty or obligation to perform an action. Some things to consider when creating a duty or obligation:</p> | | |

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| | | <ul style="list-style-type: none"> ❖ Make it clear who has the duty or obligation. One of the best ways to make this clear is to use simple, active voice sentences. ❖ The consequences of failure to perform the duty or obligation should be clear; if there are no consequences, "shall" may have no effect. Be aware what existing consequences may be applicable simply as result of placement in the law. ❖ Consider possible circumstances under which compliance would not be possible or practical. ❖ Be careful with "shall" when the intent is to grant discretion, e.g. "the committee shall approve the nomination" indicates that the committee has no discretion; it is simply required to take the action. Consider whether a statement such as "the nomination is subject to committee approval" expresses the desired meaning. ❖ The use of "shall" as a helping verb may result in an unintended shift to passive voice. If a statute says an action "shall be prohibited", it implies that some person or entity has a responsibility to prohibit the action (raising the question "shall be prohibited by whom?"). If the intent is to draft a statute that prohibits the action, "is prohibited" or "is hereby prohibited" states this intent clearly. <p>2) <i>May</i>. If authorizing an action but requiring that procedures be followed when the authority is exercised, be sure to make it clear that the requirements apply only if the authority is exercised.</p> <p>When authorizing an action subject to certain conditions, be sure to make it clear whether the authority is limited by the conditions. "The board may reject bids for just cause" is open to an argument that the board could reject bids for other reasons. "The board may reject bids but only for just cause" is not open to such an argument.</p> | | |

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| 17. | Legislative Council, Maine State Legislature Maine Legislative Drafting Manual (August 2009) | <p>http://www.maine.gov/legis/ros/manual/Draftman2009.pdf at p. 90-92</p> <p>Section 1. Legal action verbs: shall, must and may.</p> <p style="padding-left: 40px;">In stating the legislative objective, the drafter must pay particular attention to the verb forms used to direct, limit or permit action or inaction.</p> <p><u>A. Mandatory and permissive language.</u></p> <p>(1) Shall. Although “shall” is somewhat uncommon in general English usage, it may be used correctly in legal drafting. Drafters, however, must pay close attention to the proper use of “shall.” Below are examples of the proper and improper use of “shall.”</p> <p style="padding-left: 40px;">(a) Imposing a duty. “Shall” is properly used to impose a duty on a person or body or to mandate action by a person or body. Use it to say a person or a body “has a duty to” do something or “has to” do something.</p> <p><u>Examples:</u></p> <p style="padding-left: 40px;">An association that issues shares by series shall keep a record of every certificate that it issues.</p> <p style="padding-left: 40px;">The commissioner shall adopt rules.</p> <p style="padding-left: 40px;">(b) Not in conditional sentences. “Shall” should not be used in conditional sentences.</p> <p><u>Examples:</u></p> | 1 | |

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| | | <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <tr> <td style="width: 50%;">Do not write:</td> <td style="width: 50%;">Write:</td> </tr> <tr> <td>If it shall have been established ...</td> <td>If it is established ... OR If it has been established ...</td> </tr> <tr> <td>When the officers shall have completed their investigation ...</td> <td>When the officers complete their investigation ...</td> </tr> <tr> <td>To be eligible for parole, a prisoner shall demonstrate ...</td> <td>To be eligible for parole, a prisoner must demonstrate ...</td> </tr> </table> <p style="text-align: center;">(c) Not to confer a right. Avoid using “shall” to confer a right when the recipient is the subject of an active sentence. A right should not be stated as a duty to enjoy the right.</p> <p>Examples:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 10px;"> <tr> <td style="width: 50%;">Do not write:</td> <td style="width: 50%;">Write:</td> </tr> <tr> <td>The director shall receive compensation of \$12,000 a year.</td> <td>The director is entitled to compensation of \$12,000 a year.</td> </tr> </table> <p style="text-align: center;">(d) Future law. Similarly, don’t use “shall” to say what the law is or how it applies in the future.</p> <p>Examples:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Do not write:</td> <td style="width: 50%;">Write:</td> </tr> <tr> <td>A person shall be eligible to apply for tax relief.</td> <td>A person is eligible to apply for tax relief.</td> </tr> <tr> <td>A person who traps lobsters in violation of this section shall be guilty of a Class E crime.</td> <td>A person who traps lobsters in violation of this section is guilty of a Class E crime.</td> </tr> <tr> <td>Grammatical errors shall not invalidate a rule.</td> <td>Grammatical errors do not invalidate a rule.</td> </tr> <tr> <td>It shall be unlawful ...</td> <td>It is unlawful ...</td> </tr> <tr> <td>Funds shall carry to ...</td> <td>Funds carry to ...</td> </tr> </table> | Do not write: | Write: | If it shall have been established ... | If it is established ... OR If it has been established ... | When the officers shall have completed their investigation ... | When the officers complete their investigation ... | To be eligible for parole, a prisoner shall demonstrate ... | To be eligible for parole, a prisoner must demonstrate ... | Do not write: | Write: | The director shall receive compensation of \$12,000 a year. | The director is entitled to compensation of \$12,000 a year. | Do not write: | Write: | A person shall be eligible to apply for tax relief. | A person is eligible to apply for tax relief. | A person who traps lobsters in violation of this section shall be guilty of a Class E crime. | A person who traps lobsters in violation of this section is guilty of a Class E crime. | Grammatical errors shall not invalidate a rule. | Grammatical errors do not invalidate a rule. | It shall be unlawful ... | It is unlawful ... | Funds shall carry to ... | Funds carry to ... | | |
| Do not write: | Write: | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| If it shall have been established ... | If it is established ... OR If it has been established ... | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| When the officers shall have completed their investigation ... | When the officers complete their investigation ... | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| To be eligible for parole, a prisoner shall demonstrate ... | To be eligible for parole, a prisoner must demonstrate ... | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Do not write: | Write: | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| The director shall receive compensation of \$12,000 a year. | The director is entitled to compensation of \$12,000 a year. | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Do not write: | Write: | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A person shall be eligible to apply for tax relief. | A person is eligible to apply for tax relief. | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| A person who traps lobsters in violation of this section shall be guilty of a Class E crime. | A person who traps lobsters in violation of this section is guilty of a Class E crime. | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Grammatical errors shall not invalidate a rule. | Grammatical errors do not invalidate a rule. | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| It shall be unlawful ... | It is unlawful ... | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Funds shall carry to ... | Funds carry to ... | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| | | <p style="text-align: center;">(e) Definitions. In drafting definitions:</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Do not write:</td> <td style="padding: 2px;">Write:</td> </tr> <tr> <td style="padding: 2px;">“Bottle” shall mean a container ...</td> <td style="padding: 2px;">“Bottle” means a container ...</td> </tr> </table> <p>(2) Must.</p> <p style="padding-left: 40px;">(a) When not a person. “Must,” rather than “shall,” should be used when the subject is not a person or body.</p> <p>Examples:</p> <p style="padding-left: 40px;">A copy of the signed contract must be given to the debtor.</p> <p style="padding-left: 40px;">A record must be kept whenever a certificate is issued.</p> <p style="padding-left: 40px;">(b) To express requirements. Use “must” rather than “shall” to express requirements, that is, statements about what people or things <i>must be</i> rather than what they <i>must do</i>. “Must” is usually correct in passive sentences imposing requirements.</p> <p>Examples:</p> <p style="padding-left: 40px;">Applicants must be at least 17 years of age.</p> <p style="padding-left: 40px;">Professions must be licensed by the State.</p> <p style="padding-left: 40px;">(c) In conditional sentences. “Must” rather than “shall” is proper in conditional sentences.</p> <p>Example:</p> | Do not write: | Write: | “Bottle” shall mean a container ... | “Bottle” means a container ... | | |
| Do not write: | Write: | | | | | | | |
| “Bottle” shall mean a container ... | “Bottle” means a container ... | | | | | | | |

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| | | <p style="text-align: center;">To be eligible for benefits, an applicant must demonstrate ...</p> <p>(3) May. “May” means “is permitted to,” “is authorized to,” “is entitled to” or “has power to.” “May” authorizes or permits rather than commands.</p> <p>Example:</p> <p style="text-align: center;">The commissioner may call a special meeting when necessary.</p> <p>If calling a special meeting is discretionary, “may” is the proper word. If the commissioner is required to call a special meeting, use “the commissioner shall ...”</p> <p>(4) Will. “Will” should never be used as a command word. For a discussion of “will” as used in the future tense, see page 79.</p> <p>B. Prohibitive and restrictive language. Drafters should use positive language whenever possible to express ideas. Laws, however, are frequently prohibitive or restrictive in nature. Drafters must use care in wording these sections.</p> <p>(1) Prohibiting action. Do not use “shall not.” Use “may not” to prohibit an action. “May not” is broader than “shall not” as “may not” negates the authority to perform an action as well as prohibiting the action itself. Correlative expressions to “shall not” and “may not” are “no person shall” and “no person may.” Avoid “no person may” and never use “no person shall.” Literally, “no person shall” means “no person has a duty to.” Consider this sentence: “No person shall conduct a picket line without a permit issued under this section.” Literally, this means “No person has a duty to conduct a picket line without a permit issued under this section.” If “may” replaced “shall” in the sentence, it would mean “No person is authorized to conduct a picket line ...” “No person may” in this context makes more sense. In most instances, however, “no person may ...” is verbal overkill. It provides unneeded emphasis. “A person” is probably sufficient to include</p> | | |

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| | | <p style="text-align: center;">anyone who should be included.</p> <p>Example:</p> <p style="text-align: center;">A person may not conduct a picket line ...</p> <p>(2) Negating duty or condition. To negate a duty or a condition precedent, or to say a thing is not required, use “need not” or “is not required.”</p> <p>Example:</p> <p style="text-align: center;">If fewer than 7 people object to a rule, a hearing need not be held (or “a hearing is not required”).</p> <p>(3) Negating right or privilege. To negate a right, use “is not entitled to.”</p> <p>Example:</p> <p style="text-align: center;">The director is not entitled to compensatory time off.</p> | | |
| 18. | Massachusetts General Court Legislative Research and Drafting Manual (2010) | <p>https://malegislature.gov/Content/Documents/General/LegislativeDraftingManual.pdf</p> <p>3. “Shall” and “may”.</p> <p>a. A duty, mandate, obligation, requirement or condition precedent is expressed by "shall."</p> <p>b. Use "shall" if the verb it qualifies is in the active voice. Example: "The aggrieved party shall file (active verb in active voice) the application."</p> <p>c. Use "may" to confer a power, privilege, or right.</p> <p>Examples: "The applicant may demand (power) an extension of time." "The applicant may appeal (right) the decision."</p> | 1 | |

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| | | <p>d. Use "shall not" to express a prohibition.</p> <p>e. Do not use qualifiers, such as "will," "should" and "ought," in the text of a bill.</p> | | |
| 19. | Minnesota Rules, Drafting Manual <i>with Styles and Forms</i> (2013) | <p>https://www.revisor.mn.gov/static/office/2013-Revisor-Manual.pdf at Section 3:</p> <p>Limit Your Use of "Shall"</p> <p>The revisor's office recommends using <i>must</i>, not <i>shall</i>, to impose duties. Most speakers of English stopped using <i>shall</i> to mean "is ordered to" in the seventeenth century. Dictionaries show that we generally use <i>shall</i> as a formal form of <i>will</i> so to most readers the lawyer's shall is an obsolete legalism.</p> <p>If you prefer the traditional <i>shall</i>, minimize its use as follows:</p> <p><i>Shall.</i> Use <i>shall</i> only when you are imposing a duty on a person or body:</p> <p style="padding-left: 40px;">"The licensee shall give the debtor a copy of the signed contract."</p> <p>or</p> <p style="padding-left: 40px;">"An association that issues shares by series shall keep a record of every certificate that it issues."</p> <p>In conditions, don't use <i>shall</i> at all. Use present perfect tense, not future perfect. Don't write, "If it <i>shall</i> have been established..."</p> <p>Write, "If it has been established..." Don't write, "When the officers <i>shall</i> have completed their investigation..." Write, "When the officers have completed their investigation..."</p> <p><i>Must.</i> Use <i>must</i>, not <i>shall</i>, to talk about a thing rather than a person:</p> <p style="padding-left: 40px;">"A copy of the signed contract must be given to the debtor,"</p> <p>or</p> <p style="padding-left: 40px;">"A record must be kept whenever a certificate is issued."</p> <p>Use <i>must</i> to express requirements, that is, statements about what people or things must be rather than what they must do:</p> <p style="padding-left: 40px;">"Public members of the board must be broadly representative of the public interest and</p> | | 1 |

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| | | <p style="text-align: center;">must not be members of health professions licensed by the state of Minnesota..."</p> <p><i>Need not.</i> Use <i>need not</i> or <i>is not required to</i>, to say that a thing is not required:</p> <p style="padding-left: 40px;">"If fewer than seven people object to the rule, a hearing need not be held," or "no hearing is required."</p> <p><i>Should.</i> Do not use <i>should</i> in rules. A statement that a person should do something is not a rule.</p> <p><i>May.</i> Use <i>may</i> to mean "is permitted to" or "is authorized to" or "has power to":</p> <p style="padding-left: 40px;">"The commissioner may call a special meeting of the board when necessary."</p> <p>When you use <i>may</i>, be sure that your sentence does not grant impermissibly broad discretion to any agency or official. The amount of discretion permitted depends on the matter being regulated and on the statutory language that grants the rulemaking authority.</p> <p><i>Must not.</i> Use <i>must not</i> to mean "is forbidden to" or "is prohibited from." Don't use <i>shall not</i>. Say "no person may" or "a person must not," not "no person shall."</p> <p><i>Means.</i> In definitions, write <i>means</i>, not <i>shall mean</i>. Write "have the meanings given them," instead of "shall have the meanings given them."</p> <p><i>Is.</i> Don't use <i>shall</i> to say what the law is, to make a statement that is true by operation of law. For example, say that a person <i>is</i> eligible for a grant under certain conditions, not that he or she <i>shall</i> be eligible.</p> | | |
| 20. | Montana Legislative Services Division, Bill Drafting Manual (2016) | <p>http://leg.mt.gov/content/Publications/2016_Bill_Drafting_Manual.pdf p. 16-17</p> <p>(5) Mandates and prohibitions</p> <p>When qualifying a verb in the active voice, "shall" is used as mandatory and "may not" or "may only" as prohibitory.</p> <p style="padding-left: 40px;">preferred The applicant shall sign the application.</p> | 1 | |

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| | | <p>avoid The applicant must sign the application.</p> <p>preferred The applicant may not submit more than one application.</p> <p>avoid The applicant must not submit more than one application.</p> <p>avoid The applicant shall not submit more than one application.</p> <p>preferred The applicant may submit only one application.</p> <p>Use "shall" only in an imperative or mandatory sense and "may" in a permissive sense. When a right, privilege, or power is conferred, "may" should be used.</p> <p>Do not use "shall" to confer a right because that implies a duty to enjoy the right.</p> <p>preferred The officer is entitled to an annual salary of \$40,000.</p> <p>preferred The officer must receive an annual salary of \$40,000.</p> <p>avoid The officer shall receive an annual salary of \$40,000.</p> <p>preferred The annual salary is \$40,000.</p> <p>avoid The annual salary shall be \$40,000.</p> | | |

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| 21. | Legislative Counsel Bureau Bill Drafting Manual (Nevada, October 1, 1970) | <p>http://leg.state.nv.us/Division/Research/Publications/InterimReports/1967/Bulletin065.pdf at 38-39</p> <p>Unless there is some reason (such as the necessity for uniformity in an existing statute) not to use them, the following preferred expressions should be utilized. It will be noted that in most cases the preferred form is the shorter, clearer and exactly to the point.</p> <table border="0"> <tr> <td><u>Avoid saying:</u></td> <td><u>Say:</u></td> </tr> <tr> <td>it is directed</td> <td>shall</td> </tr> <tr> <td>it is the duty of</td> <td>shall</td> </tr> <tr> <td>it shall be the duty of</td> <td>shall</td> </tr> <tr> <td>is authorized</td> <td>shall</td> </tr> <tr> <td>is empowered</td> <td>shall</td> </tr> <tr> <td>it shall be lawful</td> <td>shall</td> </tr> </table> <p>(e) <u>"Shall" and "may."</u></p> <p>Use "may" when: A right, privilege or power is conferred (unless there is doubt that the right or privilege can be legally enforced, in which case use "is entitled").</p> <p>Use "may not" when: A right, privilege or power is abridged or prohibited (but to assure affirmative prohibition of an act, use "it is unlawful")</p> <p>Use "shall" when: The duty to act is imposed.</p> <p>Use "shall not" when: A prohibition against acting is imposed.</p> | <u>Avoid saying:</u> | <u>Say:</u> | it is directed | shall | it is the duty of | shall | it shall be the duty of | shall | is authorized | shall | is empowered | shall | it shall be lawful | shall | 1 | |
| <u>Avoid saying:</u> | <u>Say:</u> | | | | | | | | | | | | | | | | | |
| it is directed | shall | | | | | | | | | | | | | | | | | |
| it is the duty of | shall | | | | | | | | | | | | | | | | | |
| it shall be the duty of | shall | | | | | | | | | | | | | | | | | |
| is authorized | shall | | | | | | | | | | | | | | | | | |
| is empowered | shall | | | | | | | | | | | | | | | | | |
| it shall be lawful | shall | | | | | | | | | | | | | | | | | |
| 22. | Legislative Drafting Manual (New Mexico, 2015) | <p>https://www.nmlegis.gov/Publications/Legislative_Procedure/drafting_manual.pdf at p. 182:</p> <p><i>"Shall", "May" and "Will"</i></p> <p>Use "shall" to indicate mandatory language. Do not use "must".</p> <p><i>Example: Mandatory</i></p> | 1 | | | | | | | | | | | | | | | |

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| | | <p style="text-align: center; background-color: #f0f0f0;">The board shall promulgate rules in accordance. . . .</p> <p>Use "may" to indicate permissive language.</p> <p>Example: Permissive</p> <p style="text-align: center; background-color: #f0f0f0;">The director may appoint a deputy director who. . . .</p> <p>Avoid the use of "will". Statutes are written primarily in the present tense.</p> | | |
| 23. | Legislation Council North Dakota Legislative Drafting Manual (2017) | <p>http://www.legis.nd.gov/legislative-drafting-manual at p. 93</p> <p>Use shall when you are imposing a duty on a person or body that is the subject in the sentence. Use shall in a mandatory or imperative sense. Example: "The licensee shall give the debtor a copy of the signed contract." Use must in reference to a thing rather than a person and to express status requirements, that is, statements about what people or things must be rather than what they must do. Examples: "The contract must contain two signatures." "A candidate must be a resident of the county."</p> <p>Use may to confer a power, privilege, or right. Examples: "The applicant may demand (power) an extension of time." "The applicant may renew (privilege) the application." "The applicant may appeal (right) the decision."</p> <p>Whenever possible an obligation or discretion to act should be positively stated. However, if a right, privilege, or power is intended to be denied, may not should be used. Example: "The applicant may not submit (active voice) more than one application."</p> <p>Avoid use of "shall not" and "no person shall" because these phrases mean that no one is required to act. A statute that includes one of these phrases negates the obligation but not the permission to act. "A person may not" negates the permission to act and functions correctly as a complete prohibition.</p> <p>Avoid use of "cannot" because "cannot" means the person referred to does not have the ability or capacity to act.</p> <p>Avoid using hortatory qualifiers, such as will, should, and ought, in the text of an Act. These terms may be more appropriate in a resolution instead of a bill.</p> | 1 | |

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| | | Use is entitled to when describing a benefit or right a person may claim or exercise, such as "a state employee is entitled to expense reimbursement. . . ." In these instances, using "shall receive" or similar mandatory phrasing would negate the option of not claiming or exercising a benefit or right. | | |
| 24. | Rule Drafting Manual Ohio Legislative Service Commission (May 2006) | https://www.lsc.ohio.gov/documents/private/rules/adminruledraftmanual06_06.pdf at 46: 5.8 MATTERS OF FORM AND STYLE 5.8.3 MOOD Use "shall" to require a person to take an action. "Shall" denotes a command, a mandatory duty. Use "may" to authorize, but not require, a person to take an action. "May" denotes a discretionary action, one that may or may not be taken at the actor's initiative. | 1 | |
| 25. | Bill Drafting Manual Legislative Counsel Committee (Oregon 2014) | https://www.oregonlegislature.gov/lc/PDFs/draftingmanual.pdf at p. 4.4 - 4.5: 3. “SHALL,” “MAY,” “MUST”; “SHALL NOT,” “MAY NOT.” To impose an obligation to act, use “shall.” To confer a right, power or privilege, use “may.” Do not use “shall” to grant permission or “may” to impose a duty. To prohibit an action, use “may not.” See ORS 174.100 (4). Do not use “shall not” to prohibit an action. Although ORS 174.100 (4) makes “shall not” and “may not” equivalent expressions of prohibition, the office has a strong preference for “may not.” If you are amending a section in which there is already extensive use of “shall not” (used as a prohibition), you may use “shall not” (to express a prohibition) in order to avoid extensive changes to the statute. Note that there are instances of “shall not” in ORS that are not actually prohibitions. For example, ORS 192.580 (3) (1999 Edition) said, “The provisions of subsection (2) of this section shall not apply in the case of records” The intended meaning is probably that the provisions “do not” apply. “Shall not” must not be mindlessly replaced with “may not.” The drafter must understand the function of the phrase “shall not” before determining whether and how it should be changed. In a condition precedent, you may use “must.” For example, “An applicant must be at least 18 years of age.” To express an imperative in the passive voice, you may use “must.” For example, “The report must be filed” | 1 | |

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| | | <p>Avoid using “shall” in a manner that indicates a legal result rather than a command. For example, use “This (year) Act becomes operative on ...” instead of “This (year) Act shall become operative on” Or, use “ORS xxx.yyy does not apply to” rather than “ORS xxx.yyy shall not apply to....”</p> <p>4. “MAY” SOMETIMES CONSTRUED AS MANDATORY.</p> <p>Under certain circumstances, “may” has been held to be mandatory in statutes conferring power upon a public officer or agency when the action concerns the public interest or the rights of individuals. Unfortunately, “may at the director’s discretion” is not an acceptable cure. No general rule can be set out to determine the effect of the use of “may” in all cases. It will be construed to further the intent and purpose of the Act in which it is found, and this intent will be gathered from a consideration of the Act as a whole. For example, ORS 654.335 (a section in the Employers’ Liability Act, 1999 Ed.) read as follows:</p> <p style="padding-left: 40px;">The contributory negligence of a person injured shall not be a defense, but may be taken into account by the jury in fixing the amount of damages.</p> <p>In <u>Donaghy v. Ore.-Wash. R. Nav. Co.</u>, 133 Or. 663 (1930), the Oregon Supreme Court said that the word “may” in ORS 654.335 (1999 Edition) should be construed as “must.”</p> <p>If a provision using “may” is likely to be construed to concern the public interest or the rights of individuals and to be mandatory, and if the drafter wants to authorize and not to command, the intent should be made clear by using a separate sentence for this purpose; for example, “The exercise of this power is within the discretion of the director.”</p> <p>Even if “shall” is used, it is possible for a provision to be construed as less than mandatory. If so construed, strict compliance with the provision is not required. A court may permit some variation in the minor details of a procedure even though “shall” has been used, assuming that the legislature did not intend that minor matters and immaterial details in statutes be so firmly fixed that the courts cannot relax such requirements in proper cases.</p> <p>Mandatory provisions usually contain both a command and a prohibition against varying the terms of the command, even though the prohibition may exist only by implication. If the prohibition is expressed affirmatively and imposes a sanction or penalty, the legislative intent that the provision be mandatory is as clear as it can be made.</p> | | |

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| 26. | Office of Legal Services Legislative Drafting Guide (Tennessee 2018) | <p>http://www.capitol.tn.gov/joint/staff/legal/2018%20Drafting%20Guide.pdf at 15-17:</p> <p>(e) LEGAL ACTION VERBS</p> <p>In stating the legislative objective, the drafter must pay particular attention to the verb forms the drafter uses to establish the duty, right, power, entitlement, or disentitlement. There has been much change in how legal action verbs have been used over the years. The trend has been to discourage the routine use of "shall" and substitute words that have a more specific meaning attached to them. Because there has been change, the drafter will find that much of the existing law will not reflect the modern trend away from the routine use of "shall." Therefore, when amending existing law, the drafter should exercise discretion on the appropriate action verb to use, keeping in mind the multiple considerations when updating archaic and outdated language as discussed in subsection (e) of Chapter 3. The following chart may be helpful when determining the drafter’s needs.</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse; text-align: center;"> <tbody> <tr> <td style="padding: 5px;">Shall</td> <td style="padding: 5px;">Has a duty to, Has to</td> </tr> <tr> <td style="padding: 5px;">Must</td> <td style="padding: 5px;">Is required to (to achieve an end)</td> </tr> <tr> <td style="padding: 5px;">Shall Not</td> <td style="padding: 5px;">Is prohibited</td> </tr> <tr> <td style="padding: 5px;">May</td> <td style="padding: 5px;">Is permitted to, Has a right to, Has discretion to, Is authorized to [+ verb]</td> </tr> <tr> <td style="padding: 5px;">Is Entitled To</td> <td style="padding: 5px;">Has a right to [+ noun]</td> </tr> <tr> <td style="padding: 5px;">Will</td> <td style="padding: 5px;">Expresses a policy or a future contingency in the manner of normal English</td> </tr> <tr> <td style="padding: 5px;">Can</td> <td style="padding: 5px;">Is legally or physically capable</td> </tr> <tr> <td style="padding: 5px;">Cannot</td> <td style="padding: 5px;">Is legally or physically incapable</td> </tr> </tbody> </table> | Shall | Has a duty to, Has to | Must | Is required to (to achieve an end) | Shall Not | Is prohibited | May | Is permitted to, Has a right to, Has discretion to, Is authorized to [+ verb] | Is Entitled To | Has a right to [+ noun] | Will | Expresses a policy or a future contingency in the manner of normal English | Can | Is legally or physically capable | Cannot | Is legally or physically incapable | 1 | |
| Shall | Has a duty to, Has to | | | | | | | | | | | | | | | | | | | |
| Must | Is required to (to achieve an end) | | | | | | | | | | | | | | | | | | | |
| Shall Not | Is prohibited | | | | | | | | | | | | | | | | | | | |
| May | Is permitted to, Has a right to, Has discretion to, Is authorized to [+ verb] | | | | | | | | | | | | | | | | | | | |
| Is Entitled To | Has a right to [+ noun] | | | | | | | | | | | | | | | | | | | |
| Will | Expresses a policy or a future contingency in the manner of normal English | | | | | | | | | | | | | | | | | | | |
| Can | Is legally or physically capable | | | | | | | | | | | | | | | | | | | |
| Cannot | Is legally or physically incapable | | | | | | | | | | | | | | | | | | | |

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| | | <p>(1) The goal of the drafter should be to reduce the use of “shall” by using it only to impose a duty on a person or body or to mandate action by a person or body. That is, the drafter should only use “shall” to say a person or a body “has a duty to” do something or “has to” do something.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><u>CORRECT:</u> The commissioner shall adopt rules.</p> <p><u>INCORRECT:</u> The commissioner must adopt rules.</p> </div> <p>(2) “Shall” should not be used in sentences that require an action to achieve an end. “Must” rather than “shall” is the proper action verb to use when the action is only required to achieve an end.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><u>CORRECT:</u> To be eligible for parole, a prisoner must demonstrate...</p> <p><u>INCORRECT:</u> To be eligible for parole, a prisoner shall demonstrate...</p> </div> <p>(3) Avoid using “shall” to confer a right. If “shall be” can be replaced with “is” or “are,” make the replacement.</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p><u>CORRECT:</u> The director is entitled to compensation of twelve thousand dollars (\$12,000) a year.</p> <p><u>CORRECT:</u> Compensation for the director is twelve thousand dollars (\$12,000) a year.</p> <p><u>INCORRECT:</u> The director shall receive compensation of twelve thousand dollars (\$12,000) a year.</p> </div> <p>(4) Do not use “shall” to state what the law is or how it applies in the future. A common problem in legislative drafting is that the word “shall” is often used to indicate a legal result rather than a command. This is known as a “false imperative.”</p> | | |

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| | | <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><u>CORRECT:</u> Nine (9) members shall be appointed to the board.</p> <p><u>INCORRECT:</u> The board shall be composed of nine (9) members as follows:</p> </div> <p>(5) When using “shall” to mandate an action in which the outcome is in the discretion of the actor, include alternative actions the actor may take.</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><u>CORRECT:</u> The commissioner shall approve or deny an application within thirty (30) days.</p> <p><u>INCORRECT:</u> The commissioner shall approve an application within thirty (30) days.</p> </div> <p>(6) Use “must” rather than “shall” to express requirements, that is, statements about what people or things must be rather than what they must do. “Must” is usually correct in passive sentences imposing requirements.</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p><u>CORRECT:</u> Professions must be licensed by the state.</p> <p><u>INCORRECT:</u> Professions shall be licensed by the state.</p> </div> <p>(7) “May” means “is permitted to,” “is authorized to,” “is entitled to” or “has power to.” “May” authorizes or permits rather than commands.</p> <p>(8) If the drafter finds that “shall” or “may” could both be used, redraft the sentence to avoid the use of either legal action verb.</p> | | |

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| | | <div style="border: 1px solid black; padding: 5px;"> <p><u>CORRECT:</u> The appointee qualifies for office by taking the official oath and filing the required bond.</p> <p><u>INCORRECT:</u> The appointee shall qualify for office by taking the official oath and filing the required bond.</p> <p><u>INCORRECT:</u> The appointee may qualify for office by taking the official oath and filing the required bond.</p> </div> | | |
| 27. | Texas Legislative Council Drafting Manual (January 2017) | <p>http://www.tlc.state.tx.us/docs/legref/draftingmanual.pdf at p. 111-113:</p> <p>SEC. 7.30. “SHALL,” “MUST,” “MAY,” ETC.² Use “shall” only to denote a duty imposed on a person or entity.</p> <p style="padding-left: 40px;">The commissioner <i>shall</i> issue a license. (It is the commissioner’s duty to do so.)</p> <p>Use “must” to denote a condition precedent. The existence of a condition precedent means that a person, action, or other thing is required to comply with a stated condition as a prerequisite to having full legitimacy. The condition may be stated in a variety of ways, but typically the condition requires the person, action, or other thing to:</p> <ul style="list-style-type: none"> (1) meet certain stated conditions; (2) possess certain stated characteristics; or (3) consist of certain stated components. <p>Before entering the premises, the inspector <i>must</i> obtain the consent of the property owner. (Obtaining the consent of the property owner is a condition to the inspector’s authority to enter the premises.)</p> <p>To be eligible for appointment, a person <i>must</i> be at least 18 years of age. (A person is ineligible unless the person possesses the characteristic of being at least 18 years of age.)</p> <p>The board may appoint three persons to serve as an advisory committee to the board. The advisory committee <i>must</i> be composed of an engineer, an architect, and an attorney. (The required components of the advisory committee are the three specified professionals.)</p> | 1 | |

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| | | <p>A drafter may find the choice of whether to use “shall” or “must” difficult, particularly when using the passive voice. In general, “must” is used if the sentence’s subject is an inanimate object (i.e., is not a person or body on which a duty can be imposed).</p> <p style="padding-left: 40px;">The application <i>must</i> be in writing. (A required characteristic of an application is that it be in writing; an application that is not in writing is invalid.)</p> <p>There are circumstances in which either “shall” or “must” is correct, and the better choice depends on the context or point of emphasis.</p> <p style="padding-left: 40px;">A report <i>must</i> be filed on the form provided by the agency. (A required characteristic of a report is that it be on the form provided by the agency; a report not fi led on the correct form is invalid.)</p> <p style="padding-left: 40px;">A report <i>shall</i> be filed on the form provided by the agency. (An unidentified person or entity has the duty to fi le a report on a form provided by the agency. A preferable, more direct way of emphasizing the duty would be to identify the actor, if the actor is known, and use the active voice. See Section 7.21 of this manual.)</p> <p>A drafter might also choose a drafting approach that eliminates the decision of whether to use “shall” or “must.” Under this approach, the provision simply states a legal fact.</p> <p style="padding-left: 40px;">The appointee qualifies for office by taking the official oath and filing the required bond. (The method by which the appointee qualifies for office is stated as a factual matter.)</p> <p>Use “may” to denote a privilege or discretionary power.</p> <p style="padding-left: 40px;">The commissioner <i>may</i> inspect records. (The commissioner has authority to inspect records, but may not be compelled to do so.)</p> <p style="text-align: center;"><i>NOT</i></p> <p style="padding-left: 40px;">The commissioner <i>can</i> inspect records.</p> <p style="padding-left: 40px;">The commissioner <i>has the right to</i> inspect records.</p> <p style="padding-left: 40px;">The commissioner <i>has authority to</i> inspect records.</p> <p>Use “is entitled to” to denote a right, as opposed to a discretionary power.</p> <p style="padding-left: 40px;">A qualified person <i>is entitled to</i> a license. (The person has a right to a license.)</p> | | |

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| | | <p>Use “may not” to denote a prohibition.</p> <p style="padding-left: 40px;">The clerk <i>may not</i> release the report. (The clerk is prohibited from releasing the report.)</p> <p>NOTE: To define a criminal offense, use the format recommended in Section 3.09(b) of this manual.</p> <p>SEC. 7.31. MODIFIERS. Place modifying words and phrases so there is no doubt about what they modify. Poor placement of modifiers is probably the main contributor to ambiguity in statutes.</p> <p style="padding-left: 40px;">Consider the following examples:</p> <p style="padding-left: 80px;">SECTION 4. A person is not required to hold an exterminator’s license to apply a Class A insecticide or trap mice on the person’s own property.</p> <p>Does the qualification “on the person’s own property” apply only to “trap mice” or does it also qualify “apply a Class A insecticide”? This ambiguity may be cured by one of the following reformulations, depending on the meaning intended:</p> <p style="padding-left: 80px;">SECTION 4. A person is not required to hold an exterminator’s license to do the following on the person’s own property:</p> <p style="padding-left: 120px;">(1) apply a Class A insecticide; or</p> <p style="padding-left: 120px;">(2) trap mice.</p> <p style="text-align: center; padding-left: 100px;"><i>OR</i></p> <p style="padding-left: 80px;">SECTION 4. A person is not required to hold an exterminator’s license to:</p> <p style="padding-left: 120px;">(1) trap mice on the person’s own property; or</p> <p style="padding-left: 120px;">(2) apply a Class A insecticide.</p> <p>Placing the limiting modifier “only” in each possible position in the following sentence produces several different meanings:</p> <p style="padding-left: 40px;">The river authority may provide wastewater service in the district.</p> <p>1. No one else may provide wastewater service in the district:</p> | | |

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| | | <p style="text-align: center;">Only the river authority may provide wastewater service in the district.</p> <p style="text-align: center;"><i>OR</i></p> <p style="text-align: center;">The river authority only may provide wastewater service in the district.</p> <p>2. The actions of the river authority are limited to providing wastewater service in the district:</p> <p style="text-align: center;">The river authority may only provide wastewater service in the district.</p> <hr style="width: 20%; margin-left: 0;"/> <p>² See Section 311.016, Government Code.</p> | | |
| 28. | Drafting Manual (Utah 12/24/2014) | <p>http://le.utah.gov/documents/LDM/draftingManual.html at 2(b)(iv):</p> <p>iv. Indicative Mood</p> <p>A statute should be in the present indicative, not in the subjunctive; and in the present perfect, not in the future perfect. A common mistake in drafting legislation:</p> <p style="padding-left: 40px;">"is the use of 'shall' or 'shall not' to declare a legal result rather than to give a command. For example, . . . 'The record for judicial review shall consist exclusive of' . . . 'A Government employee shall have a right of action against the Government . . . ' This usage is known as a false imperative because it does not give a command to someone to do something but rather declares a legal result. [Legislation] is self executing. If it says something 'is,' it is. Thus, if in a [statute] a word has a certain meaning, it is only necessary to say that the word 'means . . . ' This usage is the indicative mood. . . . In addition to the use of shall in these circumstances being technically incorrect, the use of the indicative mood has two other advantages. Most important, it allows the use of shall only in those instances when the imperative mood is appropriate, this is when a command is given. . . . Elimination of the unnecessary shall, of course, also reduces the number of words in the provision."^{mm}</p> <p>Click below to see examples of how false imperatives can be changed to the indicative mood.</p> | 1 | |

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| | | <div style="background-color: #e0ffe0; padding: 5px; border: 1px solid #c0ffc0;"> <p>Do not say: Articles of incorporation shall be signed by each of the incorporators A certified copy of a contract shall be prima facie evidence The report shall be subject to examination by the commissioner Upon a proper showing, a permanent or temporary injunction, restraining order, or extraordinary writ shall be granted</p> <p>Say: Each incorporator shall sign the articles of incorporation A certified copy of a contract is prima facie evidence The commissioner may examine a report Upon a proper showing, the court shall grant a permanent or temporary injunction, restraining order, or extraordinary writ</p> </div> <p>_____</p> <p>^m Martineau and Salerno, <i>Legal, Legislative, and Rule Drafting in Plain English</i>, p. 47-48 (2005). One author explains: "the indicative mood is the mood used to indicate - that is, to make a statement of fact. Use it for a stipulation ('This Act applies after the date of the enactment of the Act') or a condition ('If the Secretary determines X, then the Secretary may Y'). Do not use the subjunctive mood ('If the Secretary were to determine X, then the Secretary may Y')." Dorsey, <i>Legislative Drafter's Deskbook: A Practical Guide</i>, p. 190 (2006). See also, e.g., National Conference of Commissioners on Uniform State Laws, <i>Drafting Rules</i>, Rule 103 (2006 ed.); Haggard, <i>Legal Drafting in a Nutshell</i>, p. 281-282 (2nd ed. 2003).</p> | | |
| 29. | Office of the Code Reviser Bill Drafting Guide (Washington 2017) | <p>http://www.leg.wa.gov/CodeReviser/Pages/bill_drafting_guide.aspx at 64-65:</p> <p style="padding-left: 40px;">(g) "Shall," "may," and "must."</p> <p style="padding-left: 40px;">(i) A statute should be drafted in the present tense because it speaks at the time it is read. Thus, the word "shall" should not be used to state a proposition in the future tense. "Evidence is admissible . . ." is preferable to "Evidence shall be admissible . . ." See <i>Sutherland</i> § 21:10.</p> <p style="padding-left: 40px;">(ii) "Shall" should only be used to mean "has a duty to." That is, to require the performance of an act. For example, "the governor shall appoint a director . . ."</p> <p style="padding-left: 40px;">Avoid using a negative subject with an affirmative shall, "A person may not . . ." is preferable to "No person shall . . ." The latter means that no one is required to act. So read, it negates the obligation, but not the permission, to act. On the other hand, "A person may not . . ." negates also the permission and is, therefore, the stronger prohibition. To avoid confusion, the drafter should use the affirmative form, "A person may not . . .," rather than negative forms such as "No person may . . ." or "No person shall . . ." "Shall not" should only be used to mean "has a duty not to."</p> <p style="padding-left: 40px;">"May" indicates discretion and is used to confer a right, privilege, or power. <i>Faunce v. Carter</i>, 26 Wn.2d 211, 215 (1946); but cf. <i>Buell v. City of Toppenish</i>, 174 Wash. 79 (1933).</p> | 1 | |

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| | | <p>Do not confuse the words "may" and "might." "May" confers authority, as in "A person may file a petition." "Might" describes a possibility, as in "They might want coffee."</p> <p>For a discussion of "may," "shall," and "must," see <i>Garner</i>.</p> <p>(iii) To determine whether the use of "shall" or "may" is correct, a helpful test is to mentally substitute for the word "may" the words "has the authority to" and substitute for the word "shall" the words "has the duty to." This reading will make it readily apparent whether the usage is correct.</p> <p>(iv) "Must" creates a condition precedent. Use "must" if the verb it qualifies is an inactive verb or an active verb in the passive voice. Examples: The applicant "must be" (inactive verb) an adult. Prior convictions "must be set forth" (active verb in passive voice) in the application.</p> <p>Use "must not" if the verb it qualifies is an inactive verb or an active verb in the passive voice. Example: The applicant "must not be" (inactive verb) a convicted felon. The application "must not be filed" before the end of the reporting period.</p> <p>Active voice is preferable to passive voice. If the word "must" seems appropriate because of passive voice, the drafter should improve the phrase to avoid ambiguity. See (h)(iii) of this subsection.</p> | | |
| 30. | West Virginia Legislature Bill Drafting Manual (December 2017) | <p>http://www.wvlegislature.gov/legisdocs/code/Drafting_Manual.pdf at 39; 63:</p> <p>Imperative and Permissive Construction</p> <p>To impose an obligation to act, use “shall”. To confer a right, privilege or power, use “may”.</p> <p>Do not combine powers and duties.</p> <p>CORRECT: The commissioner shall issue the permit. (It is the commissioner’s duty to issue the permit.)</p> <p>CORRECT: The commissioner may hold a hearing. (The commissioner may hold a hearing, but is not obligated to do so.)</p> <p>INCORRECT: The commissioner has the following powers and duties: (This does not specify which acts are mandatory and which are discretionary.)</p> | 1 | |

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| | | <p>Do not use the word "shall" to confer a right. That implies a duty to enjoy the right.</p> <p>CORRECT: His or her annual salary is \$28,000.</p> <p>INCORRECT: He or she shall receive an annual salary of twenty-eight thousand dollars.</p> <p>To prohibit an action, use “may not”. But, avoid “No person may” and instead use “A person may not”.</p> <p>Definitions</p> <p>Say "means"; not "shall mean”.</p> <p>Voice</p> <p>Use active rather than passive voice, especially when imposing duties, to avoid confusion as to who has the duty to act.</p> <p>CORRECT: The secretary shall file the annual report.</p> <p>INCORRECT: The annual report shall be filed.</p> <p style="text-align: center;">*****</p> <p>“May”, “shall”, “must”, and “should.”</p> <p>May is permissive. It confers a discretionary right, power, or privilege.</p> <p style="padding-left: 40px;">“The commissioner <u>may</u> inspect records.”</p> <p style="padding-left: 40px;"><i>The commissioner may if it is necessary or proper, but the commissioner is not obligated to do so.</i></p> <p>Shall is mandatory. It imposes a duty or obligation to act.</p> <p style="padding-left: 40px;">“The commissioner <u>shall</u> issue a license.”</p> <p style="padding-left: 40px;"><i>It is the commissioner's duty to do so.</i></p> <p>Avoid the use of “must” whenever possible, unless used as a condition precedent with inanimate subjects.</p> | | |

Exhibit 2—Survey of Jurisdictions: Use of “Shall” in Legislative Drafting

| No. | Citation | URL/Text | A m | A B C |
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| | | <p>“The information on the form must include the date and time of the incident.”</p> <p>Avoid the use of “should” or “ought”.</p> | | |
| 31. | Office of the Parliamentary Counsel Drafting Guidance (U.K. December 2017) | <p>https://www.gov.uk/government/publications/drafting-bills-for-parliament at p. 4:</p> <p>“Shall”</p> <p>1.2.9 Office policy is to avoid the use of the legislative “shall”.¹ There may of course be exceptions. One reason for using “shall” might be where the text is being inserted into an Act that already uses it.</p> <hr style="width: 20%; margin-left: 0;"/> <p>1. For reasons for avoiding “shall”, see for example Xanthaki H., Thornton’s Legislative Drafting (Bloomsbury Professional, London, 5th ed., 2013).</p> | | 1 |