

Legislative use of the “shall” and “may”

USSC state actor/actions criteria

A. Legislative use

Yale Law Journal

b. Use of Particular Words

Almost all of the manuals include conventions relating not only to style and grammar but also to the use of particular words. These provisions seek to impose order by promoting consistency and uniformity in how certain words are used in statutes. As the Colorado drafting manual notes, "[w]hen a word takes on too many meanings, it becomes useless to the drafter."¹⁶⁸ For example, thirty-three manuals from thirty-two states advise drafters on the use of "shall" as opposed to "may": the former indicates that something is mandatory while the latter is permissive and confers a privilege or power.¹⁶⁹ The Arizona drafting manual explains why drafters must pay close attention to the use of these terms: "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."¹⁷⁰ Several manuals further explain how drafters can prohibit an act through the use of "shall not" and "may not."¹⁷¹ Others explain when the use of other similar terms, such as "must," is appropriate.¹⁷²

[Note] 172. E.g., Colorado Drafting Manual, *supra* note 46, § 5-7.1(8); **New Jersey Drafting Manual, *supra* note 53, at 118**; Minnesota Drafting Manual, *supra* note 53, at 282; Utah Drafting Manual, *supra* note 53, at ch. 3, pt. 4(c)(xxviii).

[State Legislative Drafting Manuals and Statutory Interpretation](#), Grace E. Hart, Yale Law Journal, p. 465, Volume 3 (2016).

Arizona bill manual

6.34 USE OF "SHALL," "MAY," "MAY NOT" AND "SHALL NOT"

Shall

"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."

If "shall be" can be replaced with "is" or "are," do so. See §§ 6.14 and 6.15 for examples of the improper use of "shall."

May

"May" is permissive and confers a privilege or power. Generally, "may" implies discretion or permission. Use "may" when giving a person or entity the option to act or not act.

[The Arizona Bill Drafting Manual 2019-2020](#), p.98.

B. USSC State Actor Criteria