

Modality in the Language of Legal Documents

Radovan Zelenka

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Mgr. Dagmar Machová

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doc. Ing. Anežka Lengalová, Ph.D.
děkanka



PhDr. Katarína Nemčoková, Ph.D.
ředitelka ústavu

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ABSTRAKT

V této bakalářské práci se zabývám modalitou, modálními slovesy a slovesnými způsoby. Práce je rozdělená na teoretickou a praktickou část. V teoretické části jsou vysvětlené druhy modalit, výskyt a význam modálních prostředků. V praktické části analyzuji modální prostředky v právnických textech. Výsledky analýzy poté porovnávám s poznatky teoretické části.

Klíčová slova: modalita, modální prostředky, modální slovesa, slovesní způsob, analýza.

ABSTRACT

This bachelor thesis deals with modality, modal verbs and mood. Thesis is divided into theoretical and practical part. Theoretical part deals with types of modality, occurrence and meaning of modal means. Practical part is focused on analyzing modal means in legal documents. Results of analysis are compared with theoretical part.

Keywords: modality, modal means, modal verbs, mood, analysis.

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INTRODUCTION

Language is being used in many different styles. Understanding functions and application of particular styles helps to improve the quality of communication. This bachelor thesis deals with language of legal documents. I focused on analyzing modal expressions used in legal language.

The thesis is divided into theoretical and practical part. In the theoretical part I deal firstly with modality in general and distinction between epistemic and deontic. Further I introduce the means of modality which are subjects of my analysis - modal verbs, mood and modal adverbs.

The practical part consists of analysis of various legal documents such as agreements, acts, laws and treaties. Topic of modality is considerably broad, that is why the main focus of the practical part is on modal verbs and deontic modality.

Frequency and occurrence of modal verbs related to deontic modality found in analysed texts are compared with the theoretical findings. The main source for this comparison is the LSWE Corpus in Longmann Grammar of Spoken and Written English. The results of my analysis are compared with modality in other language registers. All of the analyzed texts are from Internet sources.

The findings are summarized graphically in pie charts and show the differences of modality in legal language.

I. THEORY

1 MODALITY

„Modality may be defined as the manner in which the meaning of a clause is qualified so as to reflect the speaker’s judgment of the likelihood of the proposition it expresses being true.“ (Quirk et al 1989, 219)

In more practical view term modality includes various semantic notions such as ability, possibility, obligation and imperative meaning. (Huddleston 2002, 173)

Since there is more than one kind of modality, definitions may differ. Classification of modality is mentioned in the next subsection.

1.1 Kinds of modality

Generally two main kinds of modality are known as epistemic and deontic. However, different linguists use different terminology for these two kinds of modality. In publications I went through, I found also terms like intrinsic, root, non-complex or intra-propositional modality. In decided to use terms epistemic and deontic in my thesis. Some authors mention another kind of modality - dynamic. I will not include this kind of modality in my thesis since „dynamic interpretations are peripheral to the concept of modality“. (Huddleston 2002, 55)

1.1.1 Deontic modality

Term deontic is derived From the Greek word for „obligation“. Deontic modality expresses meanings which are mainly related to obligation (1) and permission (2). These meanings refer to authority and judgement of the speaker rather than knowledge or belief. Sentences with deontic meanings are often used to influence realization of actions or situations. (Huddleston 2002, 54)

(1) *He must wear a helmet.*

(2) *You may leave the class.*

1.1.2 Epistemic modality

Term epistemic derives from the Greek word „knowledge“. Epistemic modality includes meanings relating to possibility, necessity or prediction on the basis of what we know or believe. These meanings can vary in the degree of speaker’s confidence about the statement being true. (Huddleston 2002, 54)

As Svoboda demonstrates on following examples in (1), degrees of probability can be distinguished by particular modal verbs. Considerable degree of probability is indicated by modal verb *must* as in (1). Modal verbs *may* (2) and *might* (3) signal the decreasing of probability and negative probability is represented by negative forms of modal verbs like *can't* (4). However, even the usage of *must* does not signal absolute certainty, which is expressed only by the indicative mood as in (5). (Svoboda 2004, 34)

(1) *It must be raining over there.* (90%)

(2) *It may be raining over there.* (70%)

(3) *It might be raining over there.* (60%)

(4) *It can't be raining over there.* (10%)

(5) *It's raining over there.* (100%)

1.1.3 Epistemic/deontic contrast

Modal verbs can appear in both epistemic and deontic meanings. “Epistemic modality is concerned with matters of knowledge, belief or opinion rather than fact“ and “Deontic modality is concerned with the necessity or possibility of acts performed by morally responsible agents.“

Additionally Steele et al. makes similar distinction between these two meanings: “Elements expressing modality will mark any of the following: possibility or the related notion of permission, probability or the related notion of obligation, certainty or the related notion of requirement.“ (Palmer 2002, 18-19)

This is demonstrated on the following examples where sentences can be interpreted either with meanings of possibility, probability and necessity or in terms of permission, obligation and requirement:

(1) *She may leave tomorrow.*

The speaker can express his own belief about the statement being true (Perhaps she will) or permission (she is permitted).

(2) *The book should be in the garage.*

Here the speaker means either that the car is probably in the garage, or imposes obligation (It's proper place is in the garage).

(3) *He must be at home now.*

In this case the speaker can be certain about his statement being true, or again expresses obligation (He is obliged to be at home). (Palmer 2002, 19)

Palmer also mentions there are often clear distinctions to be found between epistemic and deontic use. As an example he states the negative form *mustn't* which is used only with deontic meaning:

He mustn't be in his office. (DEONTIC)

The negative of epistemic *must* has to be replaced using negative form *can't*.

He can't be in his office. (EPISTEMIC) (Palmer 2002, 19)

According to Quirk meanings represented by modal verbs can be divided into two groups. Although Quirk uses different terminology for modal meanings (intrinsic and extrinsic) I decided to retain terms deontic and epistemic.

1) DEONTIC MODALITY

- permission (can/could, may/might)
- obligation (must, have to, should, ought to)
- volition (will/would, shall)

2) EPISTEMIC MODALITY

- possibility, ability (can/could, might)
- necessity (must, have (got) to, ought to)
- prediction (will/would, shall)

Quirk comments that meanings of modals can greatly change between American, British English other English speaking world regions. Individual pragmatic uses are also associated with modals, for example in polite requests and offers the past forms of modal verbs are used frequently. (Quirk et al. 1989, 219 - 220)

2 MODAL VERBS

According to Quirk, there are 6 categories of verbs which express modality at some degree in the scale between modal and main verbs. These are: central modals, marginal modals, modal idioms, semi-auxiliaries, catenatives and main verbs with non-finite clause. (Quirk et al. 1989, 137)

Further in this chapter I will mention the possible meanings and description of particular modals, as well as the frequency across registers.

(a) CENTRAL MODALS	can, could, may, might, shall, should, will, would, must
(b) MARGINAL MODALS	dare, need, ought to, used to
(c) MODAL IDIOMS	had better, would rather/sooner, be to, etc
(d) SEMI-AUXILIARIES	have to, be about to, be able to, be bound to, be going to, be obliged to, be supposed to, be willing to, etc
(e) CATENATIVES	appear to, happen to, seem to, get + -ed, keep + -ing, etc
(f) MAIN VERB + nonfinite clause	hope + to, begin + -ing , etc

Table 1: Range of auxiliary verbs (Quirk et al. 1989, 137)

Modal auxiliary verbs have some characteristic features which distinguish them from full verbs. In some sources they are called the NICE properties. These are described by Quirk. (Quirk et al. 1989, 121-128)

1. In negation, they are placed before the negative particle *not*. In most cases the negative reduced form *-n't* is attached to the modal verb. *She cannot/can't do it.*
2. They can change place in questions taking the first place in a question without using the verb *do*. *Can I join?* Main verbs must form questions with *do* and follow the subject. *Do you want to play?*

3. They are followed by bare infinitives of lexical verbs without *to*. *I will buy her a present*. Main verb followed by infinitive must always use *to*. *I promise to buy her a present*.
4. They can replace lexical verbs in shortened clauses *Yes, I can.*, tag questions *You can't do it, can you?* and repetitions *I can speak english and so can he*.

Additionally, modal verbs cannot form passive - because of the lack of nominal forms, or imperative - because the function of imperative is nearly identical with modal necessity. (Dušková 1990, 181)

Since these features do not apply to all verbs in these categories at full scale, it is not easy to determine what have all modal expressions in common. In general, modal auxiliary verbs do not represent facts and involve speaker's judgement if statement is possibly or necessarily true. (Huddleston 2002, 173)

2.1 Central modals

The central modals have certain properties which are not applied to marginal modals or semi-auxiliary modals *be* and *have*. They possess their own formal features:

1. With exception of a few dialects, central modal verbs do not co-occur.
**will can come*
2. They do not have -s forms for their 3rd person singular.
**She musts come tomorrow*.
3. They do not have non-finite forms - they are used only within past and present finite forms *can/could, may/might, shall/should, will/would*. Infinitives and other missing forms are expressed with other verbs: *can - be able to, may - be allowed to*.
**I hope to can come tomorrow*.
4. From morphological point of view, *must* has no past tense form although the others do (*could, should, might, would*)
5. Their negative forms are substituted.
He may be at home - He can't be at home
He must be at home - He needn't be at home

(Quirk et al. 1989, 121-122)

2.1.1 Can/could

Quirk states that there are possible three meanings:

(a) POSSIBILITY

(1) *Everyone can make mistakes.*

(2) *We could go to the cinema.*

In this case *can* expresses deontic modality because the meaning does not involve the speaker's belief of the statement being true. It can be paraphrased with *it is possible* and infinitive clause, for example:

(3) *It is possible for everyone to make mistakes.*

Can/could is often used in partly imperative statements. *Your husband could help me with this case.* However, if we change this statement into a question, it turns out to be a more polite request. *Could you please help me with this case?*

(b) ABILITY

(4) *He can speak English.*

(5) *I never could play guitar.*

When expressing ability with *can/could*, we can paraphrase these two using phrases *be able to*, *be capable of* or in some cases *be possible*. For this reason, the ability meaning is a special case of possibility meaning connected with some skill or capability of the referent.

(c) PERMISSION

(6) *Can I smoke here?*

(7) *Only some men could join the army.*

In this sense *can* is less formal than *may*. When asking for permission it is possible to replace it with *be allowed to*. (Quirk et al. 1989, 221-223)

As Biber states, *can* occurs mainly with unambiguous permission (6) and ability (4) meaning.

Could most frequently represents the meaning of possibility (2) in conversation when the speaker wants to express uncertainty. In conversation *could* is also used less frequently to mark ability (5) or permission (7). (Biber et al. 1999, 492-493)

2.1.2 May/might

Quirk says that modal verbs *may/might* can have two meanings:

(a) POSSIBILITY

As it was already mentioned term epistemic describes possibility of a statement being or becoming true.

(1) *The road may be closed.*

(2) *We might have some problems.*

The most common possibility meaning of *may* is slightly different from possibility meaning of *can*. It can be replaced with phrase *it is possible* followed by a *that* clause or with adverbs *perhaps* and *possibly*.

(b) PERMISSION

(4) *You may borrow my car if you like.*

(5) *Might I ask if I can smoke here?*

As a modal of permission meaning, *may* is used more in formal occasions. There is a slight difference between permission *may* and permission *can*. Whereas *may* (6) is connected with permission given by speaker, *can* (7) expresses permission in more general way. (Quirk et al. 1989, 223-224)

(6) *You may leave when you like. (= I permit you)*

(7) *You can leave when you like. (= You are permitted)*

May as a possibility modal is extremely frequent in academic prose (8). On the contrary, it is used very rarely in the permission sense. Concerning spoken language, it's most typical function is to express possibility (2) rather than permission meaning (6) which is used by teachers in conversation with children.

Might is used mostly to express possibility in both conversation (2) and academic writing (9).

(8) *Because of its close connection with metaphor, simile may also be considered here.*

(9) *It might be the case that this area was settled long time ago.*

(Biber et al. 1999, 492)

2.1.3 Must

Quirk states that modal verb *must* has two possible meanings:

(a) EPISTEMIC (LOGICAL) NECESSITY

The logical necessity meaning of *must* can be found in statements, where the speaker is convinced that the statement is true or is highly probable being true. In this case *must* is a conclusion of speaker's previous experiences or findings.

(1) *They must be rich.*

(2) *There must be a mistake.*

Logical necessity *must* cannot be used in negative sentences. Instead the negative of *can* (3) is used. However, it can be rarely found in questions which we expect to have positive answer (4).

(3) *There can't be a mistake.*

(4) *Must there be some good reason for the delay?*

(b) OBLIGATION

When using obligation *must*, "the speaker expresses his/her authority to advocate certain behaviour of someone else or his/her own." (Quirk et al. 1989, 224-225)

(5) *You must be back by 10 o'clock.*

(6) *I must remember to drive the children to school.*

Modal verb *must* is the only one used relatively frequent in both necessity and obligation meaning. The meaning of necessity is commonly used in both registers (7a) (7b), while the meaning of personal obligation is surprisingly more typical in academic prose (8a) despite the impersonal tendency of this register. Because there is no specific addressee in the academic writing, the obligation meaning of *must* doesn't have such a strong directive impression as in face-to-face conversation (8b). (Biber et al. 1999, 494-495)

(7) a. *There must be a mistake.* (conversation)

(7) b. *All explanations of chemists must remain without any doubts.* (acad. prose)

(8) a. *The performance of dams already constructed must be ensured,...* (acad. prose)

(8) b. *You must be there by 9 o'clock.* (conversation)

2.1.4 Will/would

There are two possible meanings for modals *will/would*, which can be further distinguished.

(a) PREDICTION

Predictional meaning is used in FUTURE, PRESENT or HABITUAL predictions.

(a1) *Will* can be used in the sense of future prediction and *would* expresses future prediction in the past.

(1) *You will feel better after this medicine.*

(2) *I was told I would feel better after this medicine.*

(a2) Prediction in present tense is quite rare, the meaning is similar with phrase *it is (very) likely*.

(3) *That will be the postman.*

(a3) In conditional sentences *will* appears in the meaning of habitual prediction and

(4) *If litmus paper is dipped in acid, it will turn red.*

Additionally *would* appears also in past tense narratives. In this case it describes habitual behaviour but needs to be specified closer with time indicator.

(5) *In the spring the birds would return to their old haunts...*

(b) VOLITION

There are three volitional meanings of *will/would*.

(b1) INTENTION

(6) *I will write as soon as I can.*

(7) *He said he would phone me after the lunch.*

(b2) WILLINGNESS

This meaning often occurs in more polite requests and offers.

(8) *Will/would you like to help me with this heavy package?*

(9) *Would you please be quiet?*

(b3) INSISTENCE

(10) *If you will go out without your overcoat, what can you expect?*

(11) *She would keep interrupting me.*

This use is quite rare and expresses the willfulness of the statement addressee. (Quirk et al. 1989, 228-229)

Modal verbs *will* and *would* are commonly used in conversation in both meanings - prediction (12) and volition (13). Concerning academic writing, *will* and *would* are used almost exclusively for impersonal predictions of events or states (14). (Biber et. al 1999, 496)

(12) *She would feel better if she went out.*

(13) *I'll come and show you what is the problem.*

(14) *Such investments would only raise the risk.*

2.1.5 Shall

Modal verb *shall* is becoming more and more infrequent in modern English. It has two possible meanings which are used with 1st person subject.

(a) PREDICTION

(1) *I shall win quite easily.*

(b) VOLITION

(2) *We shall overcome.*

In some questions where we ask for the wishes of the recipient, *shall* has rather obligational meaning.

(3) *Shall I/we deliver the package to your address?*

(Quirk et al. 1989, 230)

(c) OBLIGATION

There is another use for *shall* with a 3rd person subject, however it is restricted and occurs only in legal documents (4). It occurs most frequently in construction *shall* + *BE* + *past participle* and is used to express what is to be the obligatory consequence of a legal decision. (Crystal and Davy 1969, 206)

(4) *The Electors shall meet in their respective states.*

Biber states that *shall* marks volitional meaning rather than prediction in both academic writing (5) and rarely in conversation (6). In this case it is generally used with a 1st person subject. (Biber et. al, 496-497)

(5) *In this article I shall try to show that...*

(6) *Shall we wait for them?*

2.1.6 Should

Quirk states that central modal *should* is used to express two modal meanings:

(a) NECESSITY

The necessity meaning of *should* (1) can be found in statements where the speaker does not know if the statement is true, but claims that it is true, based on his findings or experiences. This meaning can be termed tentative inference.

(1) The mountains *should* be visible from here.

(b) OBLIGATION

Obligation is similar to *must*, but the tone of the speaker is less emphasized.

(2) You *should* do as he says. (Quirk et al. 1989, 227)

According to Biber personal obligation is the most common meaning of *should* in both conversation and academic prose. It is often used in conversation instead of *must* to express obligation more politely (2). (Biber et al. 1999, 495)

2.1.7 Frequency of central modals

I found advisable to mention the frequency of modal verbs across registers based on the Longmann Spoken and Written English Corpus, which will be further analyzed in the practical part.

Modals *can*, *will* and *would* are extremely common in global, on the other hand, the modal verb *shall* occurs least frequently. The past tense modal verb forms *would*, *could* and *might* are less frequent than their present tense pairs *will*, *can*, *may*. However, the pair *shall/should* is an exception. In general, modals *must*, *should*, *will*, *would* and *shall* are used more frequently in British English than American English. Central modals are most common in conversation and least common in publicisim and academic prose. (Biber et al. 1999, 486)

2.2 Marginal modals

Category of marginal modals is closely described by Quirk. This category consists of these modal verbs: *dare*, *need*, *ought to* and *used to*. Marginal modals are closely related to the central modal auxiliaries, but they have some different features. The main difference is that

they can appear also as main verbs. *Ought to* apparently differs from central modals because it has *-to* infinitive. (Quirk et al. 1989, 138)

2.2.1 Dare/need

Quirk notes that there are two possibilities when using these two marginal modals. Either as modal auxiliaries, or as main verbs with *to*-infinitive (1). *Dare* and *need* appear as modal auxiliaries only in negative (2) or interrogative (3) clauses. (Quirk et al. 1989, 138)

(1) *He doesn't need/dare to do it.*

(2) *He needn't/daren't do it.*

(3) *Needn't/daren't he do it?*

2.2.2 Ought to

Ought to apparently differs from central modals because it has in most cases the *-to* infinitive. Yet, in some cases we can find *ought* without *to*, but only in non-assertive sentences (1). The *to* can be omitted also when responding to a question (2). (Quirk et al. 1989, 139)

(1) *They ought not do that.*

(2) *Yes, I think you ought (to).*

Marginal modal *ought to* has synonymous use with central modal *should* to express two modal meanings:

(a) NECESSITY

The necessity meaning of *ought to* (3) is used in statements where the speaker claims that the statement is true, based on his findings or experiences.

(3) *These plants ought to reach maturity after five years.*

(b) OBLIGATION

(4) *The dishes ought to be washed at least once per two days.*

Obligation is similar to *must*, but with less emphasis on the realization of the action. (Quirk et al. 1989, 227)

2.2.3 Used to

Since *used to* indicates past activity or state. Although it always takes the *-to* infinitive, it formally belongs to modal marginals (1). It always has *-to* infinitive and occurs always in past tense. Similarly to *dare* and *need* it can appear as a main verb with infinitive (2). (Quirk et al. 1989, 139)

- (1) *I used to play tennis.*
- (2) *He didn't use to play tennis.*

2.3 Modal Idioms

Quirk states that category of modal idioms contains multi-word verbs *had better*, *would rather*, *have got to* and *be to*. Because they don't have nonfinite form like central modals, they can't follow other verbs in verb phrases. For example we cannot say **I will have got to leave soon*. On the other hand, modal idioms don't behave entirely like central modals. In negative (1) and interrogative (2) sentences, only the first word figures in the beginning of the sentence. *Have got to* also has the *-s* form and distinguishes present (3) and past (4) tense. (Quirk et al. 1989, 141)

- (1) *I wasn't to know that he was working.*
- (2) *Hadn't we better pay the fine?*
- (3) *He has got to respond by tomorrow.*
- (4) *He had got to respond by the next day.*

Modal idioms are used in meanings which are almost synonymous to central modals. *Had better* is used to give advice and has similar meaning to the obligation of *should*.

- (5) *You'd better make up your mind.*

Have got to can have obligation (6) and necessity (7) meaning. It can be substituted for central modal *must* with little difference in meaning. (Quirk et al. 1989, 226)

- (6) *You have got to be back by ten o'clock.*
- (7) *There has got to be some mistake.*

2.4 Semi-auxiliaries

Semi-auxiliaries consist of a set of verb idioms which also share features of auxiliary verbs. They are introduced by primary verb *have – have to* and *be - be able to, be bound to, be likely to, be supposed to, be about to, be due to, be meant to, be willing to, be going to, be obliged to*. As auxiliary verbs they are placed in the beginning of negative (1) and interrogative (2) sentences.

Semi-auxiliary *have to* can appear as a main verb (3) as well as an auxiliary (4). Similarly to modal idioms it can substitute for central modal *must* in obligation (5) and necessity (6) meaning in past sentences. (Quirk et al. 1989, 143-145)

- (1) *Martin isn't going to watch*
- (2) *Is Martin going to watch?*

(3) *Do we have to go to school tomorrow?*

(4) *Have we to go to school tomorrow?*

(5) *Last week I had to finish the work.*

(6) *There had to be some misunderstanding,*

Biber provides details of the distribution of semi-auxiliary modals. Semi-auxiliaries are five times more common in spoken language than in written. The recently developed semi-modals like *(had) better* and *(have) got to* are common in conversation but almost nonexistent in written discourses. The older semi-modals such as *have to* and *be going to* are used more often in American English, while the more recent semi-modals *(had) better* and *(have) got to* are much more common in British English conversation. *Be going to* (7) marks personal volition in conversation. *Used to* (8) marks past habitual behaviour or past state mainly in conversation. The semi-modal *have to* is the most common modal verb phrase used to mark personal obligation (9) in spoken language. (Biber et al. 1999, 488-490)

(7) *I am going to take a nap.*

(8) *I used to wash the dishes every day.*

(9) *What do we have to do?*

2.5 Catenative verb constructions

Quirk (146) claims that catenative constructions such as *appear to*, *come to*, *fail to*, *get to*, *happen to*, *manage to*, *seem to*, *tend to* and *turn out to* have also features related to auxiliary verbs. However, they are getting closer to main verbs category because they have do-support (1). But unlike main verbs, catenatives are not related to the subject of the sentence (2). (Quirk et al. 1989, 146)

(1) *Sam didn't seemed to realize the importance of the problem.*

(2) *Sam seemed to realize the importance of the problem.*

3 MOOD

Mood is a grammatical category which deals with the manner in which verbs are expressed - with various kinds of factuality and non-factuality or assertion and non-assertion. It marks whether the statements are represented as facts, commands, wishes or probabilities. Mood is closely associated with modality because it refers to such conditions of verbs as possibility, obligation, necessity and certainty. I will focus on the indicative, the imperative and the subjunctive.

3.1 The indicative

The indicative is the most frequently used grammatical mood used in English language. It is used to form statements or questions which deal with facts or high probability. It can be used in present as well as past tense. (Svoboda 2004, 27)

(1) *He writes/he wrote a book.*

(2) *Does he write/did he write a book?*

3.2 The imperative

The imperative mood is used in most cases through direct commands (1), when the speaker wants a certain action to be realized by the addressee. Imperative can be used also for expressing warnings (2), directions (3), instructions (4), prohibitions (5) and offers (6). (Svoboda 2004, 27)

(1) *Follow me.*

(2) *Look out!*

(3) *Take the second turning on the left and then turn right.*

(4) *Use a moderate oven and bake for 20 minutes.*

(5) *Do not feed the animals!*

(6) *Have a cup of tea.*

Imperative of the 2nd person is formed by the base form of the verb. Concerning other persons, it is composed of verb *let*, object and bare infinitive. *Let me/him/them do it.*

The imperative can be used with auxiliary verb *do* when the speaker wants to emphasize his assertion or express impatience (7). On the other hand to change the direct command into a polite request, question tags are like *will you?*, *can you?*, *could you?* are used in combination with the imperative (8).

(7) *Do stop talking!*

(8) *Don't tell anyone I told you, will you?*

3.3 The subjunctive

There are two forms of subjunctive - present and past subjunctive. In general subjunctive mood is used to express demand, recommendation, wish or desire of the speaker. (Quirk et al. 1989, 155)

3.3.1 Present subjunctive

The present subjunctive has two possible uses:

(a) that- clauses

It is the most frequent use of the subjunctive and consists only of the base form of the verb in all the persons. Present subjunctive can be identified by expressions of demand, recommendation or proposal which are placed in the beginning of that- clause.

These expressions can be represented by:

- verbs - *decide, insist, move, order, request*
- adjectives - *advisable, desirable, fitting*
- nouns - *decision, decree, order, requirement, resolution*

(1) *It is necessary that every member inform himself.*

(2) *I insist that you be a little quieter.*

(b) formulaic expressions

Present subjunctive in formulaic expressions also consists only of the base form of the verb and is considered to be rather old-fashioned. It is used mainly in certain formulaic phrases. (Quirk et al. 1989, 156-157)

(3) *Come what may, we will go ahead.*

(4) *God save the queen!*

3.3.2 Past subjunctive

As Quirk states the past subjunctive is limited only to the use of the verb form *were*. In sentences it normally follows conjunctions like *if, as if, as though, though* and verbs like *wish* and *suppose*. However the use of the past subjunctive is often substituted by the past tense indicative mood form *was*, which is used in less formal occasions with the exception of fixed phrase *If I were you*.

The past subjunctive is used in two meanings:

(a) Unreal meaning which expresses a wish of the speaker that cannot be fulfilled at present.

(1) *If I only were wiser.*

(2) *I wish I were miles away.*

(b) Hypothetical meaning which appears in conditional clauses.

(3) *If I were rich, I would buy you anything you wanted.* (Quirk et al. 1989, 158)

3.3.3 Uses of subjunctive

Quirk mentions two types of subjunctive uses:

(a) Mandatory subjunctive

is the most commonly used form of subjunctive. It figures in subordinate that-clauses and consists only of the base form of verb.

(1) *I propose that Mr. may be elected.*

That-clause can be introduced by expressions of demand, proposal, intention or resolution.

These expressions can take the form of verb (2) adjective (3) or a noun (4). (Quirk et al. 1989, 156)

(2) *They recommend that this tax be abolished.*

(3) *It is appropriate that this tax be abolished.*

(4) *We were faced with the demand that this tax be abolished.*

These expressions can precede a that-clause with mandatory subjunctive:

VERBS: *decide, insist, move, order, prefer, request*

ADJECTIVES: *advisable, desirable, fitting, imperative*

NOUNS: *decision, decree, order, requirement, resolution*

(Quirk et al. 1989, 157)

(b) Formulaic subjunctive

This type also contains the base form of the verb. It can be used in certain expressions in independent clauses. Formulaic subjunctive tends to be rather formal and old-fashioned.

(Quirk et al. 2004, 158)

(5) *Come what may, we will go ahead with our plan.*

(6) *Suffice it to say that we won.*

(7) *Be it noted that this offer was made in good faith.*

4 MODAL ADVERBS

Use of modal adverbs is connected with subjective attitudes and opinions of the speaker.

“The use of adverbs such as frankly, fortunately, possibly, wisely, express opinion or attitude of the speaker towards the proposition that the sentence expresses or the situation that the proposition describes.” Which means that modal adverbs are “associated with subjective characteristics of an utterance.” (Palmer 2002, 16).

4.1 Features of modal adverbials

The class of modal adverbials includes adverbs such as *possibly, probably, evidently, surely, certainly*.

Modal adverbials can change “the truth value or force of a sentence” (2004, 485) in three aspects - emphasis, approximation and restriction. (Quirk et al. 1989, 485)

4.1.1 Emphasis

Sentences can be enhanced or diminished by modal adverbials. Modal adverbial puts EMPHASIS on the positive (2) or negative (3) poles of the statement. (Quirk et al. 1989, 485)

- (1) *She has been enthusiastic about her work.*
- (2) *She has certainly been enthusiastic about her work.*
- (3) *She hasn't been enthusiastic at all about her work.*

4.1.2 Approximation

Contrary to emphasis, adverbials can express APPROXIMATION which reduces the positive (1) or negative (2) meaning of statement. (Quirk et al. 2004, 1989)

- (1) *She has probably been enthusiastic about her work.*
- (2) *She has not really been enthusiastic about her work.*

4.1.3 Restriction

Restriction is an aspect of modality which is used to emphasize particular element of the statement. In this case the adverbial can be placed behind (1) as well as in front (2) of the verb structure. (Quirk et al. 1989, 485)

- (1) *She has been enthusiastic only about her work.*
- (2) *She alone has been enthusiastic about her work.*

4.2 Adverbs in legal writing

Many legal writing authors do not recommend using adverbs. Many legal writing authors do not recommend using adverbs in legal documents. Even if they are used correctly, they can express a personal opinion or bias of the writer. To preserve factuality of legal texts as high as possible, feelings and opinions about a factual or legal contention are irrelevant. (Salzwedel, 2012)

(1) *Surprisingly, the court considered extrinsic evidence when interpreting the contract.*

5 FEATURES OF LEGAL LANGUAGE

Legal language is used in wide variety of documents, from the drawing up of statutes, treaties, declarations, conventions, etc. to the closing of agreements and contracts between individuals or corporations. Legal documents are composed in most cases by professionals (contract drafters) who have to be sure that every sentence in document says exactly what it is intended to say and to avoid misinterpretation at the same time. As Crystal and Davy claim, writing of these documents is not spontaneous but is copied directly from 'form books' which contain established phrases because 'Legal language must always behave in conformity with the law' (Crystal and Davy 1983, 214) when so much depends on the results of the interpretation.

Facing the pressure to remain precise or vague, contract drafters need to be cautious in their use of words and sentences. Being highly conservative, of all uses of language it can be considered as opposition to informal spontaneous conversation. (Crystal and Davy 1983, 193-194)

5.1 Sentence construction

Legal English contains exclusively complete major sentences. Most of these complete sentences are in the form of statements with no questions. Great majority of sentences established in legal language have common logical structure: 'if X, then Y shall be Y' or alternatively 'if X, then Z shall do Y'. According to this structure, action or requirement depends upon a set of conditions which must be satisfied before anything at all can happen. (Crystal and Davy 1983, 203)

5.2 French and Latin influence

In the course of historical development legal English has adopted many vocabulary characteristics from French and Latin. The French element in legal vocabulary is quite large (1) and we can find Latin related words or terms which come directly from Latin. (Crystal and Davy 1983, 195-209)

- (1) *proposal, society, schedule, signed, policy, rules, terms, conditions, date, entrance, contract.*
- (2) *declaration, registered, stated, part*
- (3) *basis, table*

5.3 Punctuation

In the early legal documents it was quite common for draftsmen to compose an entire document in the form of single sentence with lack or even absence of any punctuation. Although this feature has rather historical character, marks of old fashioned legal writing, for example omitting paragraph divisions, can be found occasionally. (Crystal and Davy 1983, 197-198)

Fortunately the more recent legal documents I have dealt with in my analysis have more advanced punctuation which includes periods, commas, colons, semicolons, parentheses, square brackets, dashes, hyphens, quotation and question marks, etc.

5.4 Archaisms and formal words

Legal draftsmen have well-established preferences in choice of words. This conservative approach reveals another considerable characteristic which is the use of archaisms. As D. 'It is especially noticeable that any passage of legal English is usually well studded with archaic words and phrases of a kind that can be used by no one else but lawyers.' (Crystal and Davy 1983, 207)

Archaisms most typical for legal documents consist of compounds usually formed by adverbs like *here, there, where* with suffixed prepositions (1). These compound adverbs are useful for precise references to longer phrases of legal documents.

Legal English has also retained some archaic morphological forms. The most widely distributed is the verb form *witnesseth*, which preserves an *-eth* ending for the third person singular present tense form of the verb for traditional reasons. It can be found in agreements and contracts (2). (Crystal and Davy 1983, 207-208)

(1) *hereto, hereon, hereunder, hereunto, herein, hereinbefore, thereof, whereof, whereas*

(2) *Now this agreement witnesseth that in consideration of the...*

In addition to archaisms, formal words like *duly, deemed, expiration, terminated* further intensify the formality of legal language.

(1) *His signature was duly witnessed by two of the secretaries.*

(2) *The foreign trustee would be deemed to be resident in the United Kingdom.*

(3) *These principles do not prevent the parties from defining the expiration of the term.*

(4) *The appointment may be terminated by either party*

5.5 Common words with uncommon meanings

Words of everyday usage like *alibi*, *appeal*, *bail*, *defendant*, *landlord*, *plaintiff*, *prayer* all mean something far more precise in law than they do in informal everyday language. (Crystal and Davy 1983, 211)

For example word *alibi* in the legal language means a form of defense where a defendant attempts to prove that he or she was elsewhere when the crime in question was committed, while in its non-legal sense it means to make an excuse.

Appeal as common word means an urgent request, but in legal documents it is a transfer of case from a lower to a higher court. (The free dictionary, 2012)

5.6 Synonyms

Another feature of legal language is the frequent use of collocations which consist of synonyms or near-synonyms usually formed in pairs: *made and signed*, *terms and conditions*, *able and willing*. (Crystal and Davy 1983, 207-208)

- (1) *A memorandum of agreement shall be made and signed by the appellant and respondent in the following terms:...*
- (2) *The proposed new terms and conditions shall be outlined by letter to staff...*
- (3) *The governing elite has to be able and willing to use...*

5.7 Avoidance of pronouns

Especially in contract documents, where two or more parties are involved, it is essential to know what or who each noun in the document refers to. The most evident way in which sentences are linked together in legal documents is repetition. Pronouns such as *he*, *she*, *it* or *they* as substitutions for repeated words or clauses can lead to ambiguity or confusion, therefore they are not used by legal draftsmen. (Crystal and Davy 1983, 202)

5.8 Overuse of shall

Another feature of legal language is the overuse of modal verb *shall*. Modal verb *shall* can be found in all types of legal documents. Its main purpose is to impose an obligation or, if used in negative form, prohibition. But legal drafters and lawyers use *shall* for many other purposes. The main reason for overusing *shall* is its flexibility because it can mark many types of meaning. However, overuse of modal verb *shall* is dangerous because it can lead to an argument about which meaning it marks in particular sentences. Following examples demonstrate purposes of modal verb *shall* in legal language. (Butt 2006, 131)

- To impose a duty:
The distributor shall keep in good and saleable condition a stock of the Goods.
(Butt 2006, 131)
- To grant a right:
A purchaser shall have the right to cancel the purchase transaction until midnight.
(Butt 2006, 131)
- To give a direction:
The receipt of a person who appears to be a proper officer of the charity shall be a discharge to my trustees. (Butt 2006, 131)
- To state circumstances:
The said restrictions shall be binding on the property hereby assured and the owner or owners thereof from time to time but the Purchasers shall not be personally liable for any breach thereof occurring after they shall have parted with all interest in the land in respect of which the breach shall occur. (Butt 2006, 131)
- To create a condition precedent:
If the Vendor shall within one month of the receipt of such notice give written notice... (Butt 2006, 131)
- To create a condition subsequent:
If in any circumstances my said intended marriage shall not have been solemnised within the period of six months from the date hereof then at the end of that period this my said will shall become void. (Butt 2006, 131)
- To express the future:
The waiver of the observance and performance of the said covenant shall terminate on the disposal of the said property. (Butt 2006, 131)

Use of *shall* in legal language is still a matter of discussion between legal writers. Some writers distinguish mandatory and directory regulations - regulations which do not impose sanctions for breaching. These writers suggest that *shall* should still be used to impose mandatory obligations and modal *must* should be used for directory regulations.

The modern trend in the legislation of some jurisdictions is to replace *shall* with more appropriate *must*, which should be understood as mandatory. In some cases, *must* can be viewed as too strict, especially in contracts between two parties which are trying to achieve mutual cooperation and respect. In such case, authors can use verb construction *is to* which can be appropriate variation of *shall* in documents written in less adversarial tone.

Another problematic use of *shall* is describing future events. Modern trend of legal writers suggest that in cases of referring to the future *shall* should be replaced by modal verb *will*. (Butt 2006, 200-203)

II. ANALYSIS

6 ANALYSIS OF LEGAL DOCUMENTS

The practical part of my thesis deals with analyzing modal means used in legal documents. I chose a total amount of 20 legal documents as a corpus for my analysis. Although the volume of my corpus is not very large, I decided to include different types of legal texts which include treaties, international agreements, statutes, rules, business contracts, agreements and deeds. I tried to make the representation of both law and contract texts equal. I chose only documents originated in native English speaking countries to avoid grammatical inadequacies. All of the analyzed documents were found on the internet. The average size of each analyzed text was approximately 2,600 words per text, together amounting to approximately 52,000 words. I tried to extract those parts of large-scale documents which I found most resourceful.

The main focus of the practical part is on modal verbs. In the first part I deal with overall frequency of modal verbs. Usage and meaning of particular modal verbs are analyzed more closely in following subchapters. The results of my analysis are compared with Longmann Spoken and Written English Corpus.

6.1 Modal verbs

The following table shows the overall frequency of modal verbs in analyzed texts indicated by numbers and percentages.

modal verb	frequency	percentage
shall	384	50,26%
shall not	59	7,72%
may	138	18,06%
may not	27	3,53%
can	21	2,74%
cannot	11	1,43%
will	55	7,19%
will not	15	1,96%
must	27	3,53%
must not	2	0,26%
should	9	1,17%
would	6	0,78%
could	4	0,52%
might	2	0,26%
ought to	1	0,13%
need	2	0,26%
need not	1	0,13%
Total	764	100%

Table 2. Modal verbs frequency (Own research)

The most commonly used modal verb in analyzed documents was *shall*. It occurred totally 384 times out of all 764 verbs which is a bit over 50% of all modal verbs occurrences. The second most frequently used modal was *may* with 138 occurrences (18%). Negative forms *shall not* and *may not* were found 86 times which is almost 11% of modal verbs in total. The third most frequent was modal *will* with 55 occurrences (7%). Other modals worth mentioning are *must*, which numbers 27 occurrences and *can* with 21.

In this section I will compare frequency of modal verbs and sum up the differences between Longmann Spoken and Written English Corpus and analyzed legal texts.

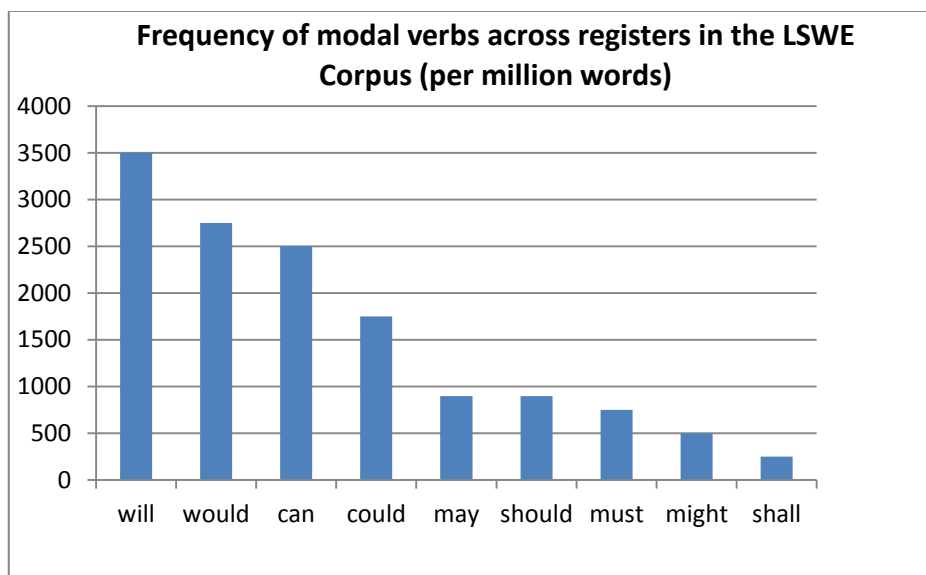


Figure 1. Frequency of modal verbs 1 (Biber et al. 1999, 486)

The modals *can*, *will* and *would* are extremely common in general English, on the other side, modal *shall* is relatively rare and occurs mainly with first-person subject. In academic prose it is used mostly to express personal volition of future actions. In conversation, *shall* is used in polite questions and suggestions.

Modals *can* and *may* are used primarily to express possibility rather than permission.

Must is used commonly for both necessity and obligation.

In conversation, *will* is used to express both personal volition and logical prediction.

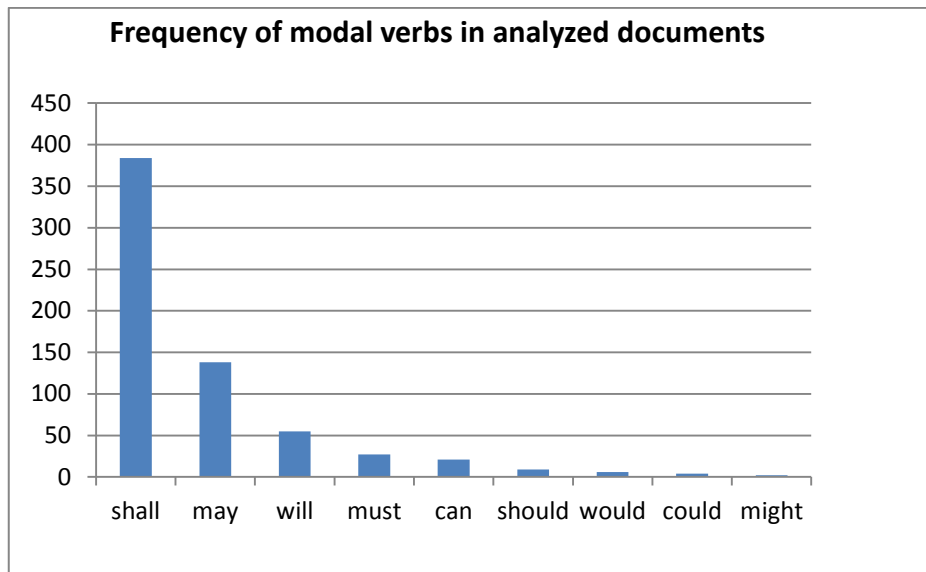


Figure 2. Frequency of modal verbs 2 (Own research)

The most striking difference is the modal verb *shall*. It is mostly used to impose obligations or prohibit certain actions but also for many other purposes which will be described in next subchapter.

As we can see, modal *may* is the second most frequent. Contrary to academic prose, *may* is frequently used to mark permission, especially in agreements.

In documents which were analyzed, *must* is used only for obligations and prohibitions. Logical necessity *must* does not occur. Modal verb *will* expresses future promise or contract obligation.

6.1.1 Shall

Considered rather old-fashioned, modal verb *shall* is getting less and less frequent in modern English. It is used quite rarely, mainly to express future or in polite questions. On the other hand it is the most frequent used modal in language of the law. This fact was obvious also in my analysis, since *shall* was the most frequent verb and occurred in all of the analyzed texts. Following pie chart shows occurrence of positive and negative forms of *shall* in analyzed documents. *Shall* occurred 384 times in its positive form which represents 86% of total occurrences, negative form occurred 59 times (14%).

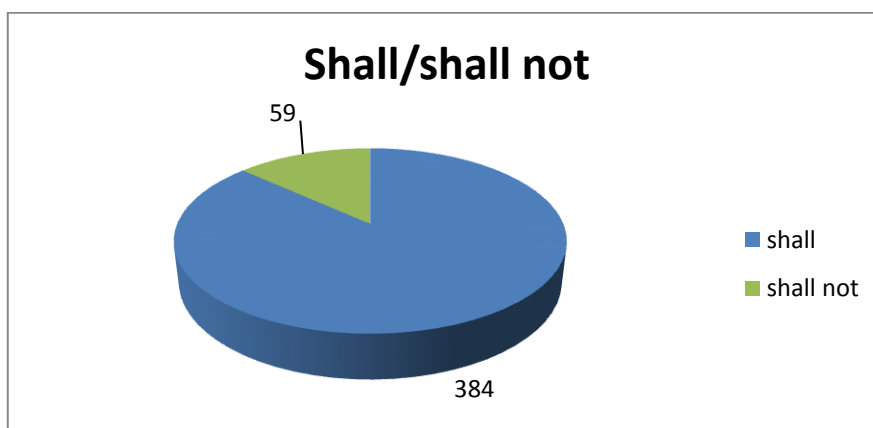


Figure 3. Shall positive/negative form (Own research)

The main function of *shall* in legal language is to impose obligation or express command, which is illustrated by following examples.

- *The Members shall make their contributions to the Company's capital in cash or property.* (Compu Devices LLC. Operating Agreement)
- *The Commission shall submit each year to the European Council, the European Parliament, the Council and the national Parliaments a report on the application of Article 3b of the Treaty on European Union.* (Treaty of Lisbon)

The main function of negative form *shall not* is to express prohibition:

- *You shall not use the space provided to you on Network Solutions hosting servers in any way which may result in an excessive load on the Network Solutions equipment and/or network.* (Network Solutions Service Agreement)

As it was mentioned in theoretical part of my thesis (see subchapter 5.8) modal verb *shall* is the most overused modal verb in legal language. This was evident in all of the analyzed documents in my corpus. Following examples show different purposes of *shall*:

To grant a right:

- *Owners of certain units shall have the right to park within designated parking areas in the Exclusive Use Area appurtenant to such Units, as set forth in Section 7 herein.* (Master Deed New View Condominium)

To describe circumstances:

- *The joint strategic plan shall include programs to provide training and technical assistance to foreign governments to enforce laws against counterfeiting and infringement.* (Digital Millennium Copyright Act)
- *In carrying out its functions, the United States Patent and Trademark Office shall be subject to the policy direction of the Secretary of Commerce, but otherwise shall retain responsibility for decisions and other administrative and management functions in accordance with this title and applicable provisions of law.* (US Consolidated Patent Law, Chapter 1)

To describe future:

- *If it is found that Director or designated alternate is in fact subject to a Director Restriction, such Director or designated alternate shall automatically be removed from such position.* (Green Exchange LLC company agreement)

Having numerous meanings, it was hard to determine the exact meanings of *shall* during my analysis. As mentioned in the theoretical part, the modern trend among legal writers is to omit, or replace *shall* with other appropriate modal verbs to make legal language more understandable. According to these suggestions (see subchapter 5.8) I will try to rewrite the examples above for comparison.

Obligation:

- *The Members shall make their contributions...*
- *The Members must make their contributions...*

Granting a right:

- *Owners of certain units shall have the right to park...*
- *Owners of certain units have the right to park...*

Describing circumstances:

- *The joint strategic plan shall include programs...*
- *The joint strategic plan includes programs...*

Describing future:

- *...such Director or designated alternate shall automatically be removed...*
- *...such Director or designated alternate will automatically be removed...*

6.1.2 May

May was the second most frequent modal within the analyzed text, occurring 138 times out of 764 total amount of modal verbs. Together with negative form *may not* it represents 21% of all occurrences. Next pie chart shows occurrence comparison of positive and negative forms of *may*.

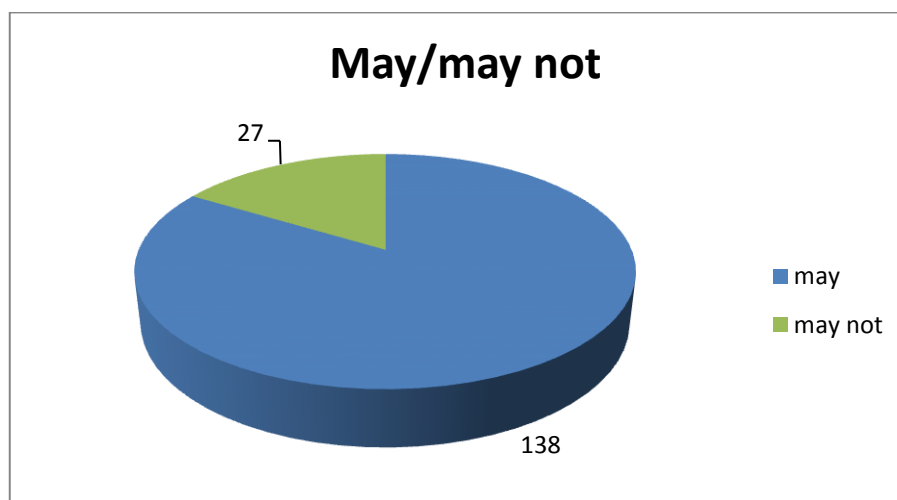


Figure 4. May positive/negative form (Own research)

Positive form *may* occurred 138 times (84%), negative form *may not* counted 27 occurrences (16%).

In general *may* is used in two meanings in English language - possibility and permission. The primary function of *may* in analyzed documents was to express permission to a person

or party and grant rights to authorities. *May* occurred rarely also in the meaning of epistemic possibility.

Permission:

- *The mayor of London may direct the Authority to refuse an application for planning permission in a specified case.* (London Olympic Games and Paralympic Games Act)
- *The Member may engage in or possess an interest in any other business venture, even if such venture or opportunity is in direct competition with the business of the Company.* (Green Exchange LLC company agreement)
- *You may opt-out of automatic charges to your credit card by contacting Customers Service.* (Network Solutions Service Agreement)
- *The applicant may file both applications concurrently.* (Texas Labor code)

Granting a right to authority:

- *The Authority may, by notice in writing, require a person to provide specified information or information of a specified description.* (UK financial Services Act)

In this example, *may* is used to refer to uncertain situations in the future.

- *Where on any occasion an authorised officer finds a person who he has reason to believe has on that occasion committed a relevant offence in the city, the officer may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.* (Leeds City Council Act)

Epistemic possibility:

- *Solely for purposes of the panel review provided for in this Article, the antidumping and countervailing duty statutes of the Parties, as those statutes may be amended from time to time, are incorporated in this agreement.* (Canada - USA Free Trade Act)
- *Your device may not have the drivers needed to communicate with that hardware.* (Microsoft Software License Terms)

- *The limitation or exclusion may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential or other damages.*
(Network Solutions Service Agreement)

In this special case, *may* occurs in rather old fashioned sentence with formulaic subjunctive.

- *Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:* (Leeds City Council Act)

Considering that different use of *may* in my analysis relate to both epistemic and deontic modality, I found advisable to illustrate the epistemic/deontic modality ratio. As you can see on the following pie chart, occurrence of deontic modality predominates in a large extent. Since many occurrences of *may* have ambiguous meaning, these were not included in this pie chart.

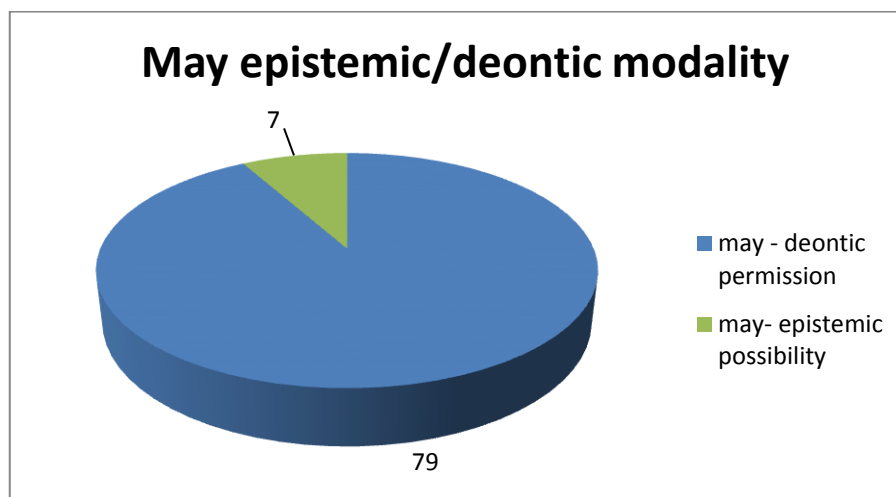


Figure 5. May epistemic/deontic modality (Own research)

6.1.3 Will

Modal verb *will* is used very commonly in general English primarily to refer to the future, whether in volition or prediction meaning. It ranked the third most frequently used modal

in my analysis occurred totally 55 times in positive and 15 times in negative form. In the aggregate, its occurrence represents 9% of all modal verbs.

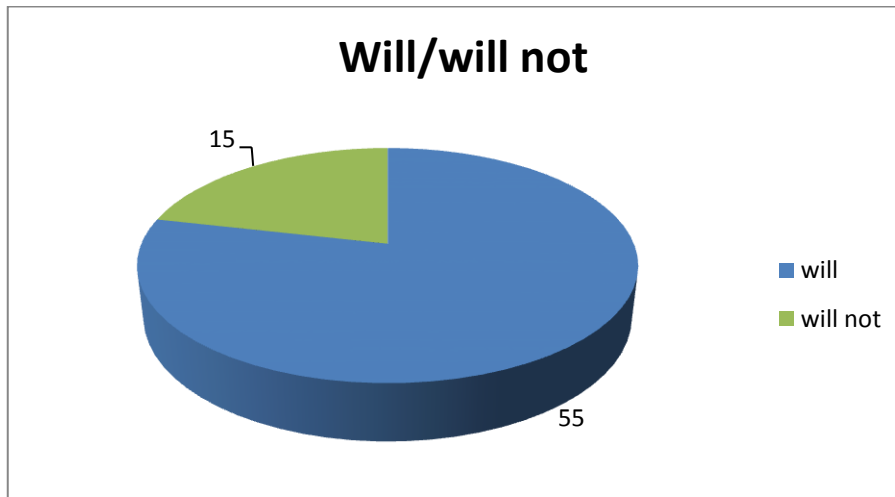


Figure 6. Will positive/negative form (Own research)

The main two meanings of modal verb *will* in analyzed texts are to refer to the future events and express obligations. In its obligation meaning, *will* occurred predominantly in contracts.

Obligation:

- *Each Member will be required to disclose to the SDA's Technical Committee all of its Essential Patent Claims that are required to implement the Proposed Specifications recommended by the technical Committee. (SD Product License Agreement)*
- *You agree that you will not exceed the data transfer or storage space limits applicable to the Web hosting Services purchased, as set forth on our Website. (Network Solutions Service Agreement)*
- *If no insurance is available, both parties will pay equal portions of any medical costs. (Marital Settlement Agreement)*

Next examples show use of *will* which is referring to future events.

- *The records of the company will be kept at the Company's business office in Los Angeles, California, and will be available for inspection and copying by any Member at such person's expense during ordinary business hours.*
- *In return, when Member's patents are completed, the Member will receive the higher value of either (1) \$200,000, (2) FMV of the patent in the form of bonus, or (3) a right to increased equity at member's preference. (Compu Devices LLC Operating Agreement)*

6.1.4 Must

In my analyzed corpus, *must* was used quite infrequently, occurring only 27 times in positive form and 2 times in negative. Total occurrence of both *must* and *must not* represents only 4% of all modal verbs which occurred in analyzed texts.

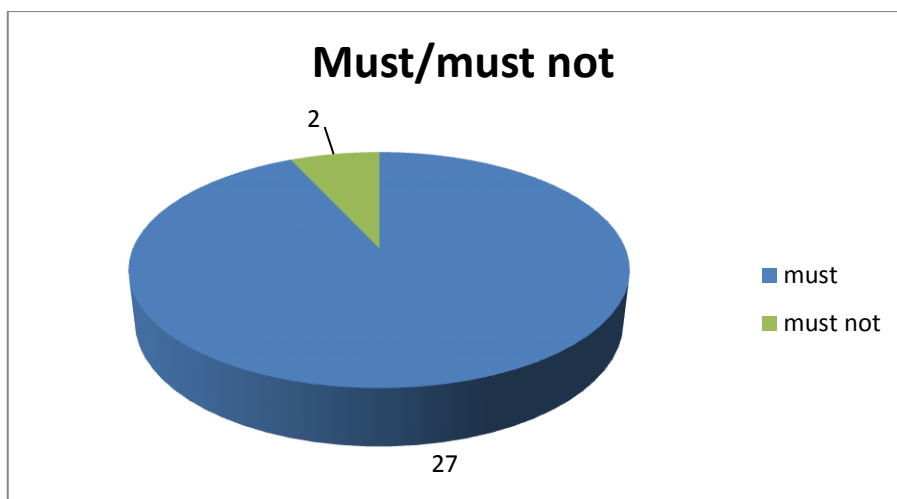


Figure 7. Must positive/negative form (Own research)

Must can mark essentially two meanings in general English, which I referred to in the theoretical part of my thesis. Firstly it is used to express epistemic, also known as logical necessity. Secondly it can be used to create obligation.

As I mentioned in subsection 5.8, according to the modern approach of some legal writers the main purpose of *must* in legal language is to make regulations, which require some action to be taken but are not mandatory. Which means breaching these obligations does not impose legal consequences. *Must* occurred mostly in agreements between two parties and in user/consumer agreements.

Following examples show use of *must* in analyzed documents:

- *The back-up copy must include all proprietary rights notices appearing on the original and must remain in your possession and control, Other users are not allowed to make back-up copies. (IOLO End User License Agreement)*
- *To cancel your Subscription Service you must notify Network Solutions. (Network Solutions Service Agreement)*
- *The Non-Managing Members shall not participate in the day-to-day management of the Company, nor shall they transact any business for the Company. However, if in the day to day management of the business, any transaction by the Company is projected to be greater than \$100,000; such transaction must be approved by a unanimous vote of all Members. (Compu Devices Operating Agreement)*
- *To use upgrade software, you must first be licensed for the software that is eligible for the upgrade. (Microsoft Software License Terms)*
- *Before any permitted transfer, the other party must agree that this agreement applies to the transfer and use of the software. (Microsoft Software License Terms)*
- *where the Secretary of State makes any such regulations the council must not set any further fixed penalties under the said subsection (1) until after the expiration of the period of 12 months beginning with the day on which the regulations are made. (Leeds City Council Act)*

In cases, where two parties are trying to reach an agreement, it is important to avoid using *must* frequently, because it can indicate adversarial tone. More appropriate variation *is to* can be used in such case, as shows following example:

- *The party must notify the other of such intention...*
- *The party is to notify the other of such intention...*

6.1.5 Can

Can is the last verb which I will describe more in detail. It occurred in both positive (21 times) and negative form (11 times) totally representing 4% of all modal verbs found in my analysis. Following pie chart shows the positive/negative form ratio of all occurrences. Compared to occurrence of negative forms of other modal verbs, *cannot* is used quite frequently.



Figure 8. Can positive/negative form (Own research)

Generally there are three possible meanings of *can* in English - ability, possibility and permission.

The most frequent meaning of *can* in analyzed texts was permission, which occurred mainly in consumer agreements, as it is illustrated by following examples:

- *You can switch off the Auto Root Update feature.* (Microsoft Software License Terms)
- *Adopted Specifications can be licensed for commercial purposes.* (SD Host Product License Agreement)
- *Excess bandwidth usage cannot be purchased by you in advance.* (Network Solutions Service Agreement)
- *The objects of this Act cannot be attained without the authority of Parliament.* (Leeds City Council Act)

Following examples show occurrences in which *can* is used. It is important to note that many occurrences of *can* have fairly ambiguous meaning, as it can be interpreted as expression of permission or logical possibility, if the reader does not have contextual knowledge of particular legal text.

- *The joint strategic plan shall give priority to those countries where programs of training and technical assistance can be carried out most effectively.* (The Digital Millennium Copyright Act)
- *The SDA strives to establish high quality specifications that can be implemented by any interested party.* (SD Host Product License Agreement)

6.1.6 Other modal verbs

The remaining modal verbs found in my analysis represent less than 3% of total occurrences. These verbs are - *should*, *would*, *could*, and *might*.

I will mention the use of modal *should* in more detail. In general English *should* can be used to express *necessity* and *obligation*. Obligation meaning of *should* is similar to *must*, but its purpose is to make the obligation less emphasized.

Should occurred 9 times in analyzed documents. Its main function is to express obligation in less emphasized manner, as shown on following examples:

- *The Conference declares that the Council should begin preparing the decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council as soon as the Treaty of Lisbon is signed, and should give its political approval within six months.* (Treaty of Lisbon)
- *You should keep the packaging that has the label on it to prove that you are licensed to use the software.* (Microsoft Software License Terms)

6.1.7 Marginal modals

Marginal modals are related to the central modals, but they have some different features. The main difference is that they can appear also as main verbs. Two modals which fall into this category - *ought to* and *need* occurred in my analysis. Although their occurrence is rare I will describe the meaning of these marginal modals found in my analysis.

Following example shows marginal modal *ought to* used to express obligation:

- *...that some other person ought to contribute towards the expense of executing any works required by the notice.* (Transport for London Act)

Because *need* can appear as modal only in negative or interrogative clauses, only one occurrence of *need not* was suitable, as illustrated in next example:

- *A Director need not be a member of the Company.* (NASDAQ LLC Certificate of formation)

6.2 Deontic modality

As I mentioned in theoretical part of my thesis modal verbs can have both epistemic and modal meaning (see 1.1.3, 13). Based on the results of my analysis it is possible to agree with the fact that deontic modality is highly predominant in legal language. In this section I will show graphic description of deontic modality expressed by modal verbs in my analyzed legal documents, which includes modal verbs with permission and obligation meaning. I will compare the results of my corpus with information based on the Longman Spoken and Written English Corpus (Biber et al. 1999, 491-494). The occurrence of particular modal verbs will be illustrated by percentages.

6.2.1 Permission

Deontic permission in analyzed documents is expressed by verbs *may* and *can*.

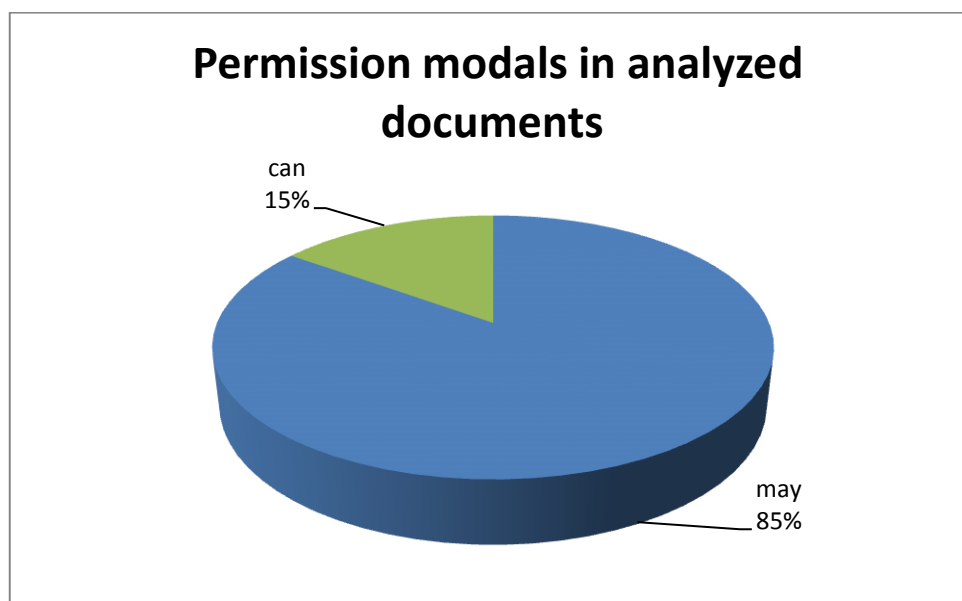


Figure 9. Permission modals in analyzed documents (Own research)

Permission in analyzed legal documents is very frequently expressed by modal *may*. *Can* with permission meaning occurred only rarely.

May

- *You may make copies of Software product as reasonably necessary for the use authorized above, including as needed for backup and/or archival purposes.*
- *We may use the computer information, error reports, and Malware reports to improve our software and services.*

Can

- *In the event of company dissolution, the patent can be bought back by the Members for \$ 250,000, plus any recognizable appreciation*
- *Upon additional rounds of financing, the Members can elect to have a portion of their compensation for future services used as contribution towards an increased equity interest.*

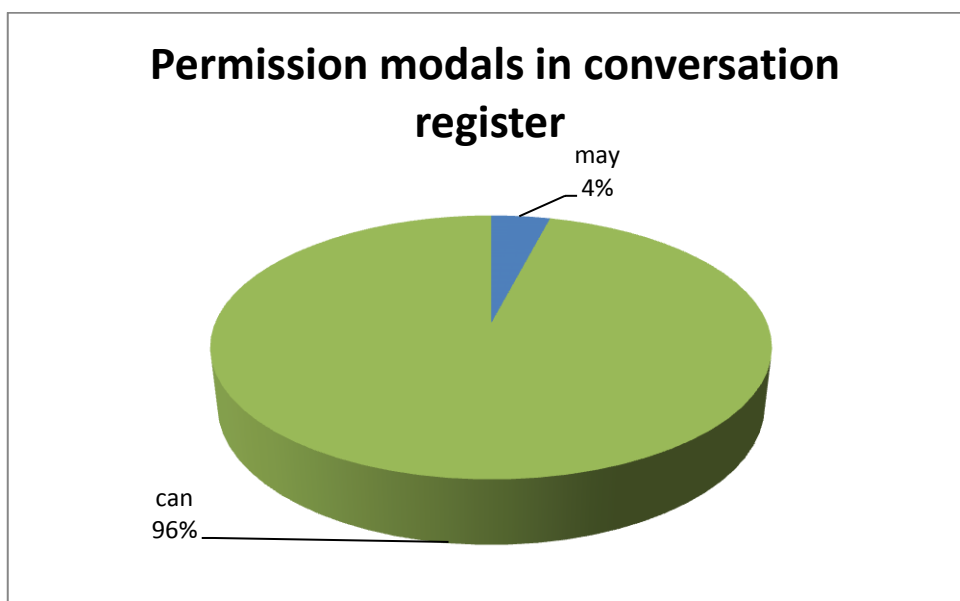


Figure 10. Permission modals in conversation (Biber et al. 1999, 491)

Generally *may* is used very rarely in conversation. When it does occur, it typically is used to express polite questions or in more formal occasions. On the other side, *can* differs from *may* in that it occurs extremely frequently with permission meaning in conversation. (Biber et al. 1999, 491)

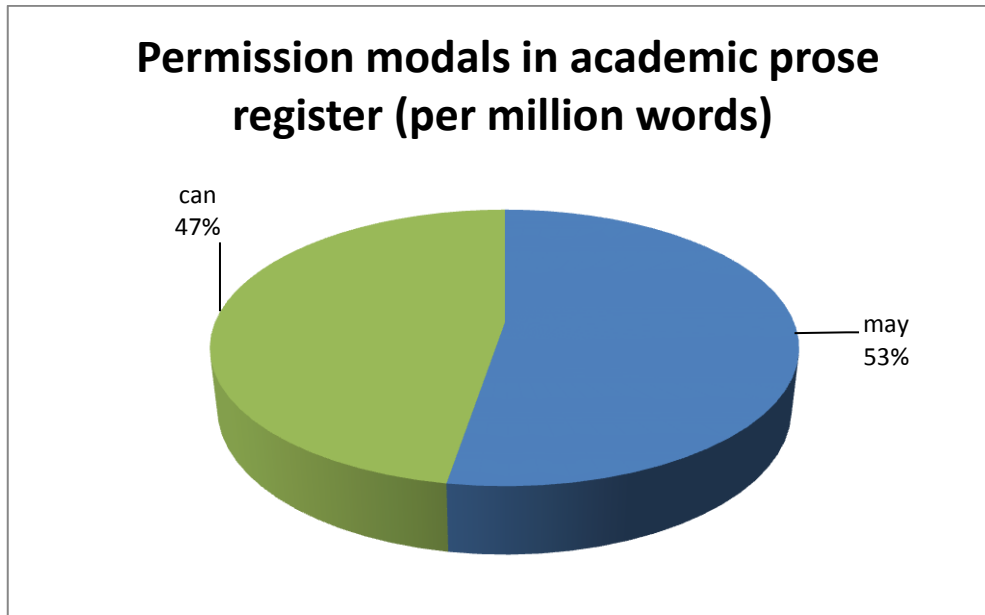


Figure 11. Permission modals in academic prose register (Biber et al. 1999, 491)

In academic prose, *may* is used rarely to express permission. *Can* is used mostly to express both ability and epistemic possibility, but rarely expresses permission. This means that permission modals generally do not occur very frequently in academic prose. (Biber et al. 1999, 491)

6.2.2 Obligation

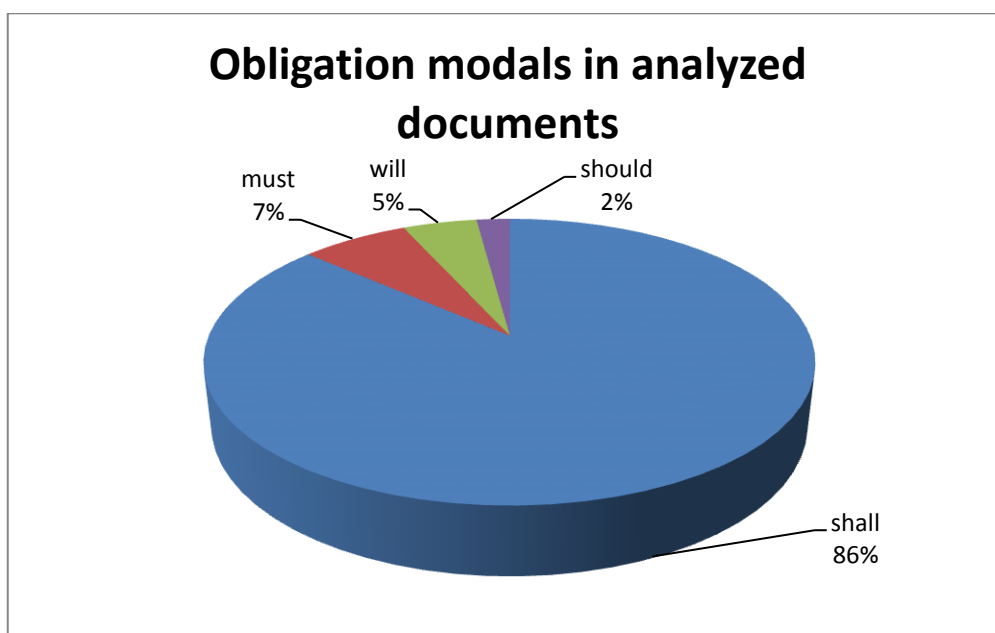


Figure 12. Obligation modals in analyzed documents (Own research)

Deontic obligation in analyzed documents is expressed by verbs *must*, *shall*, *should* and *will*. Verbs *shall* and *will* are used to express obligation appear only in legal language. In other registers, modals *will* and *shall* are used in volition and prediction meanings. Obviously the most frequent modal which marks obligation is *shall*. The overuse of *shall* has been already mentioned in previous chapters. Second most frequent modal to express obligation in analyzed documents is *must*. On the opposite, *should* is the least frequently used.

Shall

- *The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments.*
- *The Commission shall submit each year to the European Council, the European Parliament, the Council and the national Parliaments a report on the application of Article 3b of the Treaty on European Union.*

Must

- *Each Member must be prepared to license in a non-discriminatory fashion, and on reasonable terms, to all other Members and non-member licensees, such Member's Patent Claims which are required to implement the Adopted Specifications.*
- *Any such changes must be affirmatively approved by ISE LLC prior to implementation.*

Should

- *You should keep the packaging that has the label on it to prove that you are licensed to use the software.*

Will

- *If no insurance is available, both parties will pay equal portions of any medical costs.*

Prohibition

Negative forms *shall not* and *must not* express prohibition meaning.

Shall not

- *The Sole Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member.*

Prohibition can be also expressed by the structure *No+ shall be + past participle*

- *No credit shall be allowed for any expense to the extent that funds for such expense are received under any Federal State, or local program.*

Must not

- *You must not remove or alter any copyright notices on any copies of the Software product.*

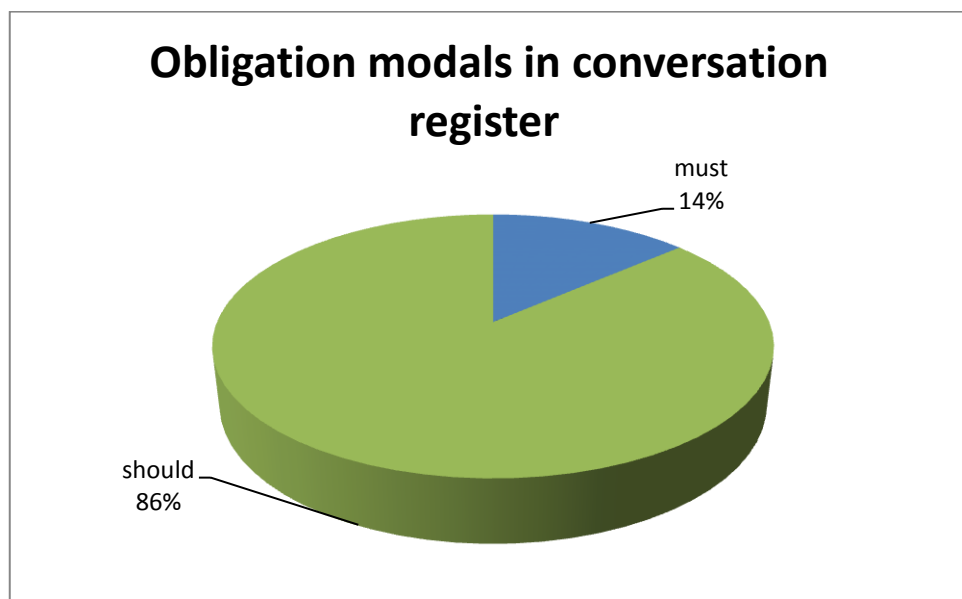


Figure 13. Obligation modals in conversation register (Biber et al. 1999, 494)

Obligation modals are generally less common in English language. *Should* in both conversation and academic prose is relatively common marking obligation. *Must* in conversation is used quite rarely to express obligation. The relative rarity of *must* marking obligation in conversation is probably due to the strong directive force this modal has when used in face-to face interaction. The modal *should* provides a hedged expression of obligation that is typically regarded as more polite. (Biber et al. 1999, 495)

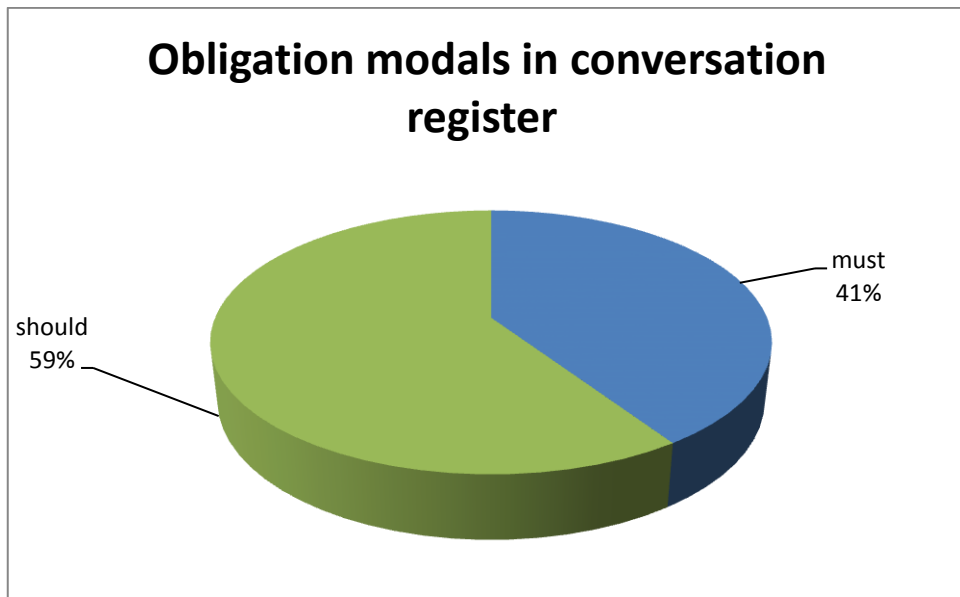


Figure 14. Obligation modals in academic prose register (Biber et al. 1999, 494)

Must in academic prose is much more common to express obligation than in conversation register. Obligation is also by far the most common meaning of *must* and *should* in academic prose. In academic prose, since there is no individual addressee, the use of *must* to express obligation is not interpreted as confrontational. (Biber et al. 1999, 495)

To summarize the results of this comparison, the first thing to be mentioned is the obvious extremely frequent use of obligation meaning of modal *shall*, which is the most notable marker of deontic modality in legal language. Secondly, *may* is used to express permission in legal documents much more frequently than in other registers, where *can* predominates in this function. Based on the corpus results we can assume that *must* is used to express obligation more frequently in legal language than in conversation. On the contrary, *should* is used more frequently in conversation.

7 MOOD

In second part of my analysis I will comment on the use of the verb category of mood in analyzed legal documents.

7.1 Indicative

The indicative mood occurred in vast majority of legal texts which were analyzed. The reason for this is that legal documents need to express statements with high factuality. As it occurs in all of analyzed texts I will show only few examples.

- Both Parties have agreed to allow existing or future incentives for oil and gas exploration, development and related activities in order to maintain the reserve base for these energy resources.
- The distributions of profits of the Company shall be paid to each Member out of such Member's profit and loss account.

7.2 Subjunctive

The subjunctive mood can be considered rather formal and archaic. I will show you few examples which I found in my analysis.

7.2.1 Mandatory subjunctive

As it was mentioned in theoretical part, mandatory subjunctive is in subordinate that-clauses. It differs from indicative in the way that it deletes the -s ending in third person and replaces *is* and *are* with infinitive *be*. (see 3.3.3, 29)

- *Where the claim arises under the law of the requesting State, and is neither supported by material in the request or conceded by the applicant for the order, the court may order that the evidence be taken, but the evidence is not transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.*

- *A party seeking to recover his property, which may be held, for example, by someone who has done work on it, will have first to issue proceedings, and if it appears that a lien arises, the court may order that the party seeking to recover pay into court, to abide the event, the amount in respect of which the security is claimed together with such further sum by way of interest and costs as the court directs, and upon such payment, the property be given up.*

7.2.2 Formulaic subjunctive

Analysing legal documents I found example of what is, according to Quirk (see 3.3.3,29), a formulaic subjunctive. Similar examples can be found in British legislation acts.

- *Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: (Leeds City council Act)*

8 MODAL ADVERBS

I mentioned in the theoretical part that adverbs expressing personal opinion and attitude should be avoided as much as possible. Adverbs were not easy to find as there were not many of them. I will show examples of adverbs found in analyzed texts. All the adverbs shown in following examples emphasize certainty of statements.

- (1) The conference confirms that the policies described in Article 140 fall *essentially* within the competence of the Member States.

- (2) ...that the member state concerned shall bear the direct financial consequences, if any, *necessarily* and *unavoidably* incurred as a result of the cessation...

- (3) Where any Member is *unavoidably* absent from the House on that day, through sickness or by being abroad, the scrutineers will make arrangements to receive their votes. (Constitutional texts. Brazier, Rodney. Oxford: OUP, 1990, pp. 1-90. 1590 s-units.)

CONCLUSION

The aim of my bachelor thesis was to analyze modal means used in legal texts and compare the results with theoretical findings.

In the theoretical part, I firstly introduced terms modality, epistemic modality and deontic modality which are fundamental to understand the research in practical part. Further I focused on illustrating the meanings of modal verbs and their categorization. In the next two chapters I provided insight on other modal means - mood and modality, which were also subject of my analysis. The fifth chapter aims to clarify specific features of legal language.

In the first part of the practical part, I provide detailed information about the results of my analysis with focus on occurrence and meaning of modal verbs. Results of analysis support the proposition that *shall* is the most frequent and most overused modal verb in legal language. It is obvious that the traditional overuse of *shall* may cause confusion in understanding legal documents, and modern trends to replace *shall* with other modal verbs or verb constructions helps to make legal language more understandable.

Since the main function of legal language is to define rights, express permissions and impose obligations, the next part of analysis deals with deontic modality. This function of legal language is expressed through modal verbs with permission and obligation meaning. In the second part of the analysis, occurrence of modals with permission and obligation meaning in analyzed documents is compared with modals expressing deontic modality in other language registers. Although I tried to choose different types of legal documents for my analysis, my main goal was not to make general conclusions, because the size of the corpus was not large. But I hope that I have provided some interesting information for anyone who might be interested in this topic.

Indicative mood is predominant in all of the analyzed texts, which springs from the fact that legal language has informative character. The archaic use of subjunctive can be found rarely. Modal adverbs are used to express certainty of statements and make the long complex sentences in legal texts less confusing.

Although I tried to choose different types of legal documents for my analysis, my main goal was not to make general conclusions, because the size of the corpus was not large. But I hope that I have provided some interesting information for anyone who might be interested in this topic.

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