

**DIVIDE AND CONQUER**  
**CONTRACT CLAUSES ASSORTED, EXPLAINED AND SIMPLIFIED**

Presented by Paula Arturo  
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Keep the  
magic  
questions  
handy!

**What are the parties trying  
to accomplish?**

**What category of language  
does that fall into?**

**How should I interpret this  
clause?**

Regardless of source word choice.\*

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Remember  
for each  
purpose or  
intention,  
there is a  
category.

Purpose of the provision	Category of Language
To accomplish an action by means of a speech act	Language of Performance
To impose duties on one or more of the parties	Language of Obligation
To grant one of the parties discretion as to whether or not to take a specific action	Language of Discretion
To prohibit the parties from doing something	Language of Prohibition
To impose duties on the parties that do not expressly require action or inaction on their part	Language of Policy
To declare facts by means of verbs of speaking	Language of Declaration
To state opinions on the legal implications of fact	Language of Belief
To address issues that can't be legally established by the parties in a contract and would ultimately be determined by the courts	Language of Intention
To make a recommendation to the other party for the purpose of avoiding dispute	Language of Recommendation



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For each  
category  
there are  
rules.

Language of Obligation	<p><b>Tense:</b> avoid simple present</p> <p><b>Voice:</b> passive + shall for obligation or active + must</p> <p><b>Mood:</b> Indicative</p> <p><b>Useful words:</b> shall to mean 'has to' only, must to replace shall, when applicable</p> <p><b>Red flags:</b> agrees to, undertakes to, promises to, covenants to, commits to + gerund, shall be obligated to, receive, is entitled to, covenant</p>	Wile E. Coyote must pay Roadrunner a monthly rent of \$X.
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**Resources:**

- 1) For information on Categories of Language and a comprehensive sample cheat sheet, visit: <https://languagewithapinch.com/2017/08/21/categories-of-language-for-meaning-and-clarity-in-dual-language-or-translated-contracts/>
- 2) For a comparative view on the correct use of *shall* in legal translation, visit: <https://languagewithapinch.com/2017/07/31/the-shall-conundrum-when-use-becomes-abuse/>

**Recommended Reading:**

Adams, Kenneth A. 2013. *Manual of Style for Contract Drafting*. Chicago: American Bar Association.  
Dick, Robert C. 1995. *Legal Drafting in Plain Language*.

Garner, Bryan A. 2011. *Garner's Dictionary of Legal Usage*. New York: Oxford University Press.  
—. 2002. *The Elements of Legal Style*. New York: Oxford University Press, Inc.

Hodges, Horner, Webb & Miller. 1994. *Harbrace College Handbook*.

Perillo, John D. Calamari & Joseph M. 1998. *The Law of Contracts*.

Willinston, Samuel. 1957. *A Treatise on the Law of Contracts*.

