

DEONTIC MODALITY AND MODALS IN THE LANGUAGE OF CONTRACTS

Aleksandra MATULEWSKA, PhD

Institute of Linguistics, Adam Mickiewicz University
al. Niepodległości 4, 61-874 Poznań, Poland
aleksandra.matulewska@gmail.com

Abstract: The purpose of this paper is to present most typical methods of expressing deontic modality, namely obligation, prohibition and permission in Polish, American and British contracts. The author has analyzed the corpora of about 45 contracts formulated in British-English, American-English and Polish, namely: (i) deeds of conveyance, (ii) contracts of sale, (iii) contracts of lease, (iv) logistic contracts, (v) deeds of partnership and company-related contracts, (vi) contracts for rendering services and (vii) contracts of employment. After presenting the exponents of deontic modality, the author compiles the results in tables to show potential translative equivalents. The listing of such exponents of modality may serve translation purposes in accordance with textual-normative equivalence (cf. Kierzkowska 2002).

Abstrakt: Celem pracy jest przedstawienie najbardziej typowych metod wyrażania modalności deontycznej (tj. nakazu, zakazu i przyzwolenia) w brytyjskich, amerykańskich i polskich umowach. Autorka dokonuje analizy 45 umów sformułowanych w polskim, amerykańskim i brytyjskim języku prawniczym. Zanalizowano następujące umowy: (i) umowy przeniesienia własności, (ii) umowy sprzedaży, (iii) umowy najmu i dzierżawy, (iv) umowy logistyczne (dystrybucji i magazynowania), (v) umowy spółek kapitałowych i osobowych, (vi) umowy świadczenia usług, (vii) umowy o dzieło, umowy zlecenia oraz umowy o pracę. Autorka przedstawia przykłady i dokonuje zestawienia wykładników modalności deontycznej w tabelach. Zebrane przykłady mogą stanowić ekwiwalenty przekładowe zgodnie z zasadą stosowania ekwiwalencji tekstowo-normatywnej (cf. Kierzkowska 2002).

Introduction

The aim of the paper is to show the exponents of deontic modality used in Polish and English contracts. The author focuses on the methods of expressing obligation, prohibition and permission.

The author has analyzed the following types of contracts formulated in British-English, American-English and Polish: (i) deeds of conveyance, (ii) contracts of sale, (iii) contracts of lease, (iv) logistic contracts, (v) deeds of partnership and company-related contracts, (vi) contracts for rendering services and (vii) contracts of employment. The detailed list of source documents under scrutiny in Polish, British, American and Plain English may be found at the end of the paper after references.

The method of parallel text comparison has been applied to establish potential translative dynamic equivalents. It should be stressed here that at the level of grammatical and syntactic structures only dynamic equivalence (connotates) is applicable. Sometimes that type of equivalence is called textual-normative equivalence (Kierzkowska 2002:96)

and it does not depend on the translation orientation (source-language or target-language oriented translation) at the level of terminology.

General remarks on deontic modality

Deontic modality ‘odnosi się do świata norm i ocen i dotyczy działań człowieka, które z woli indywidualnego lub zbiorowego sprawcy są mu nakazane lub dozwolone [refers to the world of norms and judgments and it relates to the actions of people which at the will of an individual or collective actor are imposed on him or permitted to be performed by him]’ (Jędrzejko 1987: 19). Deontic utterances are present not only in colloquial speech but also in languages for special purposes. As far as legal language is concerned we may find deontic utterances in almost all legal genres starting from statutory instruments and contracts and ending on judgments, and testaments. In case of contracts, their nature (the synallagmatic character of contracts which means that the contract imposes reciprocal obligations and is characterized by mutual rights and duties) results in using deontic utterances. Contracts state rights and duties of parties to them. Those the duty imposed on one actor (one party to the contract) is at the same time a right of another actor (another party to the contract) and vice versa. However, in contracts to statutory instruments, the actors freely agree on accepting the duties imposed on them in return for the benefits (consideration) set in the contract.

The following three pure modal meanings have been distinguished for the purpose of the analysis of contracts:

- (i) obligation,
- (ii) prohibition, and
- (iii) permission.

Deontic modality and modals in the language of contracts

Contracts are legal texts which serve the purpose of establishing rights and duties of parties to the contract. As they are considered mutually binding documents, the obligation for one party is at the same time a right for the other party and vice versa. Obligation, prohibition and permission in contracts may be expressed by modal verbs and other exponents of deontic modality.

Obligation

Obligation is understood here as the duty to perform. Within the meaning of obligation three potential sub-meanings may be distinguished that is to say:

- (i) unlimited duty;
- (ii) conditional duty; and
- (iii) external duty.

Unlimited duty

Unlimited duty is understood here as an obligation to perform which is binding no matter the situation (it is a contractual obligation).

In Polish contracts the most frequent form used is *present tense indicative* of various verbs. Apart from that three special verbs expressing obligation may be found

that is to say: *obowiązywać* [to bind, to be in force], *wymagać* [to require], and *zobowiązywać się* [to oblige oneself] and *mieć obowiązek* [to have a duty]. Moreover, there are also rare cases when the drafters of contracts use verbs in *future tense indicative*.

Example 1. Polish contracts.

Strony **postanawiają / ustalają** co następuje:...

Sprzedawca **sprzedaje**, a kupujący **nabywa**...

Przedmiotem umowy **jest** świadczenie usług logistycznych przez Usługodawcę na rzecz Usługobiorcy.

Strony **zobowiązują się** w drodze aneksu nieważne postanowienia zastąpić nowymi, zgodnie z obowiązującym stanem prawnym.

Umowa niniejsza **wchodzi w życie** w dniu ... i obowiązuje na czas nieokreślony.

Zmiany i uzupełnienia umowy **wymagają** formy pisemnej pod rygorem nieważności.

Na podstawie niniejszej umowy Najemca **ma obowiązek** korzystania z przedmiotowego lokalu mieszkalnego przez zamieszkiwanie w nim osobiście lub z członkami najbliższej rodziny (rodzice, dzieci, małżonek) przez okres, o którym mowa w § 3 ust. 3 niniejszej umowy.

Najemca **jest zobowiązany** regulować należności za wymienione w pkt 1 świadczenia bezpośrednio Wynajmującemu.

Po zakończeniu dzierżawy Dzierżawca zwróci Wyzierżawiającemu przedmiot dzierżawy w stanie niepogorszonym, wynikającym z jego prawidłowej eksploatacji na podstawie postanowień niniejszej umowy i obowiązujących przepisów prawa.

The most common modal verbs used in British and American contracts are *shall* and *will*. It should be stressed here that *shall* still dominates (is more frequently used than *will*). *Will* is considered to be used in less formal contracts (Faber, Hjort-Pedersen and Klinge, 1996/97:67). Both modal verbs are followed by the verb in active or passive voice. However, in some contracts drafted in accordance with the suggestions of the Plain English Campaign we may encounter *will* and *must* which express future and present obligations. The division into future and present obligations depends on whether the contract is to be performed the moment it is concluded and signed or whether the performance will take place after some time from the moment of contract conclusion and signing. However, the difference is not visible on the level of the sentence surface structure but it depends on the context.

Example 2. British contracts

This agreement **shall be construed** in accordance with the laws of England and Wales and **shall be subject to** the exclusive jurisdiction of the English courts.

All communications including notices required to be given under this Agreement **shall be in writing** and **shall be sent** either by personal service or first class post to the Party's respective addresses.

The Vendors **will sell** and the Purchaser **will purchase** the goodwill of the business now carried on by the Vendors.

Example 3. American contracts

SHIPPER **shall tender** to CARRIER and CARRIER **shall transport** a series of shipments between points designated by SHIPPER.

SHIPPER **shall pay** CARRIER for the **transportation** services described herein at the rate agreed to by both parties.

All loss and damage claims and any salvage arising therefrom **shall be handled and processed** in accordance with the regulations in the code of Federal Regulations (49 C.F.R. 1005).

Buyer and Seller agree to comply with FIRPTA and at or prior to closing Seller **will provide** documentation of exemption or withholding **will be made** at closing.

The Plain English Campaign movement recommends using simplified language in contracts. Therefore, they suggest using modals: *must* and *will* in contracts (cf. example 4 below) instead of *shall* which is nowadays considered archaic in colloquial speech (used only in a very limited number of structures, mainly questions). But translators should be aware of the fact that lawyers tend to oppose the Plain English Campaign claiming that the interpretation of the old-fashioned legal language is well known and unambiguous and thus introducing the changes in contracts which “must stand alone” in common law system seems very risky. Therefore, it is not recommended to use Plain English Campaign equivalents in translation especially if the English language version of a contract is to prevail in the event any disputes arise.

Example 4. Plain English Campaign approved contracts

We **will carry out** the work set out in the attached documents (the work) for the price set out below.

You **must confirm** any notice given over the phone or face-to-face in writing as soon as possible before or after the due date.

It is also possible to use non-modal verbs which express obligation. The most frequent ones are *to agree* and *to undertake*. However, other variants may also be found (such as: *warrant*, *represent*, *supersede*, etc.). Those non-modal verbs are usually used in present simple (active or passive voice).

Example 5. British contracts

NOW THEREFORE, (...), the parties, intending to be legally bound, **agree** as follows: ...

IT **IS AGREED** as follows: ...

In consideration for the employment of the Employee by the Company the parties **agree** as follows:...

WITNESSETH that it **is mutually agreed** between the said parties as follows:...

The Seller also **warrants** that the Property is in good working condition as of this date.

This Agreement **contains** the entire agreement between the parties and **supersedes** all prior arrangements and understandings whether written or oral with respect to the subject matter hereof and may not be varied except in writing signed by both the parties hereto.

The Distributor **undertakes** to properly train customers of the Products in its operation and use.

Example 6. American contracts

CARRIER **agrees** to compensate, defend, release and hold SHIPPER and its Customer harmless from all liability, costs, expenses for loss of or damage to property and/or injury to or deaths of person (including, but not limited to the property and employees of each party hereto) when arising or resulting directly, or indirectly from any acts or omissions of CARRIER, its agents, employees, or invites associated with or arising out of this Contract.

... the following terms **are hereby made** a part of that contract and **supersede** any terms to the contrary in said contract.

Conditional duty

Conditional duty is understood here as an obligation to perform only in specific circumstances (it is a contractual obligation).

In Polish contracts conditional duty is expressed by the same exponents of deontic modality as unlimited duty that is to say: *present tense indicative*, *future tense indicative*, and special verbs expressing obligation such as: *zobowiązywać się*, *mieć obowiązek*, etc.

Example 7. Polish contracts.

W przypadku zainstalowania w przedmiotowym lokalu urządzeń ułatwiających korzystanie z niego Najemca **zobowiązuje się opłacać** wszelkie koszty wynikające z ich instalacji, funkcjonowania oraz ewentualnej deinstalacji.

Z upływem okresu najmu umowa **ulega** automatycznie przedłużeniu o rok, jeżeli żadna ze stron niniejszej umowy nie wypowie jej pisemnie w czasie trwania okresu najmu.

Kaucja **będzie zwrócona** Dzierżawcy po zakończeniu umowy, po potrąceniu z niej ewentualnych należności czynszowych bądź kosztów naprawy sprzętu.

Similarly, as in the case of unlimited duty, conditional duty in British and American contracts is usually expressed by *shall* and *will*. Both modal verbs are followed by the verb in active or passive voice. The most frequent structure used in such clauses are different types of conditionals. Conditional clauses may be introduced by *if*, *in the event (that)*, *unless*, *in the case of*, *as long as*, *so long as*, *on condition that*, *even if*, etc.

Example 8. British contracts

If any provision of this agreement should be held to be invalid it **shall** to that extent **be severed** and the remaining provisions **shall continue to have full force and effect**.

In the event of any inconsistency or ambiguity between the Polish language version and the English language version, the English language version **shall prevail**.

If Buyer is unable to obtain said loan prior to closing, Buyer's entire earnest money deposit **shall be refunded** immediately.

Upon completion as aforesaid the Vendors **will** if required by the Purchaser and at the expense of the Purchaser **send** to the customer of the Vendors in connection with the Business a circular in a form approved by the Vendors' Solicitors announcing the transfer of the goodwill and Business to the Purchaser.

Example 9. American contracts

If SHIPPER is responsible for any of the above, or injury or death of CARRIER'S employees, CARRIER **shall indemnify** SHIPPER the amount thereof, including all expenses and attorney fees incident thereto.

If Seller's proceeds at closing are not enough to cover the required withholding, Seller **will provide** additional funds at closing as necessary.

In the event Seller will hold a mortgage under this contract, said mortgage **will be** on a standard form used by lenders in the area and contain a "due on sale clause."

Example 10. Plain English Campaign approved contracts.

To accept this quotation and contract, you **must sign** the bottom of this page and return it to us by (date).

If there is more than one reason, You **must give** each reason and the amount which applies to it.

External duty

External duty is an obligation to perform imposed on the actor not by the contract but by other factors such as statutory instruments (it is a non-contractual obligation).

In Polish contracts usually the following expressions are used to express external duty: *mieć zastosowanie*, *regulować*, *należy stosować*. In Polish contracts there are special contractual clauses which inform about the provisions which are to be applied in case of matters not regulated by the contract. Such clauses usually are not found in British and American contracts.

Example 11. Polish contracts.

W sprawach nie unormowanych niniejszą umową, a odnoszących się do niej, **mają zastosowanie** odpowiednie **przepisy** Kodeksu Pracy i Kodeksu Cywilnego.

Poza niniejszą umową stosunki pomiędzy Sprzedającym a Odbiorcą **regulują** w szczególności: ...

Strony ustalają, że wygaśnięcie niniejszej umowy **nastąpi na zasadach określonych w ustawie** z 21 czerwca 2001 r. o ochronie praw lokatorów, mieszkaniowym zasobie gminy i o zmianie Kodeksu cywilnego (tekst jedn. Dz.U. z 2005 r. Nr 31, poz. 266 ze zm.).

W sprawach nieuregulowanych niniejszą umową **należy stosować odpowiednio przepisy** ustawy z 21 czerwca 2001 r. o ochronie praw lokatorów, mieszkaniowym zasobie gminy i Kodeksu cywilnego (tekst jedn. Dz.U. z 2005 r. Nr 31, poz. 266 ze zm.).

W sprawach nieuregulowanych niniejszą umową **stosuje się przepisy** Kodeksu cywilnego.

The external duty is rarely present in British and American contracts which is probably due to the fact that English contracts "must stand alone". However, a few examples of such sub-meaning of obligation may be found in the analyzed corpora (see examples 12 and 13 below).

Example 12. British contracts:

The Vendors **will do** such acts and things and execute such deeds and documents **as may be necessary** fully and effectively **to vest** in the Purchaser the assets hereby agreed to be sold and to assure to the Purchaser the rights hereby agreed to be granted.

Any disputes **shall be referred to** a sole arbitration **pursuant to** the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force.

Example 13. American contracts:

No modification or change in this contract shall be binding **unless in writing and signed by the party to be bound thereby**.

The seller of any interest in residential real property **is required to** provide the buyer with any information on lead-based paint hazards from risk-assessments and inspections in the seller's possession and and notify the buyer of any known lead-based paint hazards.

Moreover, the following phrases are used to refer the reader to a statutory instrument: in *compliance with (provisions of)*, *in accordance with (provisions of)*, which are not direct exponents of deontic modality but due to the contextual meaning they express obligation to refer to some provisions of statutory instruments.

The table below contains the comparison of detected exponents of obligation found in Polish, American and British contracts.

Table 1. Exponents of obligation in the language of contracts.

<i>Polish contracts</i>	<i>British contracts</i>	<i>American contracts</i>
<i>Unlimited duty</i>		
verb in present tense indicative	shall	shall
verb in future tense indicative	to agree	will
zobowiązywać się in present tense indicative	will	to agree
wymagać in present tense indicative		to supersede
obowiązywać in present tense indicative		
mieć obowiązek in present tense indicative		
<i>Conditional duty</i>		
verb in present tense indicative	shall	shall
verb in future tense indicative	will	will
zobowiązywać się in present tense indicative		

wymagać in present tense indicative obowiązywać in present tense indicative mieć obowiązek in present tense indicative		
External duty		
mieć zastosowanie regulować stosować następować na zasadach określonych w...	Sb will do sth as may be necessary to do shall+verb+pursuant to if so required by in compliance with (provisions of) in accordance with (provisions of)	to be bound by to be required to in compliance with (provisions of) in accordance with (provisions of)

Prohibition

Prohibition is understood here as the duty not to perform or refrain from performing or acting. Within the meaning of prohibition three potential sub-meanings may be distinguished that is to say:

- (i) unlimited prohibition;
- (ii) conditional prohibition; and
- (iii) external prohibition.

Unlimited prohibition

Unlimited prohibition is understood here as the prohibition to perform which is binding no matter the situation (it is a contractual prohibition). In fact prohibition may be considered as an obligation to refrain from performing or acting. Therefore the exponents of prohibition are usually the exponents of obligation followed by *not* or other forms of negative sentences.

In Polish corpora unlimited prohibition may be expressed by modal verb *móc* [may]+*not*, as well as the following phrases: *zobowiązywać się +nie+verb in infinitive* [oblige oneself not to do sth], *zobowiązywać się* [oblige oneself]+*negative deverbal noun*, *negative verb in present tense indicative*, and *not+wolno+verb in infinitive* [is not allowed to do sth].

Example 14. Polish contracts.

Najemca **nie może** bez pisemnej zgody Wynajmującego oddać osobie trzeciej przedmiotowego lokalu do odpłatnego bądź nieodpłatnego korzystania.

Najemca **zobowiązuje się nie dokonywać** zmian w elementach estetyki zewnętrznej budynku, w którym znajduje się przedmiotowy lokal, a w szczególności **zobowiązuje się do niewywieszania** reklam.

Za prowadzenie spraw Spółki Partner **nie otrzymuje** wynagrodzenia.

Biorącemu do używania **nie wolno oddawać** Lokalu do korzystania innym osobom.

Spadkobierca Partnera **nie wstępuje** do Spółki w miejsce zmarłego Partnera.

Shall and *will* +*not* have been the most frequent exponents of unlimited prohibition in the analyzed British and American corpora. Apart from them the author has also encountered the following structures: *shall not be entitled to*, *may not* and *have no right*.

Example 15. British contracts:

During the continuance of the Partnership **neither** Partner **shall** without the written consent of the other **engage** in any business or occupation other than that of the Partnership.

The Tenant **will not do or omit to do** anything on or at the Property which may be or become a nuisance or annoyance to the Landlord or owners or occupiers of adjoining or nearby premises or which may in any way prejudice the insurance of the Property or cause an increase in the premium payable therefore.

Example 16. American contracts:

Mortgagee **shall** look only to the collateral for security and **not be entitled to** any deficiency judgment.

The CARRIER also **has no right of** recourse to attempt to collect such nonpayment from customer of SHIPPER in any way and that all collection efforts will be performed by SHIPPER.

Conditional prohibition

Conditional prohibition is understood here as the prohibition to perform only in specific circumstances (it is also a contractual prohibition).

The most frequent methods of expressing conditional prohibition include in Polish corpora include *nie+móc* [may not] and negative sentences in *present tense* and *future tense indicative*. However other possibilities may also be encountered (usually the same as in the case of unlimited prohibition).

Example 17. Polish contracts.

Wykonawca **nie może** bez zgody Zamawiającego przekazać praw i obowiązków wynikających z niniejszej umowy w całości lub w części na rzecz osób trzecich.

Naruszenie tego zakazu spowoduje, iż osoba trzecia **nie zostanie dopuszczona** do wykonania jakichkolwiek czynności i nie otrzyma z tego tytułu żadnego wynagrodzenia.

The most frequent exponents of conditional prohibition found in the English corpora under scrutiny are the following: *may not*, *shall not*, *will not* as well as *to agree not to do sth*.

Example 18. British contracts:

This Agreement contains the entire agreement between the parties and supersedes all prior arrangements and understandings whether written or oral with respect to the subject matter hereof and **may not be varied** except in writing signed by both the parties hereto.

Should any portion of this agreement be held to be invalid, unenforceable or void, such holding **shall not have** the effect of invalidating the remainder of this

agreement or any other part thereof, the parties hereby agreeing that the portion so held to be invalid, unenforceable, or void shall, if possible, be deemed amended or reduced in that scope.

The Employee **agrees not to use** any such information or material for himself or others, and not to take any such material or reproductions thereof from the Company, at any time during or after employment by the Company, except as required in the Employee's duties to the Company.

The Tenant **will not** without the Landlord's prior consent **allow or keep** any pet or any kind of animal at the Property

Example 19. American contracts:

If Seller is to remain in possession of the property at closing, Seller's proceeds **shall not be released** until Seller has fully vacated the property, and Buyer shall be entitled to \$_____ per day for each day Seller holds over.

In the event any clause in this contract is held to be unenforceable, or against public policy, such holding **shall not affect** the validity of the remainder of the contract unless it materially alters the terms hereof.

No prior or present agreements or representations **shall be binding** upon the parties unless incorporated into this contract.

Neither party **will be liable for** failure to fulfill its obligations when due to causes beyond its reasonable control.

This Agreement contains the entire agreement between the parties and supersedes all prior arrangements and understandings whether written or oral with respect to the subject matter hereof and **may not be varied** except in writing signed by both the parties hereto.

In the event Seller will hold a purchase money mortgage under this Contract, said mortgage **shall contain no** prepayment penalty, be fully assumable, and allow a thirty-day grace period on late payments.

External prohibition

External prohibition is the prohibition to perform which is imposed on the actor not by the contract but by other factors such as e.g. statutory instruments (it is a non-contractual prohibition).

There have been no examples found of external prohibition in Polish, British and American contracts.

The table below contains the comparison of detected exponents of prohibition found in Polish, American and British contracts.

Table 2. Exponents of prohibition in the language of contracts

<i>Polish contracts</i>	<i>British contracts</i>	<i>American contracts</i>
Unlimited prohibition		
nie móc zobowiązywać się do nie robienia czegoś zobowiązywać się nie robić czegoś nie+verb in present tense indicative	shall not neither+noun+shall+verb will not+verb	shall not have no right shall not be entitled to

nie+verb in future tense indicative		
Conditional prohibition		
nie móc zobowiązywać się do nie robienia czegoś zobowiązywać się nie robić czegoś nie+verb in present tense indicative nie+verb in future tense indicative	shall not may not will not+verb to agree not to do sth	shall not+verb shall+verb+no+noun may not no+noun+shall+verb neither party will be liable for
External prohibition		
-/-	-/-	-/-

Permission

Contractual permission is the right to which the party to the contract is entitled or an authorization to exercise one's rights. Within the meaning of *permission* the following three potential sub-meanings may be distinguished:

- (i) unlimited permission;
- (ii) conditional permission; and
- (iii) external permission.

Unlimited permission

Unlimited permission is understood here as the right which may be exercised no matter the situation (it is a contractual permission).

In Polish corpora usually the modal verb *móc* [may] is used. Apart from that exponent of deontic modality it is also possible to use the phrase *mieć prawo* [have a right].

Example 20. Polish contracts.

Rozwiązanie niniejszej umowy **może** nastąpić:

- a) w każdym czasie na mocy porozumienia Stron wyrażonego w formie pisemnej,
 - b) przez pisemne oświadczenie jednej ze Stron z zachowaniem okresu wypowiedzenia 30 dni – licząc od dnia złożenia tego oświadczenia drugiej Stronie.
- Abonent **ma prawo** wglądu do swoich danych oraz ich poprawiania.

Każdej ze stron **przysługuje prawo** rozwiązania umowy ze skutkiem na ostatni dzień miesiąca następującego po miesiącu, w którym doręczyła drugiej stronie wypowiedzenie w formie pisemnej pod rygorem nieważności.

Każdej ze stron **służy prawo** rozwiązania umowy z zachowaniem miesięcznego okresu wypowiedzenia.

Sprzedający **jest uprawniony** do nieograniczonego przeniesienia tych praw na Kupującego.

The most popular exponent of unlimited permission in English contracts is the modal verb *may*. Apart from *may* we may also encounter modal verb *will* accompanied

with verbs carrying the meaning of permission such as: *allow, permit, be entitled to* and the structure *to be able to* which in accordance with modern grammars expresses rather ability than permission, but as may be seen from example 22 below in the case of contracts expresses permission. It is also possible to use the phrase *to have a right to/of*.

Example 21. British contracts:

The Employer **may terminate** this Agreement by giving written notice to the Employee as follows...

The Employee **may terminate** this Agreement by two weeks' written notice to the Employer.

The Partners **shall be entitled** in each calendar year to 20 days holiday in addition to public holidays.

Example 22. American contracts:

Either party **may cancel** this Contract by giving the other party at least thirty (30) days written notice of the date of termination.

Buyer **may assign** this contract and all rights and obligations hereunder to another person, corporation, or trustee.

Mortgagor **shall be permitted to** miss one monthly payment per loan year and **shall be able to substitute** other collateral of equal equity at any time.

Conditional permission

Conditional permission is understood here as the right which may be exercised only under specific circumstances (it is also a contractual permission).

Similarly as in the case of obligation, the same exponents of permission are used for unlimited and conditional permission, that is to say *móc* [may] and *mieć prawo* [to have a right].

Example 23. Polish contracts.

Wynajmujący **ma prawo** jednostronnego rozwiązania umowy, jeśli Najemca zalegałby z czynszem przez kolejne dwa miesiące bądź naruszałby istotne postanowienia umowy.

W razie naruszenia powyższego obowiązku Wyzierżawiający **może** dzierżawę **wypowiedzieć** bez zachowania okresów wypowiedzenia.

Wyzierżawiający **zastrzega sobie prawo do wypowiedzenia** niniejszej umowy bez zachowania okresu wypowiedzenia, jeżeli Dzierżawca zalega z zapłatą czynszu za 2 miesiące pełne okresy płatności lub narusza inne istotne postanowienia umowy.

Similarly as in the case of unlimited permission in English contracts, the most frequent exponent of conditional permission is the modal verb *may*. The cases of *shall* followed by verbs carrying the meaning of permission such as: *allow, permit, be entitled to* and *to have a right to* have also been encountered (see examples 24 and 25 below). The exponent of conditional permission used in the Plain English Campaign recommended contracts, however, is the modal verb *can*.

Example 24. British contracts:

The books of account and value added tax relating to the Business shall become the property of the Purchaser from the actual completion date but shall be available to

the Vendors if required for a period of six months from the date thereof and during that period the Vendors **may inspect and make** such extracts therefrom as he may think fit relating to the business prior to the actual completion date.

Each Partner **shall be entitled to draw out** of the funds of the Partnership any undrawn balance of his entitlement to profits shown in any profit and loss account at any time after such account has been signed by both Partners.

Upon either of the Partners leaving the Partnership all documents relating to the Partnership **shall be allowed to** remain in the hands of or be delivered to the other Partner.

Example 25. American contracts:

In the event Seller defaults hereunder, Buyer **may proceed** at law or in equity to enforce his or her rights under this contract.

Mortgagor **shall have a first right of** refusal at any time mortgagee desires to sell the note and mortgage at a discount, and mortgagor **may have released** from the mortgage, parts of the property proportional to the principal paid.

In the event Buyer defaults hereunder, Seller **shall be entitled to** the earnest money deposited herewith as liquidated damages.

Example 26. Plain English Campaign

If a dispute arises, you **can** only **withhold** payment after the due date for any payment owed to us, if you give us notice: before the final date for that payment.

However, if you can change those requirements, while still meeting your obligations under condition 12, you **may do** so.

External permission

External permission is understood here as the right which may be exercised under statutory instruments (it is a non-contractual permission).

There have been no examples found of external permission in Polish, British and American contracts under scrutiny. In the Plain English Campaign recommended contracts, however, we have encountered the phrase: *to have the right to*.

Example 27. Plain English Campaign

You **have the right to** receive insurance money or a local authority grant.

The table below contains the comparison of detected exponents of permission found in Polish, American and British contracts.

Table 3. Exponents of permission in the language of contracts

<i>Polish contracts</i>	<i>British contracts</i>	<i>American contracts</i>
Unlimited permission		
móc mieć prawo przysługuje prawo prawo służy	may shall be entitled to	may shall be permitted to shall be able to
Conditional permission		
móc	may	may

mieć prawo przysługuje prawo prawo służy	shall be entitled to shall be allowed to	shall have a right of/to shall be entitled to
External permission		
-/-	-/-	-/-

Concluding remarks

To sum up, the exponents of deontic modality used in contracts differ from those used in statutory instruments to some extent. First of all the catalogue of exponents of deontic modality in contracts is narrower than in statutory instruments. Furthermore, the modal verb *must* which is becoming more and more popular in contemporary statutory instruments and which at least in the United States of America starts replacing *shall* as less ambiguous is actually not present in contractual clauses (apart from the contracts drafted in accordance with the recommendations of the Plain English Campaign).

Due to the limited corpus of contracts which have been analyzed for the purpose of this study it should be assumed that the exponents of deontic modality listed in table 4 below are interchangeable for translation purposes.

Table 4. The listing of most frequent exponents of deontic modality used in Polish, British and American contractual clauses for translation purposes.

Polish contracts	British contracts	American contracts
Unlimited and conditional obligation		
verb in present tense indicative zobowiązywać się in present tense indicative wymagać in present tense indicative obowiązywać in present tense indicative mieć obowiązek in present tense indicative	shall will to agree to undertake [rarely possible other verbs]	shall will to agree to undertake [rarely possible other verbs]
Unlimited and conditional prohibition		
nie móc zobowiązywać się do nie robienia czegoś zobowiązywać się nie robić czegoś nie+verb in present tense indicative nie+verb in future tense indicative	shall not may not will not+verb have no right of/to neither+noun+shall+verb to agree not to do sth	shall not may not have no right of/to shall not be entitled to shall+verb+no+noun no+noun+shall+verb Neither party will be liable for
Unlimited and conditional permission		
móc mieć prawo	may shall have a right of/to	may shall have a right of/to

przysługuje prawo prawo służy	shall be entitled to shall be allowed to to have a right of/to	shall be entitled to shall be permitted to shall be able to
----------------------------------	--	---

Bibliography

- Bañcerowski, Jerzy, Pogonowski, Jerzy, Zgółka, Tadeusz, 1982. *Wstęp do językoznawstwa*. Poznań: UAM.
- Black's Law Dictionary*. 2004. Eighth Edition. Garner Bryan A. (ed.). United States of America: Thomson Wesvol.
- Delisle, Jean (et al., ed.), 1999. *Translation Terminology*. Amsterdam/Philadelphia: John Benjamins Publishing Company.
- Faber, Dorrit, Hjort-Pedersen, M., Klinge, A. 1996/1997. *Introduction to English Legal Language*. BA Sproglinien.
- Garner, Bryan A., 2001. *A Dictionary of Modern Legal Usage*. London/New York: Oxford University Press.
- Grzegorzczkova, Renata, 2001. *Wprowadzenie do semantyki językoznawczej*. Warszawa: PWN.
- Jędrzejko, Ewa, 1987. *Semantyka i składnia polskich czasowników deontycznych*. Wrocław: Ossolineum.
- Jędrzejko, Ewa, 1988. O tzw. wewnętrznej i zewnętrznej konieczności i jej podstawowych wykładnikach leksykalnych. *Polonica* 13, (17–27).
- Joseph, John.E., 1995. Indeterminacy, Translation and the Law. *Translation and the Law*, M. Morris (ed.). Amsterdam/Philadelphia: John Benjamins Publishing Company, p. 13–36.
- Kaczmarek, Karolina, Matulewska, Aleksandra, 2007. Polish Petitions in Polish-Hungarian and Polish-English Aspect of Translation. (not published).
- Kiefer Ferenc, Gyuris Beata, 2006. *Szemantika*, in: Kiefer Ferenc (szerk.), *Magyar nyelv*, Budapest, Akadémiai Kiadó.
- Kiefer, Ferenc, 1999. Modality. *Concise Encyclopedia of Grammatical Categories*. Keith Brown, Jim Miller and R.E. Asher (eds). Amsterdam: Elsevier.
- Kielar, Barbara Z., Miler, J., 1993. Through the Looking Glass of Translation – the Verb Phrases of the Statutory Clauses in Kodeks Handlowy and Their English Renditions. *International Forum of Legal Translation 1992. Proceedings*. Warszawa: Wydawnictwo TEPIS Polskiego Towarzystwa Tłumaczy Ekonomicznych, Prawniczych i Sądowych., (41–53).
- Kierzkowska, Danuta (red.), 2005. *Kodeks Tłumacza Przysięgłego z komentarzem*. Warszawa: Wydawnictwo TEPIS Polskiego Towarzystwa Tłumaczy Ekonomicznych, Prawniczych i Sądowych.
- Kierzkowska, Danuta, 2002. *Tłumaczenie prawnicze*. Warszawa: Wydawnictwo TEPIS Polskiego Towarzystwa Tłumaczy Ekonomicznych, Prawniczych i Sądowych.
- Lyons, John, 1977. *Semantics* 1–2. Cambridge University Press.
- Lyons, John, 1989. *Semantyka* 1–2. Warszawa: PWN.

- Palmer, Frank Robert, 1999. Mood and Modality: Basic Principles. *Concise Encyclopedia of Grammatical Categories*. Keith Brown, Jim Miller and R.E. Asher (eds). Amsterdam: Elsevier.
- Palmer, Frank Robert, 2001. *Mood and Modality*. Cambridge University Press; 2 edition.
- Radwański, Zbigniew, 2005. *Prawo cywilne – część ogólna*. Warszawa: C.H. Beck.
- Rytel, Danuta, 1982. *Leksykalne środki wyrażania modalności w języku czeskim i polskim*. Wrocław: Ossolineum.
- Stawecki, Tomasz, Winczorek, Piotr, 2002. *Wstęp do prawoznawstwa*. Warszawa: C.H. Beck.
- Vermeer, Hans J., 2001. Skopos and Commission in Translational Action. *The Translation Studies Reader*, Lawrence Venuti and Mona Baker (eds). London/New York: Routledge, (221–232).
- Wronkowska, Sławomira, Zieliński, Maciej, 1997. *Zasady techniki prawodawczej*, Warszawa: Wydawnictwo Sejmowe
- Wronkowska, Sławomira, Zieliński Maciej, 1993. *Problemy i zasady redagowania tekstów prawnych*. Warszawa: Urząd Rady Ministrów.
- Wróbel, Henryk, 1991. O modalności. *Język Polski* 3–5, (260–270).
- Wróblewski, Bronisław, 1948. *Język prawny i prawniczy*. Kraków.
- Zieliński, Maciej, 2002. *Wykładnia prawa. Zasady. Reguły. Wskazówki*. Warszawa: Wydawnictwo Prawnicze LexisNexis.

Polish Sources

1. Akt założycielski spółki z ograniczoną odpowiedzialnością.
2. Umowa dzierżawy – Lex Omega
3. Umowa najmu – Lex Omega
4. Umowa najmu z 30 lipca 2000r. (own sources).
5. Umowa o dzieło zawarta z Uniwersytetem im. Adama Mickiewicza (own sources).
6. Umowa o pracę(own sources).
7. Umowa o świadczenie usług logistycznych z 15.06.2004r. (own sources).
8. Umowa o świadczenie usług logistycznych z 18. 01. 1999r. (own sources).
9. Umowa o świadczenie usług logistycznych z 24.06.2004r. (own sources).
10. Umowa o świadczenie usług telefonicznych. (own sources).
11. Umowa sprzedaży energii elektrycznej i świadczenia usług przesyłowych. (own sources).
12. Umowa sprzedaży gazu ziemnego. (own sources).
13. Umowa sprzedaży nieruchomości w formie aktu notarialnego z 1998 r. (own sources).
14. Umowa sprzedaży nieruchomości w formie aktu notarialnego z 1999 r. (own sources).
15. Umowa sprzedaży nieruchomości w formie aktu notarialnego z 1996 r. (own sources).
16. Umowa sprzedaży nieruchomości w formie aktu notarialnego z 1994 r. (own sources).
17. Umowa sprzedaży rowerów. (own sources).

18. Umowa zlecenie zawarta z Uniwersytetem im. Adama Mickiewicza. (own sources).

British Sources

1. Agreement for the Sale of Business. In: Justyńska, J., Justyński, J. 1998. *The Main Institutions of the English Legal System*. Toruń: Dom Organizatora TNOIK, pp. 252-258.
2. Articles of Association of the Perfect Company Ltd. In: Kierzkowska, D. (ed.). 1998. *Selection of English Documents*. Warszawa: Wydawnictwo TEPIS, pp. 139-142.
3. Articles of Association. Faber, D., Hjort-Pedersen, M., Klinge, A. 1996/1997. *Introduction to English Legal Language*. BA Sproglinien, pp. 120-122.
4. Contract for Sale and Purchase of Property (own sources).
5. Deed of Partnership. In: Kierzkowska, D. (ed.). 1998. *Selection of English Documents*. Warszawa: Wydawnictwo TEPIS, pp. 129-130.
6. Employee Agreement on Inventions and Patents. *301 Legal Forms. Letters and Agreements*. 1997. London: Law Pack Publishing Ltd.
7. Employment Agreement. *301 Legal Forms. Letters and Agreements*. 1997. London: Law Pack Publishing Ltd.
8. Limited Partnership Agreement. Faber, D., Hjort-Pedersen, M., Klinge, A. 1996/1997. *Introduction to English Legal Language*. BA Sproglinien, pp. 108-111.
9. Memorandum of Association of the Perfect Company Ltd. In Kierzkowska, D. (ed.). 1998. *Selection of English Documents*. Warszawa: Wydawnictwo TEPIS, pp. 131-138.
10. Memorandum of Association. Faber, D., Hjort-Pedersen, M., Klinge, A. 1996/1997. *Introduction to English Legal Language*. BA Sproglinien, pp. 116-118.
11. Partnership Agreement. In: Justyńska, J., Justyński, J. 1998. *The Main Institutions of the English Legal System*. Toruń: Dom Organizatora TNOIK, pp. 259-268.
12. *Rental Agreement (For a Furnished House or Flat on an Assured Shorthold Tenancy)*. *301 Legal Forms. Letters and Agreements*. 1997. London: Law Pack Publishing Ltd.
13. *Rental Agreement (For an Unfurnished House or Flat on an Assured Shorthold Tenancy)*. *301 Legal Forms. Letters and Agreements*. 1997. London: Law Pack Publishing Ltd.
14. Sale Agreement. In: Faber, D., Hjort-Pedersen, M., Klinge, A. 1996/1997. *Introduction to English Legal Language*. BA Sproglinien, pp. 86-87.
15. Tenancy Agreement (own sources).
16. Warehousing and Distribution Agreement (own sources).
17. Warehousing and Partsbanks Services Agreement (own sources).

American Sources

1. Real Estate Purchase Contract 1. In: Warda, M. 2005. *The Complete Book of Real Estate Contracts*, pp. 201-206.
2. Real Estate Purchase Contract 2. In: Warda, M. 2005. *The Complete Book of Real Estate Contracts*, pp. 207-212.

Comparative Legilinguistics vol. 2/2010

3. Real Estate Contract. In: Warda, M. 2005. *The Complete Book of Real Estate Contracts*, pp. 213-216.
4. Real Estate Sales Contract 1. In: Warda, M. 2005. *The Complete Book of Real Estate Contracts*, pp. 217-219.
5. Real Estate Purchase Contract 2. In: Warda, M. 2005. *The Complete Book of Real Estate Contracts*, pp. 221-223.
6. Deed of Conveyance (own sources).

Plain English Campaign Contracts

1. Domestic Contract for Minor Building Work (<http://www.fmb.org.uk/find-a-builder/free-contracts/download-contracts/>).
2. Domestic Building Contract(<http://www.fmb.org.uk/find-a-builder/free-contracts/download-contracts/>).
3. Domestic Building Contract (Scotland) for Minor Building Work(<http://www.fmb.org.uk/find-a-builder/free-contracts/download-contracts/>).
4. Commercial and Industrial Building Contract (<http://www.fmb.org.uk/find-a-builder/free-contracts/download-contracts/>).