June 18, 2012

Extract from (Justice) Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts (2012), citing Tillman & Tillman, A Fragment on Shall & May

Seth Barrett Tillman

Available at: https://works.bepress.com/seth_barrett_tillman/329/
Reading Law

The Interpretation of Legal Texts

Antonin Scalia & Bryan A. Garner
Shall, in short, is a semantic mess. Black's Law Dictionary records five meanings for the word.¹

Responding to this sloppy usage, courts have treated shall as having variegated meanings. In the Supreme Court of the United States alone, the pronouncements on its meaning have been widely diverse:

- For existing rights, shall means “must,” but it need not be construed as mandatory when a new right is created.²

¹ Black's Law Dictionary 1499 (9th ed. 2009). See Nora Rotter Tillman & Seth Barrett Tillman, A Fragment on Shall and May, 50 Am. J. Legal Hist. 453 (2010) (focusing on the historical usage of shall and may with emphasis on legal contexts); Dale E. Sutton, Use of “Shall” in Statutes, 4 John Marshall L.Q. 204, 204, 208 (1938–1939) (noting that shall “has too many meanings to make its unnecessary use safe” and that “[a]ny valuable hours and needless paragraphs have been wasted on this word by courts”).

²