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## **Time is of the Essence:**

Futurity and Modality in a Corpus of Dutch and English Legal Contracts

MA Thesis

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## Chapter 1 Introduction

Unlike many other languages, such as Latin and French, neither English nor Dutch has a formal grammatical construction to refer to future time. However, Carter and McCarthy (2006) explain that “both languages have several widely used ways to solve this, often dependant on how much evidence there is for future statements” (p. 629). When it comes to everyday spoken and written English and Dutch, these ways of referring to the future have been described in many different grammars, for example by Huddleston and Pullum (2002), Carter and McCarthy (2006), and Haeseryn (1997). Furthermore, advice on how to translate between these languages can, in scarce amounts, be found in general Dutch to English translation guides by for example Lemmens (1995). Nevertheless, neither the grammars nor the translation guides provide adequate insight in how futurity within legal contracts should be translated. This lack in literature makes it hard for the drafter, reader, and translator to draft, interpret, or translate such texts without conveying any unintended meaning.

Considering legal writing, drafters are encouraged to adhere to the writing rules set out by legal linguists such as Garner (2011) and Adams (2013). Despite the frequent differences of opinion between these two legal experts, they do seem to agree on Garner’s idea that “good drafting generally ought to be in the present tense, not the future” (2011, p. 952). This notion essentially means that a well-written contract describes the agreements parties have reached and which become legally binding, in other words present tense, as soon as the contract is signed. In other words, at the moment you enter into an agreement, even if you agree that a certain event or action will take place in the future, you agree on that at the moment of signing which is always present tense. The first expectation is then that most contracts within the corpus used will be drafted in the present tense.

In contrast, it is expected that futurate constructions including *will* or *zullen* will be found when used to describe contingent events or conditions. To illustrate, Haanappel and MacKaay (1990) explain that there are two types of conditional obligations, namely suspensive and resolutive conditions. A suspensive conditional obligation does not take effect until the event has occurred, and a resolutive conditional obligation ceases to exist upon the occurrence of a certain event. The suspensive obligation can often be found in *Koopovereenkomsten* which always include a clause that maintains a three-day cooling-off period during which potential buyers can terminate the contract without any financial consequences. The resolutive obligation can also be found in *Koopovereenkomsten*, for example, a buyer can also terminate the contract if a property becomes damaged by means of, for example, a force majeure. Because these obligations involve conditional clauses, it is expected that they will be expressed by means of a futurate construction including *will* or *zullen*.

## 1.1 Aim

The aim of this research is to gain insight in how futurity is expressed within English and Dutch legal contracts and to define the relation between modality and temporality. Therefore, the research questions central to this thesis will be:

1. *Is there such a thing as futurity in legal contracts or are all agreements, considering the works of Garner (2011) and Adams (2013), drafted in the present tense?*
2. *Is futurity unequivocally expressed in English and Dutch contract language?*
3. *Within Dutch and English legal contracts, how are modality and temporality related and can they be separated?*

It is hypothesized that futurity is not unequivocally expressed in contract language. Also, it is expected that not only within futurity but also within modality a potential degree of ambiguity can be found considering expression of epistemic, dynamic, and deontic modality.

## 1.2 Method

Many of the works on legal writing, which are mostly written by lawyers such as Adams (2013) and Garner (2011), are prescriptive manuals and dictionaries on legal style. Rather than continuing in this prescriptive tradition, I aimed to adopt more of a linguistic approach and to describe and analyse occurrences of futurity within a corpus of contract text. The primary aim of this thesis is to compare futurity in Dutch and English contract law. In order to illustrate how Dutch and English contract drafters use futurity, two small corpora of Dutch and English contracts were composed. After the corpus had been composed, a selection of lexical items for analysis had to be made through a study of literature on futurity and modality in English, Legal English, and Dutch. The reason why Legal Dutch is lacking here is explained in section 2.6. The purpose of this literature study was to come up with the selection of constructions that select or permit a future time interpretation.

Once the list of English and Dutch lexical items was composed, Wordsmith and Microsoft Word were used to find how often these lexical items occurred within the corpora. The lexical items that consisted of modal verbs were easily found using a concordance search in Wordsmith. For example, by using the modal verb *will*, Wordsmith provides a concordance list in which all of the 112 entries within the English corpus are shown within their surrounding sentence. However, Wordsmith is not able to search for conjugations of verb (phrases) nor is it able to search for parts of words which meant that it was impossible to search for all the occurrences of, for example, the simple present. Conveniently, the search function in Microsoft Words is able to highlight parts of words within a document. For

example, by performing a search for the suffix *-ing*, it was possible to find all of the words and constructions including this suffix. Then, further close reading was required in order to establish if and which lexical items were used in the corpus text. Unfortunately, neither Wordsmith nor Microsoft Word is able to find, count or highlight all the occurrences of the English simple present and the Dutch presents. Yet, the aim of this corpus research was mainly to provide an overview of the different types of futurity found in legal contracts. Fortunately, insight into the use of English simple present and Dutch presents to refer to futurity could also be provided by a number of randomly selected examples found in the corpus rather than by manually counting and analysing each contract for these forms.

First, it was established if there were any occurrences of futurity or that all of the contracts belonging to the corpus were drafted in the present tense. Secondly, closer attention was paid to the types of futurity and established whether there were cases of pure futurity (without any additional meaning such as permission or possibility). Such cases were analysed in order to determine whether these constructions had been used correctly. Third, attention was paid to occurrences for which it was difficult to determine whether they involved either futurity or modality, or possibly both. Based on the literature discussed in the chapter two, a modal verb (selecting or permitting a future time interpretation) is used incorrectly if it denotes more than one modal meaning. In chapter three, a limited amount of examples from the corpus were selected that show a few of the incorrect uses of modal verbs. For those incorrect uses, it was then attempted to provide a solution incorporating a different construction (selecting or permitting a future time interpretation). The limitation on the amount of examples is due to the fact that the scope of this thesis does not allow to rewrite all of the contracts included in the corpus. However, a number of revisions for both English and Dutch contracts will be provided and these revisions should provide a preliminary answer to the question of what types of futurity are used in contracts and how these types could be translated.

Through the analysis, conclusions were drawn on how futurity in contract law is used between English and Dutch. Any striking features within the English and Dutch corpus were separately analysed in chapter three and discussed in chapter four. Finally, each analysis was concluded by providing both drafters and translators on how to use constructions selecting or permitting a future time interpretation and how to translate these constructions, both in English and Dutch.



### 1.3 Material

The two small corpora of Dutch and English contracts each comprise around 20,000 words. The different areas were found using Book 7 of the Dutch Civil Code, in which legal variants of contracts can be found. Nine texts, each concerning a different area of contract law, were randomly selected for each language with a strong preference for texts not exceeding a word count of 3,000 words for both languages. The reason for this limitation is that the scope of this thesis does not allow a multitude of larger texts to be closely analysed. By finding contracts for similar areas of contract law in both languages, the relevant linguistic components could be analysed in more close detail per contract area.

The texts were acquired through Google Advanced Search in early May 2017. In order to find the types of English contracts needed, three general keywords were used: *party*, *agreement*, and *clause*. The choice of these keywords was based on recommendations by my thesis supervisor, A.A. Foster, and Curtotti and McCreath (2010) who conducted research focused on contract language, however focused on Australian contracts in particular. The keywords were especially useful in the sense that they did not limit the results to any specific sort of contract for they are common in contract language. Furthermore, the language setting was set to English and the region was limited to the United States because the literature on Legal English is largely American. In order to retrieve the contracts in one of the nine areas of law required, the search was further limited by keywords such as *real estate purchase agreement*, *confidentiality agreement*, and *license agreement*. After the search settings had been set, a number of search results were yielded and nine American English contracts not exceeding 3,000 words were then randomly selected.

Since this paper revolves around the translation of contracts, the Dutch corpus was composed in a similar manner. In order to find the types of Dutch contracts needed, the three general keywords used for the English search were translated to Dutch: *partij*, *overeenkomst*, and *bepaling*. Furthermore, the language setting was set to Dutch and the region was limited to the Netherlands. In order to retrieve the contracts in one of the nine areas of law required, the search was further limited by translations of the English keywords such as *koopovereenkomst*, *geheimhoudingsovereenkomst*, and *licentieovereenkomst*. After the search settings had been set, a number of search results was yielded and nine Dutch contracts not exceeding 3,000 words were then randomly selected.

## **Chapter 2 Theoretical Background**

### **2.1 Introduction**

Linguists use different terminology and approaches to discuss futurity and, often, do not have the same opinion on these matters. An example of this can be found in the different manners that Dutch and English linguists use to classify different types of modality about which a further discussion can be found in section 2.3.1. This disagreement is also present between linguists and legal writers. In order to identify the gap between the expression of futurity within linguistics and within legal language, I will first analyse and summarize the ways in which future can be expressed in English and Dutch based on a number of prescriptive grammars. Second, I will look at how future is expressed within Legal English according to two legal writers. Finally, I will create a schematic overview of my findings in order to provide insight into this linguistic gap.

### **2.2 Introduction to linguistic terminology**

Before moving on to comment on the specific aspects of futurity in English and Dutch, I will first offer some terminological clarifications. Therefore, this section will deal with defining the relevant key concepts and terminology within linguistics mostly based on the works of Palmer (2001), Huddleston and Pullum (2002), Quirk (1985), Aarts (2011), Haeseryn (1997), and Broekhuis (2012). I will draw distinctions between the basic concepts of time and tense, aspect and aspectuality, and mood and modality. Understanding these distinctions will help grasp the concepts and terminology explained under sections 2.3 to 2.5.

#### **2.2.1 Time and tense**

When we speak of time, we are talking about a real-world notion measured with a clock. To introduce this idea, Aarts (2011) uses a quote from the *The Concise Oxford English Dictionary* (Pearsall, 2002), which defines it as “the indefinite continued progress of existence and events in the past, present, and future, regarded as a whole”. Aarts (2011) adds that we understand time as having three ‘zones’, ‘past’, ‘present’, and ‘future’, which can be represented on a ‘timeline’ as shown in Figure 2.1.

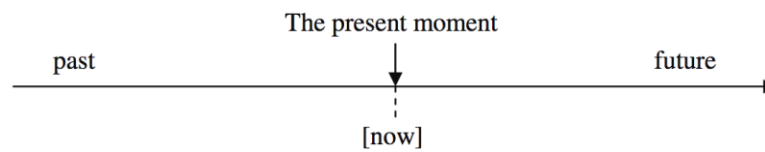


Figure 2.1: Past, present, and future on a ‘referential level’ (Quirk et al. 1985:175)

Time is an extralinguistic concept, i.e. it exists independently of language (Declerck, 2006). Quirk (1985) makes a distinction between three levels at which the notion of ‘time’ can be looked at. The first is called the ‘referential level’, this level refers to time in relation to our understanding of and experience with the world around us. As described in the paragraph above, we can distinguish at least three ‘zones’ or, as Quirk (1985) refers to them, ‘times’, namely ‘past’, ‘present’ and ‘future’. In this sense and for any language, ‘present’ refers to the ‘now’ of our experience, and everything before this present moment is ‘past’, everything after this present moment is ‘future’, as shown in Figure 2.1. On the second level, the ‘semantic level’, present can also be understood as “the most general and unmarked category” (Quirk, 1985, p. 175). For example, the generic statement in sentence [1] may be applied to past, present, and future. In contrast, the statement in sentence [2] is less general and suggests that Mammoths, like the dodo, may be extinct.

- [1] Mammoths *are* large animals.  
 [2] Mammoths *were* large animals.

From this perspective, ‘present’ can be understood as a semantic category that includes the time before and after now. Consider Figure 2.2.

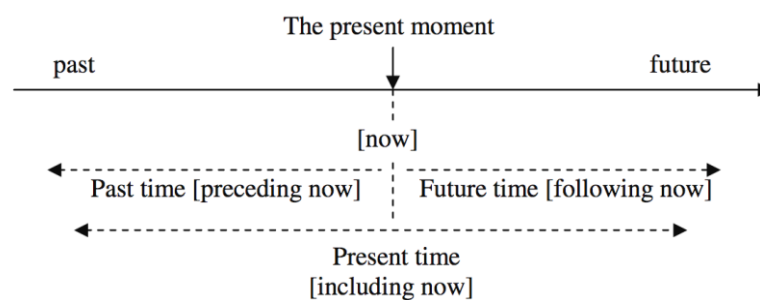


Figure 2.2. Past, present and future on a ‘semantic level’ (Quirk et al. 1985:176)

The ‘referential’ and the ‘semantic’ are distinguished from the ‘grammatical’ level in the sense that they are extralinguistic concepts. The ‘grammatical’ level, however, is a linguistic concept often referred to as ‘tense’ which will be discussed in the following paragraph.

The linguistic concept of ‘tense’ denotes a grammatical system which is used to locate the situation, or part of it, at some point or period of time. Situation, in this case, is a kind of collective noun that, according to Vendler’s 1957 distinction, can be used to refer to states, events, achievements, and accomplishments. For both the English and the Dutch language, this grammatical system makes use of different verbal inflections to locate the actualization of a given situation in time (Aarts, 2011; Declerk, 2006). Hence, when we are reading or listening, the past tense inflection on the verb indicates that the occurrence referred to took place in the past. According to Declerk (2006), the only way to locate the situation in time is to take a point in time whose location is known, and then locate the situation in relation to this point; this means that any tense linguistically expresses “the temporal relation between the time of actualization of a situation and some other time” (p.94). This other time is usually the moment of speech or, as Declerk (2006) calls it, some other “time of orientation” (p.95). In example [3] below, we find an English example in which the past tense form *said* locates the actualization of the situation of Karen speaking at a time which is thought of as past time, i.e. as a “time of orientation” which lies completely before the moment of speech.

[3] Karen said that Anne had left.

The past perfect form *had left* indicates that Anne’s leaving is actualized before Karen’s utterance: the time of the second situation is therefore the “time of orientation” and the time of Anne’s leaving is represented as happening first.

Both English and Dutch have two main tense forms: present and past which, like aspect and mood, are marked inflectionally on the verb in just one case (Quirk, 1985, p.175; Haeseryn, 1997, p. 69). Consider Figure 2.3 and 2.4:

	Present	Past
Regular	I <i>work</i>	I <i>worked</i>
Irregular	I <i>come</i>	I <i>came</i>

Figure 2.3 Examples of the two main English tense forms

	Present ( <i>Presens</i> )	Past ( <i>Imperfectum</i> )
Regular	Ik <i>werk</i>	Ik <i>werkte</i>
Irregular	Ik <i>kom</i>	Ik <i>kwam</i>

Figure 2.4 Examples of the two main Dutch tense forms

Unlike many other languages, neither English nor Dutch have a morphologically marked future tense, because they have no future inflections nor any other grammatical form or combination of forms that can exclusively be called a future tense. However, both languages offer various alternative ways of talking about the future, as will be discussed in sections 2.4 and 2.5.

### 2.2.2 Aspectuality and aspect

Aarts (2011) states that, similar to the distinction between time and tense, aspectuality is a grammatical notion which denotes how a situation is perceived to be “unfolding in time in the real world (as completed, ongoing, or the like)” whereas the term aspect denotes the system that grammar uses to encode this (p. 254). English and Dutch each have their own specific constructions by means of which aspect is encoded. English recognizes *perfect aspect* and *progressive aspect*. Unlike in many other languages such as French and Russian, these are not coded in verbal inflections, but as constructions. Dutch recognizes the *perfect aspect* (*perfectum*) and the *progressive aspect* (*duratief aspect*) (Haeseryn, 1984, p. 456). Klooster (2001) states that there are a number of ways to realize this progressive aspect, including changing the word order and placing a verb at the end of a sentence.

### 2.2.3 Mood and modality

Comparable to the distinction between time versus tense, and aspect versus aspectuality, mood refers to the way in which “the grammar of a language encodes *modality*” (Aarts, 2011, p. 254), a concept which involves various kinds of “non-factuality or non-actuality” denoting that the situation is “merely possible, is predicted or assumed rather than known, and so on” (Huddleston and Pullum, 2002, p. 117). However, the mood system differs from the aspect and tense system in that there are multiple modal auxiliaries which express semantic notions such as ‘possibility’, ‘probability’, ‘necessity’, ‘obligation’, ‘permission’, ‘intention’, and ‘ability’. These are called “modal meanings” (Aarts, 2011, p. 254). Aarts (2011) and Broekhuis (2012) further add that the same kind of meaning as is expressed by the auxiliaries

of mood can also be conveyed by other means, e.g. adverbs such as *maybe*, adjectives such as *likely*, the imperative construction (*go to work*), quasi-modal verbs and others. However, these other means will not be further discussed because they are beyond the scope of this research.

### **2.3 Linguistic futurity**

In a similar fashion to the aforementioned distinctions, such as time versus tense, the term *future* is a category of meaning whereas *futurity* denotes the system that grammar uses to encode this (Quirk, 1985). As mentioned before in section 2.2.1, neither English nor Dutch has a formal future tense in addition to present and past tense. In other words, both languages use grammatical constructions rather than verbal inflection to indicate future time. However, some grammarians have argued for a third, 'future tense', advocating that English realizes this tense by the use of an auxiliary verb construction (such as *will* + infinitive). Despite this point of view, there is a vast number of grammarians, for instance, Quirk (1985); Huddleston and Pullum (2002); and Aarts (2011), who prefer to treat tense strictly as a category realized by verb inflection. In this paper, then, I will not talk about the future as a formal category: what I will consider is that certain grammatical constructions are capable of expressing the semantic category of future time, in other words futurity.

According to Carter and McCarthy (2006) and Haeseryn (1984), both English and Dutch have several widely used ways of referring to future time. They state that references to the future can depend on the amount of evidence there is for future statements. They add that it is often not possible to refer to the future with complete certainty, even though some future events and actions are inevitable. Therefore, choices of form sometimes depend on how definite or certain the speaker is about the actualization of the proposition. For this reason, a number of the ways of referring to the future involve modal verbs. In order to provide an overview of the relevant literature, section 2.3.1 will discuss modality in English and Dutch, section 2.4 will discuss futurity in English, and section 2.5 will discuss futurity in Dutch.

#### **2.3.1 Modality in English and Dutch**

As stated in section 2.3, a number of ways of referring to the future involve modal verbs. That this is true for both English and Dutch has already been discussed in section 2.2.3. To elaborate, this section will include a more in-depth analysis of what modality is in both English and Dutch and it will solely focus on the type of modality that is involved in expressing future time. Furthermore, it will be limited to the core, or true, modal verbs according to Aarts (2011) and Donaldson (1997).

So far it has been concluded that tense, aspect, and modality are all three concerned with the characteristics of the event that is reported by the utterance. *Modality* is an umbrella term for a number of semantic dimensions in terms of which a speaker can express his or her “attitude towards the factuality or actualisation of the situation expressed by the rest of the clause” (Huddleston and Pullum, 2002, p. 173).

Palmer (2001), however, believes that the terms ‘factuality’ and ‘non-factuality’, or ‘actualisation’ and ‘non-actualisation’, are not satisfactory. He prefers to make use of the typological categories of ‘realis’ and ‘irrealis’. The ‘realis’, then, is used to describe situations that have been actualized, that have occurred or are actually occurring. In contrast, the ‘irrealis’ is used to describe something that is not known to be the case in reality, in other words, that only exist within the realm of thought. According to Palmer (2001), most languages have a single realis mood called the indicative mood, although some languages have additional realis moods, for example to express different levels of certainty. An example of the contrast between these two categories, also called moods, is seen in the following English examples:

[4] She teaches at a school.

[5] She may teach tomorrow.

In the first sentence [4] *teaches* is a present indicative (realis) form of the verb, and is used to make a direct assertion about the real world. In the second sentence [5] *teach* is in the subjunctive mood, which is an irrealis mood – here *She may teach* does not express a fact about the real world, but refers to what would be a desirable state of affairs. Despite the fact that there are several modal categories, there is no general consensus about the exact number of modal notions that can be distinguished. For instance, Aarts (2011) states that the English modal verbs are syntactically characterized by the NICE properties which they share with the larger set of auxiliaries (p. 281). NICE is an acronym that stands for Negation, Inversion, Code, and Emphasis and works as follows (Aarts, 2011, p. 68):

Negation: Auxiliary verbs can be followed by *not* or take an ending in *-n't*.

[6] The girls *will not/won't* go to school next week.

Inversion: Auxiliary verbs can invert with their subjects.

[7] *Will* the girls go to school next week?

Code: Auxiliary verbs can be ‘stranded’: the auxiliary can be repeated without the lexical verb.

[8] The girls will go to school, and so will the boys.

Emphasis: Auxiliary verbs can emphasize the force with which something is uttered.

[9] The girls *will* go to school next week.

Furthermore, English modal verbs are always followed by a bare infinitive verb, which means that they cannot stand on their own (Aarts, 2011, p. 281) In contrast, Klooster (2001) states that, according to traditions, Dutch modal verbs can occur on their own. However, he does not entirely agree with this because he feels that, when occurring on their own, these verbs are no longer used to express modal meaning. Compare:

[10] Anne *kan* ziek geweest zijn.

[11] Hij *kan* een auto besturen.

In example [10], modal *kan* denotes how the proposition relates to reality, *kan* does not say anything about the subject *Anne*. In other words, the auxiliary *kan* is not performed by the subject of the sentence and has a reading that can be paraphrased as ‘it is possible that Anne may have been ill’. In contrast, in example [11], *kan* does not establish a relationship between the proposition ‘He is able to drive a car’ and reality, *kan* expresses something about the subject. In this example [11], the auxiliary *kan* is used in a non-modal sense and denotes his ‘real ability’ to drive a car, unlike in example [10], in which modal auxiliary *kan* denotes uncertainty about Anne being ill. Klooster (2001) states that despite the fact that the Dutch modal verbs can also be used in a non-modal sense they are still referred to as modal verbs. However, it could also be argued that the verbs used in a non-modal sense express a separate type of modality rather than no modality at all. For example, in contrast to Dutch grammars, English grammars distinguish between three main types of modality which will be discussed in sections 2.3.1.1, 2.3.1.2, and 2.3.1.3 below.



In contrast to English modal verbs, Dutch modal verbs used in a modal sense cannot be stranded. Klooster (2001) states that stranding can be used in order to test whether a modal verb is used in its modal sense or not. Compare the following examples:

[12] Hij *kan* een auto besturen, maar zij *kan* dat ook.

[13] Zij *kan* ziek geweest zijn, \*maar hij kan het ook.

In example [11], modal *kan* expresses ‘real ability’ and is therefore used in its non-modal sense. In example [13], modal *kan* expresses possibility and is therefore used in its modal sense.

Another difference between English and Dutch modal verbs is that Dutch modal verbs have to be conjugated. For example:

[14] Ik *zal*. (I will)

Jij *zult, zal* (you will - singular)

Wij *zullen* (you will – plural)

Zij *zullen* (they will)

The above examples do not form an exhaustive overview of the features of modal verbs; however, this is not the place for such a terminological and theoretical discussion as this is not relevant to research into the differences between futurity in Legal English and Dutch that is conducted by means of this thesis. A few remarks about the terminology applied within this thesis are necessary. Palmer (2001), Broekhuis (2012), and Huddleston and Pullum (2002), as well as many others, distinguish between three main types of modality: *epistemic*, *deontic* and *dynamic*. Palmer (2001) points out that futurity can also be expressed by modality, and that the different modal systems tend to overlap. Therefore, these three types of modality will be discussed below.

### 2.3.1.1 Epistemic modality

Epistemic modality relates to the speaker’s knowledge, based on which he or she makes judgements about the factual status, or truth value, of a proposition (Huddleston and Pullum, 2002, p. 178). In other words, it refers to the way speakers communicate their doubts, certainties, and guesses – their ‘modes of knowing’.

Consider examples [15] and [16] below:

[15] There's no answer; he *may/must* have already left.

[16] Er wordt op de deur geklopt. Dat *zal/moet* Jan zijn.

Both examples contain a clear case of epistemic modality. In example [15], *may* indicates the speaker's degree of confidence in the truth of the proposed situation. *May* in this sentence means "it's possible that...". By replacing *may* with *must*, the speaker expresses a stronger confidence in the truth of the utterance and indicates that he or she "is confident that...". Similarly, in example [16] *moet* expresses stronger confidence than *zal*.

Epistemic uncertainty and probability are often applied for the purpose of *hedging*. This is a strategy which uses linguistic means to indicate (1) "a lack of complete commitment to the truth value of the accompanying proposition", or (2) "a desire not to express that commitment categorically" (Hyland as cited in Palmer, 2001, p. 35). To rephrase it, we use epistemic modal verbs intentionally to hedge an assertion in regard to its truth value. The epistemic modal verbs will be listed and explained in sections 2.4 (English) and 2.5 (Dutch).

### 2.3.1.2 Deontic modality

Deontic modality, like epistemic modality, relates to the speaker's attitude towards the proposition. However, in this case the speaker imposes an obligation, makes a commitment, grants permission, etc. for the proposition to be actualized (Huddleston and Pullum, 2002, p.173).

[17] You *must* only cross this street at the zebra crossing.

[18] De kat *mag* niet naar buiten vandaag.

The voice of authority, or deontic source, is either the speaker him/herself (example 18) or he/she speaks objectively, in which case the voice of authority can be a rule, regulation, general norm or other kind of authority (example 17). Deontic modality is commonly expressed in English by use of *must*, *should*, *may* and *can*. However, in legal language, *shall* and *will* are also used deontically and express obligation, duty and commitment (Garner, 2011). In Dutch, this type of modality is commonly expressed by use of *moeten*, *mogen*, *hoeven*, and, for emphasis, *zullen*. Consider the following examples:

[19] De klant *moet* een aanbetaling doen van tien procent.

[20] Je *zult* je huiswerk maken!

The use of English *shall* and *will*, and Dutch *zullen* to express deontic modality is usually restricted to the legal register and, therefore, of high importance to this study concerning the legal aspect of the corpus examples that will be studied in the analysis chapter.

### 2.3.1.3 Dynamic modality

Huddleston and Pullum (2002) identify dynamic modality as having to do with the subject's or agent's ability, possibility or willingness to act. They argue that dynamic modality is "less central to modality... in that it does not involve the speaker's attitude to the factuality or actualization of the situation" (p. 179). Dynamic modality can be divided into potential and intentional modality. Consider examples [21] and [22].

[21] The Dutch *can* speak English reasonably well.

[22] De buren *zullen* morgen op vakantie gaan.

Sentence [21] is an example of potential modality because it indicates a latent possibility for something to take place. Sentence [22] is an example of intentional modality, expressing the subject's intention or willingness to what's being proposed. The latter overlaps with future tense since the proposition always takes place in the future, relative to the time of the modal verb.

### 2.3.2 Differences in modal classification

Whereas English linguists broadly classify modality into three categories, namely epistemic, deontic and dynamic, Dutch linguists only use the distinction of non-modal and modal. For example, Haeseryn (1997) uses the term non-modal for constructions that English would probably classify under dynamic modality. This difference gives rise to the assumption that English linguistics is operating at a more advanced stage than the Dutch. However, in order to stay in line with Dutch literature, the limited modal classification used by Haeseryn (1997) will also be used in this literature review when it comes to the classification of Dutch modal verbs.

## 2.4 Futurity in English

Although English has no formal future tense, it has a range of constructions which select or permit a future time interpretation. These are illustrated in section 2.4.1 to 2.4.5. The discussion of modal verbs will be limited to the core modal verbs according to Aarts (2011).

As we will see, each modal has more than one meaning. It is important to be aware of the fact that very often it is not clear in a particular clause which meaning a modal verb expresses, and very often meanings overlap. We will also see that contextual or discourse factors frequently affect the interpretations of modal verbs. Hence, I will mostly focus on the modal verbs that are able to express futurity and epistemic modality, as these are most relevant to this thesis. However, I will briefly analyze the deontic and dynamic modality expressed by a number of modals so that when these come up within the corpus, I will be able to determine their meaning. The different types of futurity and modality will be discussed and exemplified in sections 2.4.1 to 2.4.5.

### **2.4.1 Simple present**

According to Aarts (2011), the English simple present tense, in its basic use, encodes that a situation “obtains at the present time, conceived of as the time of utterance” (p. 244).

However, Quirk (1985) states that the simple present tense is, after the *will/shall* construction, the next most common way of referring to futurity in English. Huddleston and Pullum further explain that the simple present can be used to refer to future time but that this futurate construction is “subject to severe pragmatic constraints”: the clause in which this construction is used must involve something that can be assumed or to be known already in the present (2002, p. 132). In their work, they describe the three most common uses which involve (a) cyclic events in nature, (b) scheduled events, and (c) conditionals.

#### **(a) Cyclic events in nature**

Huddleston and Pullum (2002) identify that the present tense is used for recurrent events “whose time of occurrence can be scientifically calculated” (p. 131), see for example sentence [23].

[23] *There is a solar eclipse on Wednesday.*

Here the scientific evidence for the future occurrence of the situation is clear enough in order to consider the occurrence as something that is currently known. In contrast, we do not use the futurate construction to describe predictions about future weather. For example, we say ‘*It will rain tomorrow*’ or ‘*It is going to rain tomorrow*’ not ‘*It rains tomorrow*’ because such future events are not thought of as being within the domain of what is known.

They further add that these cyclic events in nature are characteristically accompanied by a temporal expression “specifying (or questioning) future time” as in example [21] (Huddleston and Pullum, 2002, p. 131). Frequently, the “significant information to be conveyed (or obtained)” is exactly the time of the future situation (p.131).

### **(b) Scheduled events**

The present tense is used for future situations that have already been arranged, scheduled by human agency. Huddleston and Pullum (2002) propose that the evidence for treating these situations as being within the domain of what is known might not meet the demands of a philosopher concerned with the theory of knowledge, but it is adequate in the everyday use of language. The element of current schedule/arrangement by human agency can be seen in such a contrast as in examples [24] and [25].

[24] Feyenoord meets Feyenoord in the Eredivisie 2017.

[25] Feyenoord beats Ajax in the Eredivisie 2017.

In a context where Feyenoord and Ajax both play in the Eredivisie, the present tense in example [24] is quite natural. However, it is not natural in example [25], as this would mean that not only the competitors but also the final result has already been arranged. Huddleston and Pullum (2002) note that subjective certainty is not enough: Feyenoord’s fans might feel quite certain about its future championship, but that does not warrant for the simple present *beats*. Additionally, similar to the cyclic events in nature, scheduled events are also characteristically accompanied by a temporal expression which specifies the future time. As can be seen in example [24], the future event very often takes place exactly at the time of this temporal expression.

### **(c) Conditionals**

Huddleston and Pullum (2002) explain that the present tense futurate is used to indicate that “the consequence of the condition being fulfilled is inevitable or already decided” (p. 132). Carter and McCarthy (2006) call this the “real conditional” and explain that is used refer to real situations. These real situations refer to things that are “true, have happened, generally happen or are likely to happen” (p. 749). Consider example [26] and [27].

[26] If you touch a fire, you get burned.

[27] If my son fails to do the dishes, he is denied access to the cookie jar.

It is important to denote that not every conditional construction has a relationship with futurity. Carter and McCarthy (2006) explain that differences in tense and modality are important to a possible or imagined situation. The conditional using the present tense is what Carter and McCarthy (2006) refer to as the ‘real conditional’. Furthermore, the ‘real conditional’ can also be created using other tenses and constructions such as idiomatic *be going to*.

Conditional clauses are most typically introduced by the subordinating conjunction *if* followed by the apodosis. This construction is oftentimes confused with *when*. Carter and McCarthy (2006) explain that *when* and *if* are not the same. They state that, in unreal conditionals, only *if*, not *when*, may be used. *When*, they elaborate, is used to refer to “something the speaker knows will happen at some point in time”, in other words, future time (p. 751). Compare example [26] to example [28]:

[28] When you touch a fire, you get burned.

Example [28] is incorrect because *when*, in this case, implies that everyone will touch a fire at some point in their life and gets burned. However imaginable, this is not necessarily true and therefore *if* would be a better choice.

#### 2.4.2 Present progressive and idiomatic *be going to*

As identified by Quirk (1985) and Huddleston and Pullum (2002), the present progressive, in its non-aspectual use, can refer to future plans, decisions and arrangements. It is found in (b), scheduled events, and to a limited extent in (c), conditionals. Huddleston and Pullum (2002) write that the progressive is limited to cases where “human agency or intention is involved” (p. 171). Whereas the simple suggests a schedule or plan, the progressive could be used in schedule/plan scenarios, but it is not limited to them. Secondly, the progressive tends to be used for the relatively near future. Consider the following examples:

[29] I work tonight.

[30] I am working tonight.

In example [29], the simple suggests a schedule or plan whereas the progressive in example [30] could also mean that the speaker has simply formed the intention to work tonight.

Furthermore, replacing *tonight* with *in ten years* would create an unnatural sentence because the progressive tends to be used for the relatively near future.

Subsequently, idiomatic *be going to* is also used to refer to future plans, decisions and arrangements. Huddleston and Pullum (2002) explain that the idiom historically derives from progressive auxiliary *be* + the lexical verb *go*, which denotes movement. However, in construction with “a to-infinitival complement the meaning of motion and progressivity has been lost” (p. 211). As a result, there is sometimes a contrast in meaning between the progressive and idiomatic *be going to*, up to a point that there are certain situations in which the latter is preferred over the former. Consider examples [31] and [32].

[31] I'm going to ask her to marry me.

[32] I'm starting a new job next week.

The *be going to* construction in example [31] indicates that the decision to ‘pop the question’ has been made and that the event will take place soon, but that all the necessary plans have not yet been made. *Be going to* “stresses the subjective view of the speaker” (Carter and McCarthy, 2006, p. 629). In contrast, the present progressive, as in example [32], generally indicates that a decision has been made and that all the necessary plans have (probably) been made as well.

Moreover, idiomatic *be going to*, like *will*, can be used to make predictions based on present evidence or the present situation whereas this cannot be done by using the present progressive (Carter and McCarthy, 2006, p. 630). Similar to the contrast between the present progressive and *be going to* there is sometimes also a contrast in meaning between *be going to* and *will*. Consider the following examples:

[33] Look at those dark clouds, it's going to rain soon.

[34] I think he will be late again.

As can be noted from example [33], *be going to* is used when there is some “outside evidence” for what is said; in this case the dark clouds (p.630). Furthermore, Carter and McCarthy (2006) add that *be going to* can also be used when the statement made by the speaker can be clearly interpreted or seen. In example [34], *will* is used because the actualisation of the evidence is based on the speaker's judgements or opinion. In short,

Huddleston and Pullum (2002) conclude that “*will* lacks the implicature of immediacy commonly found with *be going to*” (p.211). Additionally, another contrast between these two constructions is that, in general, *be going to* is characteristic of relatively informal style, whereas *will* is entirely neutral. A further discussion of *will* can be found in section 2.4.3.

### 2.4.3 Will

According to Aarts (2011), *will* is most used within spoken and written English to refer to future time. Despite the fact that *will* allows other possibilities the attention in this thesis will be confined to future cases. Within the literature, there are a surprising number of variant views with regard to the use of *will* to refer to future time. For instance, according to Aarts (2011) the *will* + infinitive combination should not be regarded as future tense. Instead, he believes that it both semantically and syntactically belongs with the modal verbs because it always contributes a modal dimension of meaning. At the same time, Huddleston and Pullum (2002) argue that, when *will* indicates a prediction or an assumption about the future, futurity overlaps with epistemic modality. They explain that the futurity indicated by *will* is accompanied by varying degrees of modal meaning. Consider examples [35] and [36].

	<u>Past time</u>		<u>Future time</u>
[35]	a. He <i>turns</i> eight tomorrow.	b.	He <i>will turn</i> eight tomorrow.
[36]	a. Feyenoord <i>competes</i> with Ajax for the championship.	b.	Feyenoord <i>will compete</i> with Ajax for the championship.

In example [35] there is no difference between the two constructions, whereas in example [36] the difference is quite obvious. In [36a], the unmodalised *competes* is appropriate only in a context where most of the matches have been played up to a level that the number one and two have already been determined. Whereas [36b], with modal *will compete*, could be used earlier in the competition, predicting the outcome of the intermediate matches. Huddleston and Pullum (2002) explain that the *will* construction is thus “pragmatically considerably weaker than” the present futurate: “it requires less supporting evidence, less ‘epistemic warrant’” (p. 190). The section below provides an outline of the use of *will* as described by Aarts (2011), Huddleston and Pullum (2002), and Palmer (2001).



### 2.4.3.1 Will: Epistemic modality

Aarts (2011) states that “the most common use of *will* followed by an infinitive verb form is to refer to future time” (p. 282). He goes on to say that this verb often expresses the epistemic meaning of *prediction*, based on the speaker’s knowledge of the circumstances. These propositions may or may not be actualized, see example [34].

[37] The weather report said it *will* rain tomorrow.

Furthermore, *will* can be used when the speaker bases a conclusion on previous knowledge and/or experience, see example [38]. In some cases, predictions are based on the speaker’s knowledge of an existing schedule or a statutory course of events, as in example [39].

[38] If this thesis is completed in time, I *will* graduate this semester.

[39] All the children I teach *will* be on summer break starting 8 July.

Aarts (2011) states that in a conditional clause, however, *will* does not always refer to future time when the speaker draws a conclusion based on previous knowledge. He provides the following example:

[40] “If you have two identical twins and one of them is schizophrenic there is a fifty per cent chance that the other *will* be schizophrenic.”(p. 283)

In this case [40], the modal verb expresses a meaning that might be paraphrased as ‘scientific prediction’, therefore it does not refer to future time. About conditional constructions, Huddleston and Pullum (2002) add that the epistemic modality expressed by *will* (or *may*) is of the objective type and is not “a matter of the speaker’s subjective judgement” (p.191).

### 2.4.3.2 Will: Dynamic modality

In its dynamic meaning, *will* commonly carries volitional or, a weaker kind of volitional, intentional meaning. Aarts (2011) states that it is hard to find examples of this dynamic meaning of *will*. Volitional meaning is particularly clear when the modal verb is stressed, as in example [41].

[41] I *will* go to New York, even if you don’t approve.

Huddleston and Pullum (2002) state that futurity *will*, in its dynamic meaning, rarely occurs and that it is mostly concerned with expressing volition and propensity. In the case of propensity, *will* expresses “characteristic or habitual behaviour of animates or general properties of inanimates” (p. 194). Consider examples [42] and [43].

[42] He *will* sit on the couch all day, watching football.

[43] Water *will* boil if it reaches a hundred degrees Celsius.

In both examples, a simple present could be substituted with little effect. Therefore we can conclude that this use is fairly sharply distinct from futurity, yet in many cases there is a connection through conditional consequences.

Furthermore, Huddleston and Pullum (2002) claim that strong stress on the auxiliary conveys the speaker’s “emotive response to the situation – usually exasperation, disapproval, or resignation” (p. 194). This can be illustrated by the following example:

[44] He *will* pour the tea-leaves down the sink.

In example [44], the speaker clearly disapproves of the subject pouring the tea-leaves down the sink rather than throwing them in the bin.

### 2.4.3.3 Will: Deontic modality

In the example below, the speaker is obligating the addressee to do something, so that the modal verb in this example clearly expresses deontic meaning.

[45] You *will* hand in your paper before the first of July.

The deontic use of *will* is “a matter of implicature” (Huddleston and Pullum, 2002, p. 194): the speaker has the authority to require the addressee to do something. The evidence for the prediction is that the speaker is telling the addressee to do something and the addressee is required to do as he or she says. *Will* expressing deontic modality strongly relates to futurity for it expresses an obligation that has to be fulfilled in the future.

### 2.4.3.4 Shall vs will

The distinction between *will* and *shall* within English grammar is fairly straightforward compared to the distinction within Legal English, as described in sections 2.7.2 and 2.7.4.

First of all, *shall* is traditionally used with the 1<sup>st</sup> person subject (i.e. *I* and *we*) in the interrogative and as a variant of *will*, as can be noted from the following examples.

[46] I *shall* never understand mathematics. (Futurity)

[47] If you become ill before the holiday we *shall* stay home.  
(Consequence)

[48] I *shall* do what you say. (Volition)

Huddleston and Pullum (2002) provide a prescriptive rule that treats *shall* and *will* as complementary (p. 195):

[49] Traditional prescriptive rule	1 <sup>st</sup> Person	2 <sup>nd</sup> /3 <sup>rd</sup> person
a. Futurity	<i>shall</i>	<i>will</i>
b. Volition/determination	<i>will</i>	<i>shall</i>

However, they note, this rule is not valid, which can be illustrated based on the following example (p. 195):

[50] I shall drown and no one will save me. (expressing futurity)

[51] I will drown and no one shall save me. (expressing a determination to drown)

They explain that for futurity according to the traditional prescriptive rule we must allow *will* as well as *shall* for the 1<sup>st</sup> person, which has been recognized by several modern usage manuals. Not only is *will*, in fact, much more common but in American English *shall* is also quite rare. Furthermore, they add, there is a style difference: *shall* tends to be somewhat more formal than *will*.

#### 2.4.4 Shall

As with *will*, Aarts (2011) writes, the main use of *shall* is to refer to future time as can be noted from example [43]. However, Aarts (2011) also adds recent research has shown that the use of *shall* is declining rapidly both in the United Kingdom and in the United States. *Shall* can also convey deontic and dynamic meaning as will be briefly discussed below.

#### 2.4.4.1 **Shall: Deontic modality**

In written language, subjects other than 1<sup>st</sup> person singular and plural are possible with *shall*, especially in rules and regulations. Note the following example.

[52] Teachers *shall* retire at the age of 68.

Similar to deontic *will*, deontic *shall* is strongly related to futurity for it expresses an obligation that has to be fulfilled in the future.

#### 2.4.4.2 **Shall: Dynamic modality**

*Shall* can also be used to express volition or intention, usually in requests. See example [53].

[53] *Shall* we go to the cinema?

Aarts (2011) states that, because the use of *shall* is on the decline, *shall* expressing volition or intention is also becoming quite rare.

#### 2.4.5 **Can**

According to Aarts (2011), *can* is not used to express futurity. However, this modal verb can express dynamic and deontic possibility and epistemic necessity. This will be briefly discussed below. The difference between *can* and *may* (see section 2.4.4) is that *may* can be said to express a 'real' possibility, unlike *can*, which would express a more remote or theoretical possibility.

##### 2.4.5.1 **Can: Dynamic possibility**

Aarts (2011) states that the core meaning of *can* is possibility, a neutral type of modality and dynamic because it is used in statements about events and states which are true or which are usually the case and the actualisation of the statement does not depend on the speaker.

Furthermore, he adds that "the 'existential' meaning of *can* typically concerns a property that is ascribed to members of a particular set of individuals, animals, or the like, or a property that applies to a referent at certain times" (p. 292). Consider example [51].

[54] Teachers *can* be strict.

Sometimes, *can* indicates a future possibility. In that case, the statement could be paraphrased by 'It will be possible...'. For this, consider example [55].

[55] What if it's raining? We *can* always go to the cinema.

### 2.4.5.2 Can: Deontic possibility

A meaning less common for *can* is deontic possibility, in other words 'permission'. Consider examples [56] and [57].

[56] You *can* only leave the table if you have finished your plate.

[57] *Can* I go to the bathroom?

Aarts (2011) demonstrates that it is not always possible to determine the difference between 'possibility' and 'permission'. In example [56] above, both readings are possible. According to Quirk (1985), *can* expressing permission is combinable with a future time adverbial; but *can* expressing ability is not. Compare the following examples:

[58] You *can* borrow my car tomorrow.

[59] \*You *can* pass your final exams when you take the resit.

When expressing future ability, the construction that should be used is *will be able to*. The exception here is that *can* may be used in, for example, *if*-clauses in which the present tense is normally used for future reference. Consider example [60]:

[60] If you *can* pass your final exams in the resit next week, you will be able to go on holiday after.

### 2.4.5.3 Can: Epistemic necessity

*Can* is also used to express a knowledge-based conclusion, note example [61].

[62] It *can't* be eleven o'clock already, it's still light out.

Aarts (2011) denotes that this modal verb can only express epistemic meaning when it is negated.

### 2.4.6 May/might

In the following sections I look at the epistemic and deontic meanings of *may/might*. *May* differs from its past tense form *might* in the sense that a speaker expresses a higher degree of uncertainty when using *might* than when using *may*. In other words, the strength of the modal meaning is lessened in the case of *might* (Aarts, 2011). Carter and McCarty (2006) add that *might* generally is a more indirect and tentative alternative to *may*. Its most frequent uses are

for expressing probability; its uses referring to permission are mostly formal and much less frequent.

#### 2.4.6.1 May/might: Epistemic possibility

Both *may* and *might* commonly express epistemic possibility. Consider examples [63] and [64].

[63] We *may* go to the pub later.

[64] The train has been delayed, we *might* be late.

In both examples, the modal verb is can be paraphrased as ‘It is possible that...’.

Furthermore, these examples express epistemic meanings, because the speakers have some knowledge or evidence for their assumptions, though this evidence is likely to be weak.

Carter and McCarthy (2006) add that *may* is used in formal written English to describe things which are likely to occur or which normally do occur. They state that, in this sense, it is a more formal equivalent of *can*. Consider the following example.

[65] This cookie *may* contain traces of nuts.

#### 2.4.6.2 May/might: Deontic permission

Aarts (2011) claims that a less common meaning for *may* is permission. Conversely, the permission meaning of *might* is rare. The difference between *can* and *may* in this deontic sense is that *may* is much more formal and “a speaker who grants permission using this verb is more likely to be in a role of authority” (p. 295).

[66] *May* I go to the bathroom?

[67] You *may* go home after you have finished your homework.

In both of these examples, the role of authority is likely that of a teacher who is in the position to grant certain permissions to his pupils.

#### 2.4.7 Must

In the following section I look at the deontic and epistemic meanings of *must*.

### 2.4.7.1 **Must: Deontic necessity**

According to Aarts (2011), the core meaning of *must* is deontic necessity, in other words: obligation. Note example [68].

[68] You *must* stay in school until you are eighteen years old.

He further adds that deontic *must* expresses obligation more strongly than *shall* or *should*.

### 2.4.7.2 **Must: Epistemic necessity**

When *must* is used epistemically the speaker has drawn a conclusion from things already known or observed. See example [62].

[69] The train has been delayed, you *must* be annoyed.

## 2.4.8 **Conclusion: Futurity and Modality in English**

By means of the discussion in section 2.4, the question of whether the category ‘future tense’ in English is a tense or a modality has received a lot of attention, and both answers have been explored. If we believe Broekhuis and Verkuyl (2014) and state that English future morphemes convey epistemic modality, then the ‘future’ as a purely temporal category becomes redundant. Because it is often not possible to refer to the future with complete certainty, I believe that the future contains both epistemic and metaphysical dimensions. Metaphysical in a philosophical sense for we do not know if a future event will actually occur and become the truth. Epistemic in the sense that one can only predict and not know a future event because it has not happened, in contrast to past or present tenses. The schematic overview of my findings, as mentioned in the introduction, can be found in the appendices.

## 2.5 **Futurity in Dutch**

Compared to English grammar books, significantly less has been written about Dutch grammar. I will base my discussion on the works of Haeseryn (1997), Klooster (2001), Donaldson (1997), Broekhuis (2012), Boogaarts (2013) and Van Bart (1998).

Similar to English grammar, Dutch has no formal future tense but a limited range of constructions which permit a future time interpretation. Donaldson (1997), in his Dutch grammar for English speakers, describes that the Dutch usage of the future tense is very similar to the English usage because of the tendency to use the verb *gaan* (*to go*) and the present tense for actions in the future. He states that “the main difference is that Dutch uses the present tense more than English does to express the future” (p.146).

However, Van Bart (1998) distinguishes multiple future tenses in Dutch and he points out that distinguishing between these future tenses is problematic for not only students but also for linguists. He claims that some sentences both express future time and an aspect of non-reality, in other words irrealis. Boogaart (2013) adds that it is impossible to talk about the future with absolute certainty, therefore any idea of irrealis, or modality, is inevitably present in statements about the future.

Haeseryn (1997) specifies two groups of modal auxiliaries in Dutch:

(a) *blijken, schijnen, heten, dunken, voorkomen, toeschijnen.*

(b) *Kunnen, moeten, hoeven, mogen, willen, zullen.*

However, the modal auxiliaries in group (a) are not used to refer to future time and will therefore not be discussed within this thesis. Haeseryn (1997) claims that the modal auxiliaries in group (b) cannot only be used to express modality but also to express something which is related to modality. These non-modal meanings will be discussed separately for each modal verb belonging to group (b).

This section will first discuss the *presens* and then the modal verbs referred to in group (b) above, namely: *zullen, gaan, kunnen, moeten, hoeven, mogen, and willen* in their modal and non-modal sense. Furthermore, *(be)horen* and *dienen* will be discussed for reasons explained in section 2.5.9.

### 2.5.1 Presens

Klooster (2001) writes that the *presens* (comparable to English simple present tense) can also be used to indicate future time, for example:

[70] Morgen *fiets* ik naar school.

Donaldson (1997) states that this form of the future is somewhat more common in Dutch than in English. This statement is supported by Haeseryn (1997), who sets forth that future time can be expressed by the *futurum* but that, within actual language use, the *presens* is more common. However, he adds, the *presens* can only be used to express future time when the context and/or situation indicate that the actualisation of the proposition will take place in the future.

[71] We *zijn* voor donker terug.



[72] De trein *komt* om kwart over twee *aan*.

This condition is also described by both Donaldson (1997) and Van Bart (1998), who write that the *presens* is usually used with an adverb of time which indicates that the action will take place in the future. This is also true for example [70] above, in which the adverb *morgen* is used to indicate that the actualisation of the proposition will take place in future time.

### 2.5.2 Zullen

According to Donaldson (1997), the Dutch auxiliary used for the future tense which corresponds to English *will* is the verb *zullen*. This is supported by Van Bart (1998), who states that, by Dutch tradition, *zullen* is considered “een hulpwerkwoord van toekomstige tijd of het *futurum*” (p.45). Both Donaldson (1997) and Van Bart (1998) state that *zullen* can have temporal as well as epistemic modal qualities. Whether this statement is true has been a topic of great discussion among several Dutch linguists. For instance, Verkuyl and Broekhuis (2014) claim that *zullen* only has a modal reading and that it expresses no posteriority, or temporality, at all. Instead, they believe that *zullen* expresses a high degree of plausibility and that the localisation of situations in time can only be accomplished through the opposition between present and past tense in combination with the opposition between perfect and imperfect forms. Boogaart (2013) disagrees with them and states that the meaning of *zullen* has most likely developed from deontic modality to futurity, and then to epistemic modality. Consider examples [73], [74] and [75].

[73] Gij *zult* niet doden.

[74] Het vliegtuig naar Londen *zal* vertrekken om 12 uur.

[75] Hij *zal* het gedaan hebben.

Example [73] carries deontic meaning whereas example [75] expresses modality of the epistemic kind. Boogaart (2013) claims, however, that this development has been a gradual one and that therefore between the deontic and the epistemic meaning, future meaning can be found with “modale nuances” (p. 332), for instance in example [74]. He asserts that, despite the fact that Verkuyl and Broekhuis (2014) state that, due to recent developments, *zullen* no longer expresses anything but epistemic modality, the sole existence of epistemic *zullen* does not mean that this verb can no longer express futurity. To exemplify this, he discusses several

cases in which the temporal meaning of *zullen* dominates, amongst which examples [76] and [77] (p. 334).

[76] De trein naar Amsterdam *zal* vertrekken vanaf spoor 5.

[77] Ik denk dat hij ziek *zal* zijn.

In example [76], the speaker tells a truth about the train schedule resulting in a temporal reading. In example [77], the temporal *zal* has been combined with the expression of epistemic modality '*Ik denk*'. Boogaart (2013) claims that as a result of this combination, the modal meaning of *zullen* moves to the background.

In his contribution, he concludes that, at this point, (1) it is very difficult to distinguish between temporality and epistemic modality and (2) that the reality of language cannot easily be captured in a system of binary oppositions. Furthermore, he wonders "why one would want to" (Boogaart, 2013, p. 338). This distinction (1), however, is important to this thesis because, in order to analyse the instances of *zullen* in the Dutch part of the corpus, the difference between futurity and epistemic modality may result in different interpretations and consequences. Despite this need, the line of separation between futurity and epistemic modality is remarkably thin and too little has been written, especially in Dutch, to designate this line. Therefore, I expect to face the same difficulties while analysing both the Dutch and the English corpus in chapter three. That is why, in the analysis chapter, I will have to analyse and consider each case individually.

### 2.5.2.1 **Zullen: non-modal sense**

Haeseryn (1997) denotes that *zullen* in a non-modal sense is only used to express obligation or, when paired with negation, a prohibition. Furthermore, the meaning of *zullen* is comparable to the meaning of *moeten* but, in many cases, *zullen* is used for emphasis. Consider the following examples:

[78] Je *zult* je huiswerk afmaken!

[79] Gij *zult* niet stelen.

The use of *zult* in example [79] has an archaic style which, according to Haeseryn (1997), is no longer regularly used.

### 2.5.2.2 Zullen: modal sense

Haeseryn (1997) states that *zullen* can, usually in combination with the adverb *wel*, express that something is probable, regardless of whether the moment of actualization is in the present, past or future. Consider the following examples:

[80] Martijn *zal* wel afstuderen.

[81] Martijn dacht dat hij wel *zou* afstuderen.

[82] Martijn *zal* wel afgestudeerd zijn.

Furthermore, in questions the *presens* forms of *zullen* can be used with a first-person subject in order to express an offer or a request for permission. Consider examples [83] and [84].

[83] *Zal* ik je even helpen?

[84] *Zullen* we vandaag maar weer aan onze scriptie gaan werken?

### 2.5.3 Gaan + infinitive

In his Dutch grammar for English learners, Donaldson (1997) writes that the future can also be rendered by the verb *gaan*. His assumptions are supported by Haeseryn (1997), who reports that the verb *gaan* can be divided in two main types: (1) meaning to move, and (2) not meaning to move. For type (1), consider example [85]:

[85] Kom, we *gaan* een eindje *wandelen* op het strand.

In this sense, *gaan* means ‘to move in order to do what the infinitive expresses’. This is in contrast to the second type, which can be divided into two subtypes: (A) meaning ‘gradually continuing to’ or ‘starting to’, and (B) indicating that ‘what the infinitive expresses will take place in the future’ (Haeseryn, 1997). Consider the following examples:

[86] Ik voel de wind opsteken. Het *gaat stormen*.

[87] Ik hoop dat die nieuwe docent een einde *gaat maken* aan dat geklier.

In the first example [86], *gaat* has a transitional meaning and belongs to subtype (A). In the second example [87], however, *gaat* expresses that the actualization of the proposition will be in the future. Therefore this subtype is most relevant to this thesis. In addition, It is important to realize that a sentence consisting from the same words can belong to different (sub)types,

as in example [86]. In this example, *het gaat stormen* means that it is starting to rain at that very moment, which is type [2A]. However, this interpretation would be impossible, or improbable, in the following example:

[88] Wat voor weer wordt het morgen? Het *gaat stormen*.

Furthermore, future *gaan* is preferably used when a change of condition or state is expressed. Consider the following examples:

[89] Feyenoord *gaat* in 2017 kampioen worden.

[90] In verband met de lange reistijd *gaan* we naar Leiden verhuizen.

Haeseryn (1997) states that, for these categories, *gaan* + infinitive is more usual than the *presens* or the *futurum*. Furthermore, future *gaan* is more commonly used in spoken than in written language.

#### 2.5.4 Kunnen

The usage of *kunnen* in its modal and non-modal sense has already been briefly discussed in section 2.3.1. In the following sections I will elaborate a bit further, based on the work of Haeseryn (1997). I will first discuss *kunnen* in its non-modal sense and then move on to *kunnen* in its modal sense.

##### 2.5.4.1 Kunnen: non-modal sense

According to Haeseryn (1997), *kunnen* in its non-modal sense expresses: (1) real ability, (2) opportunity, (3) permission, and (4) obligation. In order to provide insight he uses the following examples (p. 996).

[91] Hij *kan* heel goed zwemmen.

[92] Op zaterdagmiddag *kan* hij nooit zwemmen, want dan moet hij werken.

[93] *Kan* ik opruimen, of zijn jullie nog niet klaar?

[94] Ze laten alles maar staan, en ik *kan* het opruimen.

Example [91] expresses the subject's '(1) real ability' to swim well. Example [92] denotes that the subject does not have the (2) opportunity, or occasion, to swim on Saturday afternoons. In example [93], the subject asks whether he or she has the (3) permission to

clear, for example, the table. In the final example [94], the subject expresses that he or she feels the (4) obligation to clear the table.

#### 2.5.4.2 **Kunnen: modal sense**

Haeseryn (1997) states that *kunnen* in its modal sense usually indicates that the proposition, according to the speaker, is possible. In this case, *kunnen* is often combined with the adverb *wel*. Consider the following example:

[95] Eva *kan* wel ziek zijn.

Combined with a negation, *kunnen* expresses impossibility. Note example [96].

[96] Yara *kan* het niet gedaan hebben.

In example [95], the speaker believes that it is possible that Eva is ill, based on previous experience. Similarly, in example [96], the speaker does not believe Yara to have done something, probably previously referred to in the conversation.

#### 2.5.5 **Moeten**

In the following two sections I will discuss the use of *moeten* in its non-modal and modal sense based on the work of Haeseryn (1997).

##### 2.5.5.1 **Moeten: non-modal sense**

Similar to *kunnen*, Haeseryn (1997) uses examples to explain that *moeten* in its non-modal sense can express: (1) necessity, (2) obligation, and (3) wish or liking. He provides the following examples (p. 996):

[97] We *moeten* nog heel wat werk verzetten, voordat dit boek klaar is.

[98] De hond *moet* eten hebben.

[99] De hond *moet* doen wat de baas wil en niet omgekeerd.

[100] *Moeten* jullie ook koffie hebben?

Examples [97] and [98] both denote a kind of (1) necessity: in [97] that it is necessary to do a lot of work before the book is done, in [98] the dog needs to be fed. Example [99] expresses that the dog has the (2) obligation to do what its boss wants, and not the other way around. Finally, in example [100], someone asks whether his or her, for example, guests would (3) like to have some coffee.

### 2.5.5.2 **Moeten: modal sense**

By using *moeten*, the speaker indicates that the proposition, based on previously gained knowledge or facts, is imperatively possible. Consider the following examples.

[101] De klant *moet* niet genoeg geld hebben gehad om te kunnen betalen.

[102] Dat *moet* een pittig gesprek zijn geweest.

In these examples, the speaker expresses strong certainty about the proposition based on knowledge that was previously acquired or can possibly be logically deduced.

### 2.5.6 **Hoeven**

In the following two sections I will discuss the use of *hoeven* in its non-modal and modal sense based on the work of Haeseryn (1997).

#### 2.5.6.1 **Hoeven: non-modal sense**

Haeseryn (1997) does not discuss *hoeven* in its non-modal sense separately; instead he contrasts it with *moeten* in sentences with a ‘negative element’. He specifies that in certain language elements containing something negative, both *hoeven* and *moeten* can occur although they do have different functions. He believes that the usage of *hoeven* and *moeten* is complicated and therefore difficult to describe clearly and comprehensively. Despite the fact that Haeseryn (1997) does provide several reasons why their usage is complicated, these are not relevant for this thesis and will not be further discussed here. However, I will provide a brief summary with some examples because this construction might be found within the corpus used for this thesis.

In general, *niet hoeven* indicates that something is not necessary or desirable and *niet moeten* indicates that the not happening of something is necessary or desirable. Consider examples [103] and [104].

[103] Je *hoeft niet* naar hem te luisteren.

[104] Je *moet niet* naar hem luisteren.

In example [103], *hoeft niet* means that it is not necessary/desirable that you listen to him. Conversely, in example [104], *moet niet* means that it is necessary/desirable that you do not listen to him (Haeseryn, 1997).

### 2.5.6.2 Hoeven: modal sense

In his *Algemene Nederlandse Spraakkunst*, Haeseryn (1997) states that the auxiliary *hoeven* is only used combined with a negation instead of negated *moeten*. He compares the following examples (p. 997):

[105] Ze moet in haar jeugd heel mooi geweest zijn, daarom *hoeft* ze dat nu niet meer te zijn.

[106] Moeder is een uur te laat, maar daarom *hoeft* ze onderweg nog geen oponthoud gehad te hebben.

He asserts that the speakers of these utterances do not feel a sense of imperative necessity. In other words, they see no immediate reason why in [105] the subject still has to be beautiful, and in [106] the subject should have suffered any delay.

### 2.5.7 Mogen

In the following two sections I will discuss the use of *mogen* in its non-modal and modal sense based on the work of Haeseryn (1997).

#### 2.5.7.1 Mogen: non-modal sense

In order to explain that *mogen*, in its non-modal sense, expresses (1) permission; (2) obligation or duty; (3) logical deduction; and (4) ability, Haeseryn (1997) uses the following examples (p. 1003):

[107] Je *mag* hier niet roken.

[108] U *mag* even uw bovenkleden uitdoen.

[109] Ze *mochten* hier wel eens een raam openzetten!

[110] Hij *mag* blij zijn dat hij er levend afgekomen is.

[111] Jullie *mogen* wel eens opschieten, het is al laat.

[112] We *mogen* aannemen dat het waar is.

[113] Wie *mag* ik helpen? (spoken in, for example, a store)

Haeseryn (1997) specifies that especially within conversations between doctors/nurses and patients, *mag* is used to express (1) permission as shown in examples [107] and [108]. Yet, he

adds, this is only seeming permission as it is actually a way of requesting certain behavior from the addressee, for this consider especially example [108]. In example [109], the speaker expresses that, for example the owners of the building, have the (2) obligation to open a window, probably due to an uncomfortable heat or smell. Furthermore, obligation, or duty, is expressed in examples [110] and [111]. Example [112] denotes a (3) logical deduction based on previously acquired knowledge by the speaker. Example [113], spoken in a store, indicates the (4) ability of helping someone with their purchase.

Haeseryn (1997) further adds that the subjunctive form *moge* is used to express wish or politeness, consider example [114].

[114] Ik *moge* u verzoeken deze brief per omgaande te beantwoorden.

### 2.5.7.2 Mogen: modal sense

Haeseryn (1997) states that first of all, modal *mogen* has a concessive function; the speaker indicates that he or she admits the content of the clause containing *mogen*, but not without a quid pro quo. He provides the following examples (p. 989):

[115] Hij *mag* dan intelligent zijn, ijverig is hij niet.

[116] Ze *mag* dan hard gewerkt hebben, de resultaten zijn er niet naar.

Furthermore, in conditional subclauses, *mocht(en)* is used to indicate that it is entirely uncertain whether the mentioned, in itself possible, event or state is or will become reality. Consider these examples provided by Haeseryn (1997, p. 990):

[117] *Mocht* ik toch verhinderd zijn, dan stuur ik nog wel een bericht.

[118] *Mocht* u meer informatie wensen, dan kunt u bellen met het kantoor.

This construction is relevant to this thesis because it is also used for conditions, or conditional obligations, that could possibly be fulfilled in the future. Consider the following example:

[119] *Mochten* er nog opmerkingen zijn, dan dienen deze op 15 juni aanstaande gemeld te zijn bij de verkoopmakelaar.

However, Haeseryn (1997) points out that in statements containing an imperative condition, *als* should be used. Compare examples [120] and [121]:



[120] \**Mocht* hij in het vervolg zijn werk correct uitvoeren, dan wordt hij niet ontslagen.

[121] *Als* hij in het vervolg zijn werk correct uitvoert, wordt hij niet ontslagen.

*Als* can, in this case, be also replaced by the more formal *mits*:

[122] *Mits* hij in het vervolg zijn werk correct uitvoert, wordt hij niet ontslagen.

From the above cannot be deduced that it is possible to indicate exactly to which sentences this does and does not apply. Haeseryn (1997) claims that some sentences may seem to contain an imperative condition whereas it is actually an assumption.

## 2.5.8 Willen

In the following two sections I will discuss the use of *willen* in its non-modal and modal sense based on the work of Haeseryn (1997).

### 2.5.8.1 Willen: non-modal sense

Haeseryn (1997) describes that non-modal *willen* can be used to express (1) wish, (2) believed ability, (3) suggestion, and (4) request. To provide insight, he uses the following examples (p. 1004):

[123] Wij *willen* hier graag blijven wonen.

[124] Waar *wil* hij zo veel geld vandaan halen?

[125] *Wil* ik de deur even openmaken?

[126] *Wil* je het raam even openzetten?

In example [123], the subject expresses the (1) wish to remain living in the same house. In example [124], the speaker wonders about the (2) believed ability of the direct object in acquiring a certain amount of money. The speaker in example [125] (3) suggests opening the door, and the speaker in example [126] (4) requests for a window to be opened.

### 2.5.8.2 Willen: modal sense.

In its modal sense, *willen* can express that the proposition is sometimes actualized. In these cases, *willen* is often combined with (*nog*) *wel eens* (Haeseryn, 1997) Consider the following examples:

[127] Laat het maar weken in lauw water, dat *wil* nog wel eens helpen.

[128] Hij moet om negen uur op zijn werk zijn, maar het *wil* wel eens kwart voor tien worden.

In subclauses, *willen* can indicate that something will only be actualized based on a certain condition or under certain circumstances. Haeseryn (1997) provides the following examples:

[129] Het moet erg meelopen, *wil* hij door zijn examen komen.

[130] *Willen* we nog op tijd komen, dan moeten we ons haasten.

In example [129], the speaker feels that things should be easy in order for him to pass his exams. In example [130], the speaker feels haste is in order if they want to arrive in time. This construction may prove relevant to this thesis because contracts inherently include conditional clauses.

### 2.5.9 (Be)horen, dienen

Haeseryn (1997) does not provide a distinction between the use of *(be)horen* and *dienen* in modal and non-modal sense. However, he does explain that the auxiliaries *(be)horen* and *dienen* greatly resemble *moeten* in a non-modal sense. He states that *(be)horen* means “verplicht zijn volgens bepaalde morele normen (zoals de spreker of schrijver die ziet)”, and that *dienen* means “onder meer verplicht zijn” and can be considered a more polite variant of *moeten*, often used in official practice (p. 1010). Consider examples [131], [132], and [133].

[131] Men *behoort* zich voor te stellen wanneer men in een onbekend gezelschap verschijnt.

[132] Bezoekers *dienen* zich te melden bij de portier.

[133] De giro-overschrijving dient vóór 1 mei in ons bezit te zijn.

It is important to note that, when norms or politeness do not play a role due to, for example, inevitable necessity, *(be)horen* and *dienen* cannot be used and must be replaced by *moeten*.

### 2.5.10 Conclusion: futurity and modality in Dutch

Similar to my conclusion about futurity and modality in English, I believe that, in Dutch, the future also contains both epistemic and metaphysical dimensions. However, as Haeseryn

(1997) points out that the most frequent construction to refer to the future in Dutch is that of the *presens* combined with an adverb of future time, it seems that modality plays less of a role in expressing futurity in Dutch. It would be fortunate if modality did in fact play a minor role, for the polysemic nature of Dutch modals, in other words the division between modal and non-modal sense, often leads to ambiguity about the semantic meaning.

## 2.6 Legal Futurity

There is a big difference between the way in which linguists and lawyers look at grammar. Adams (2007) illustrates this difference this by comparing the way linguists prescribe the use of *shall* to the ways in which *shall* is used in legal writing. In his article, which was published in the *New York Law Journal*, he starts by explaining that *shall* is a modal auxiliary verb which used to be a full verb like *eat*, *walk* and *play*. As a full verb, *shall* and *will* are used to convey obligation or compulsion, however, nowadays it is only used as an auxiliary. Because obligations and intentions concern future conduct, and because there is no future tense in English, *shall* and *will* also came to be used with future time. Because *shall* and *will* now expressed both modal meanings and future time, the British developed a rule to distinguish these two uses: “to express future time, use *shall* when in the first person and *will* when in the second or third person, and do the reverse to convey modal meanings”(Adams, 2007, p.1). The former existence of this rule is also described in Garner’s *Dictionary of Legal Usage* (2013). Despite the fact that this rule and its exceptions have largely been abandoned, *shall* continues to serve as the principal means of expressing obligations in the stylized context of the language of contracts.

The main problem is that contract drafters use *shall* to do more than express obligations and therefore overuse this verb (Adams, 2007). Consequently, this overuse of *shall* plays a large role in distancing contract language from standard English, thereby making it harder to read. Garner (2011) describes that, during the 1970s, a number of legal arbiters started addressing the problem that the language used in contract drafting by legal writers is often so complicated that one may feel that “draftsmen sometimes aim deliberately at obscurity”(p. 678). This discourse lead to the Plain-Language movement; a revolutionary body of lawyers, government workers, educators, and legal writers marching under the banner of clarity preaching straightforwardness and simplification. As a result of the Plain-Language movement, most American states have passed some type of Plain-Language legislation and lawyers in many English-speaking jurisdictions have formed commissions and committees to

promote plain language (Garner, 2011). Next to works devoted to the simplification of legal writing there are also many legal writers, for example Adams (2013) and Garner (2011), who have made an effort to create manuals and guidelines for clear and concise legal language.

Because there is such an abundance of studies and works dedicated to the topic of Legal English, one would expect something similar to have come into existence regarding Legal Dutch. Astonishingly, little to nothing can be found on the topic. Therefore the final section of this theory and background chapter will solely be devoted to providing insight in what has been written about futurity and modality in Legal American English. I will base this discussion on the works of Adams (2013) and Garner (2011), both American lawyers and legal writers.

## **2.7 Futurity in Legal American English**

Adams (2013) states that contracts are mostly written in the present tense for they express actions that are accomplished by means of the signing of a contract, which he calls the language of performance. However, as contracts often include intentions and obligations that concern future conduct, part of them will have to be written using constructions that indicate future time.

Whereas neither Garner nor Adams seem to be concerned with categorizing the auxiliaries and constructions under epistemic, dynamic or deontic modality, they each have their own manner of categorizing verbs and their meanings. For example, Garner (2011) suggests using a consistent glossary “restricting the vocabulary by which one sets forth duties, rights, prohibitions, and entitlements” (p. 954)” Adams (2013) prefers to look at the type of language, for example, the language of performance, obligation and intention. Garner’s and Adam’s views on each of the constructions will be discussed below, with the overuse of *shall* and their possible solutions occupying the bulk of this section.

### **2.7.1 Simple present**

Adams (2013) states that most contracts use present tense to express language of performance, in other words, the actions that will be accomplished by means of signing the contract. Consider example [134].

[134] Shell hereby purchases the assets from Engie.

He also discusses instances in which the present tense should explicitly not be used. One of these instances involves expressing obligations. He describes how a model construction contract once recommended that “you use the present tense to express obligations” (p. 161). He states that, in standard English, expressing obligations is not one of the functions of the present tense used with the third person. In order to express obligations, he suggests using *shall* instead. The use of *shall* will be discussed in the following section.

### 2.7.2 Shall

Over the past decade, the overuse of *shall* has been a topic of great discussion among several legal writers. The main reason for this discussion is that *shall* is overused and therefore does not seem to carry consistent meaning. Not only do contract drafters use *shall* to express future time, it also creeps into contexts that have nothing to do with expressing obligations or future time. Adams (2007) writes that “it sometimes seems as if drafters suspect that a contract provision won’t be enforceable unless it features *shall*” (p. 1). In order to provide insight into this problem, Garner (2011) provides a list of the meanings including supporting examples (p. 952):

1. *Shall* can impose a duty on the subject of the sentence. This is the most traditional and correct use of the term, and according to Garner, “the one that most drafters think they’re using most of the time” (2011, p. 952). Consider the following example.  
[135] The court *shall* enter an order directing the county clerk to issue a tax deed.
2. *Shall* can impose a duty on an unnamed person, but not on the subject of the sentence.  
[136] Service *shall* be made, whenever possible, upon the more responsible officers.
3. *Shall* can give, or in combination with *not*, deny, permission. In this problematic sense, *shall* is equivalent to *may*, and often appears in the statutory phrase ‘No permission shall’.  
[137] Such time *shall* not be further extended except for cause shown.
4. *Shall* can act as a future-tense modal verb. In the following example, however, the reading might also confusingly suggest that the sender has a duty.  
[137] The sender *shall* have fully complied with the requirement to send notice when the sender obtains electronic confirmation that the transmission has been received.

5. In the following example, *shall* seems to impose a duty on the debtor but actually imposes it on an unnamed actor:  
[139] The debtor *shall* be brought forthwith before the court that issued the order.
6. In the following example, *shall* expresses conditional duty: a party that wants to object must file and serve the objections.  
[140] Any objection to the proposed modification *shall* be filed and served on the debtor.
7. *Shall* is used to express entitlement instead of duty.  
[141] The prevailing party *shall* be reimbursed by the other for all reasonable costs.
8. In the following example Garner (2011) provides, *shall* even shifts its meaning midsentence from ‘false-future’ to a true future meaning, better replaced by *will*. Furthermore, Garner feels that both instances should be replaced by the present simple.  
[142] If any person *shall* curse or abuse anyone, or use vulgar, profane, or threatening or indecent language over any telephone in this state, he *shall* be guilty of a misdemeanour.

Based on the list of examples above, it can be stated that *shall* is used in contexts that have nothing to do with expressing obligations or future time. Garner (2011) suggests that one solution to the problem that *shall* poses is to restrict it to one sense. This solution, which is called the “American rule” (Garner, 2011, p. 952), is used by careful American drafters who use *shall* only to mean “has a duty to”. Another solution, also suggested by Garner (2011), is the “ABC rule” (p.953), so called because it was strongly advocated by certain Australian, British, and Canadian drafters in the late 1980s. The ABC rule holds that legal drafters cannot use *shall* under any circumstance because it is felt that lawyers are not trainable on the subject of *shall*. The latter rule, and solution, has fast been gaining ground in the United States, which shows that the view of omitting *shall* in its entirety has much to be said for it (Garner, 2011). However, Adams (2013) does not agree and, as mentioned before in this section, suggests using *shall* for contract obligations, specifically to impose an obligation on the subject of the sentence. Consider the following example:

[143] Engie *shall* purchase the shares from Shell.

In order to make sure whether *shall* is used correctly, he introduces the “has a duty to” test. He states that this test provides a simple way to ensure that *shall* is not used for any other purpose. This test can be illustrated by means of the following example.

[144] Engie *shall* promptly repay the deposit.

In this example, the provision still makes sense if you were to replace *shall* with *has a duty to*. The test also shows that, in the following example, *shall* is inappropriate.

[145] The parties *shall* settle by arbitration administered by a third party.

In this example, *shall* cannot be replaced with “has a duty to” because it does not make sense to impose an obligation on the parties to arbitrate all disputes. The manner in which the sentence would have to be rewritten to be correct involves, what Adams (2013) calls, “the language of discretion” and is beyond the scope of this section. Section 2.7.5 will deal with this “language of discretion” expressed by *may*.

### 2.7.3 Must

In order to impose an obligation on the subject of a sentence, Adams (2013) suggests *must* as an alternative to *shall*. However, he adds, this is not an ideal solution to the problem of the overuse of *shall* for this would involve *must* being used to convey different meanings. First of all, *must* would be used to express any obligation, whether it’s imposed on the subject of a sentence [146] or on someone else [147].

[146] The company *must* reimburse the Consultant for all authorized expenses.

[147] The closing *must* take place at Engie’s offices.

Secondly, *must* would also be used to express conditions. Compare example [148] and [149].

[148] To be reimbursed, the customer *shall* return the products within 90 days.

[149] To be reimbursed, the customer *must* return the products within 90 days.

With its use of *shall*, [148] is phrased as an obligation. If a court were to treat it as an obligation, failure by the customer to timely return the products would represent a breach by the customer. If, on the other hand, this provision were expressed as a condition, the customer would not be entitled to reimbursement unless he or she timely returned the products.

Furthermore, many drafters consider *must* inappropriately bossy. Garner (2011) endorses the use of *will* instead of *must* in private drafting for the word may strike the wrong tone when the parties to a contract know each other. In contrast, Adams (2011) does not understand why one should let the word they use to express obligations depend on how well-known the parties are and, when expressing obligation, considers *must* the better option. In the following section, I will, among others, discuss why Garner (2011) endorses *will* and how Adams feels about this.

#### 2.7.4 Will

According to Adams (2007, 2011, 2013) and Garner (2011), *will* can be used to (1) indicate future performance, (2) express future contingency, (3) express obligation when the parties are well-known, and (4) to express one's own client's obligations in an adhesion contract. Yet, the fact that *will* can express multiple meanings is rather inconsistent with the idea that a word ought to bear a consistent meaning within a drafted document. Below, I will discuss each of these four meanings by comparing the views of Garner (2011) and Adams (2008, 2011, 2013).

As to the first function of *will* as mentioned above, Adams (2013) states that if one is looking to state the consequences of entry into a contract or issuance of a document at some point in the future, one would think that they could use the language of performance (see section 2.7.1) combined with *will* and *thereby* instead of *hereby*. But according to Adams, however, that is not how language of performance works in standard English. He states that, instead, *will be deemed* should be used to indicate future performance. Consider example [150]

[150] Any notice given by personal or courier delivery *will be deemed* given on delivery.

Adams (2013) claims that, in contracts, *deem* means to “treat a thing as that which it is not or might not be, or as possessing certain qualities that it does not or might not possess” (p. 267). In other words, it is used to create legal fiction. And as the future has not become reality yet, one could refer to the legal future as being legal fiction as well.

The second function of *will* is, according to Garner (2011), to express future contingency and similar to the first as both meanings involve futurity. However, the difference is that the second function involves a form of conditionality which Garner (2011)



describes as: “there is some condition precedent to its (for example: the provision) taking effect” (p. 927). Consider example [151].

[151] If Maarten ceases to be employed by Engie, the option *will* terminate.

He further adds that this circumstance is not common, since he feels that “the best drafting should generally be in the present, not the future, tense” (p. 954). Adams (2013) disagrees with this and states that, in conditional clauses, if “the verb in a matrix clause would be in the present tense”, as in example [151] above, *will* should be used.

About using *will* instead of *must* to express future obligation, Garner (2011) states that *must* may strike the wrong tone particularly when both parties to a contract are known quantities. He states that using *will* “is probably the best solution here” (p. 954). Consider the following example:

[152] Engie *will* follow the rules and regulations as imposed by the government.

Adams (2013) believes Garner’s assessments to be “puzzling in three respects” (p.47). First, he does not understand why the word you use to express obligations with should depend on how well-known the parties are. Second, he feels it suggests that varying the word used to express an obligation depending on whether the obligation is imposed on the drafter’s client or another party is “a novel, and unlikely, distinction” (p. 47). Third, he states that the suggestion that *will* is “probably the best solution” (Garner, 2011, p. 954) is “oddly wishy-washy” (Adams, 2013, p.47).

Finally, Garner (2011) adds another meaning of *will* to the list. He claims that, in an adhesion contract, *must* is entirely appropriate for the “party lacking the bargaining power” (p. 954). However, for the party that has this “bargaining power”, for example a landlord, *will* is more appropriate. Garner (2011) demonstrates that the form of such a contract could read as follows:

[153] *You must ... You must ... We will... We will... We will...*

Adams (2008) does not agree with this and states that *will* should only be used in language of policy relating to a contingent future event.

### 2.7.5 May

Garner (2011) points out that *may* means “has discretion to; is permitted to” (p. 954). Adams (2013) agrees with this but adds that, when used in an active construction, *may* means “has discretion to”, “is permitted to”, or “is authorized to, for this see example [154]. In a passive construction, *may* can also be used to express permission, in which case “the one or more parties that have permission are represented by a *by-agent* or are absent” (p. 59), for this see example [155].

[154] The indemnified party *may* at its expense retain separate co-counsel.

[155] The option *may* be exercised by Engie any time before January 1, 2018.

Thus, *may* used as language of discretion states that a party has the discretion to take or not take a specified action.

#### 2.7.5.1 Must not/May not

In addition, Garner (2011) states that *must not* and *may not* are nearly synonymous; *must not* means ‘is required not to’ and *may not* means ‘is not permitted to’. He adds that, for those following the ABC rule, the phrase *must not* is usually the more appropriate wording. Furthermore, he claims that some drafters avoid the use of *may not* for it can sometimes be ambiguous – it can mean either ‘is permitted to’ or ‘might not’. Compare the following example.

[156] This office *may not* consider applications received after April 30.

According to Garner (2011), the two possible interpretations for his example above are that (1) the office has discretion whether to consider applications received after April 30 or (2) some rule or regulations prohibits the office from doing so.

### 2.7.6 Is entitled to

As a second and non-modal vehicle of discretion, Garner (2011) suggests using *is entitled to* as the wording for expressing an entitlement. Adams (2013) adds that this phrase should be used with a complement clause in the active voice. Garner (2011) states that *is entitled to* means ‘has a right to’, as can be noted from example [157].

[157] Shell *is entitled to* serve on Engie’s board of directors.

### **2.7.7 Conclusion**

In contrast to standard English and Dutch, Garner (2011) and Adams (2013) seem to believe that modality plays little to no role in Legal English. If this were the case, this would be fortunate because trying to restrict usage to one sense only has already proven difficult enough as it is. As Garner and Adams seem to agree on one topic but then disagree on another, it would be interesting to see how contract drafters actually use drafting language in 'the real world'. The expectation is that further analysis of the corpus will show that modality does play a role in Legal English and that Garner and Adam's views are incorrect. The schematic overview, including my findings on Legal English, can be found in the appendices.

### **2.8 Schematic overview**

To conclude this section on futurity and before moving on to the analysis, table 1 in die Appendices provides a schematic overview of my findings on futurity and modality in Standard English, Standard Dutch, and Legal English.

## Chapter 3 Analysis and discussion

### Introduction

The aim of this analysis is to discover whether futurity exists in the English and Dutch corpus and, if it does, how it is expressed. Sections 3.1 to 3.3 focus on the analysis of the English corpus and sections 3.4 to 3.6 focus on the analysis of the Dutch corpus. Conclusions drawn from the analysis can be found in the following chapter, namely chapter 4.

### 3.1 Introduction to the analysis of the English corpus

According to the literature discussed in chapter two, English has a number of ways of referring to future time, also called *futurate constructions* (Rodney Huddleston, 1977). The first three of these ways that will be discussed are the commonly used grammatical constructions which employ the simple present, the present progressive, and idiomatic *be going to*. However, as mentioned in chapter 1, neither Wordsmith nor Microsoft Office is able to find, count or highlight all the occurrences of the simple present. Therefore, I have chosen to provide insight into the relationship between futurity and the simple present within the corpus through a number of examples in which the simple present selects or permits a future time interpretation. The discussion of these examples can be found in section 3.1.1.1. As expected, no instances of the present progressive or idiomatic *be going to* were found within the English corpus. As was pointed out earlier in chapter 2, this lack can be explained in that both the present progressive and idiomatic *be going to* are not typical of the formal writing style which contract drafters usually adhere to.

Table 3.1 Tokens modal verbs in corpus.

Shall	296
May	125
Will	112
Must	18
Can	6
Might	4

Table 3.1 above shows the token count of the core modal verbs in the English corpus according to the concordance listing of Wordsmith. The verbs have been ordered according to their frequency in the corpus. In chapter two, it was discussed that only *will* and *shall* are used to indicate futurity. Moreover, the Legal English literature prescribes that, of the core modal verbs, only *will* should be used to indicate futurity and that its use should be limited to only expressing future contingencies. However, the analysis of what was expressed by each individual token within the corpus revealed that not only *shall* and *will* were used to express futurity, but that *may*, *can*, and *must* also seem capable of expressing a degree of futurity. Examples of this use and the interpretations can be found in sections 3.2.2.1 to 3.2.2.3, and in section 3.3.1.

### **3.2 Futurity in the English corpus**

In this section, I will analyse the different types of futurity that were found within the English corpus. More specifically, this section focuses on the constructions which seem to select or permit a future time interpretation without carrying any additional meaning, in other words pure futurity. However, as Huddleston and Pullum (2002) argue, futurity and epistemic modality overlap when certain modal verbs are used to indicate a prediction or an assumption about the future. Therefore, this section includes not only constructions with the simple present but also epistemic constructions with modal verbs.

#### **3.2.1 Futurate constructions with the simple present**

In chapter two, it was discussed that the simple present is a common way of expressing futurity in English. Furthermore, Garner (2011, p. 952) states that “good drafting generally ought to be in the present tense, not the future” and his statement is supported by Adams (2013). This notion essentially means that a well-written contract describes the agreements parties have reached and which become legally binding, in other words present tense, as soon as the contract is signed. At the start of this research paper it was therefore expected that most of the agreements presented in the contracts in the corpus were presented in the simple present. Moreover, it was expected that the agreements reached starting now and continuing into the future would be written down by means of a combination of a simple present and a specific date; a construction which could be considered one of the purest forms of futurity, because it does not or hardly carry any additional meaning and, furthermore, because any ambiguity is resolved since there is a specific reference to future time. Examples satisfying these expectations can be found in the first sentence of most of the contracts included in the

corpus. Consider example [158] which was be found in the Real estate purchase agreement and which includes a simple present passive construction:

[158] This Real Estate Purchase and Sale Agreement and Joint Escrow Instructions (the “Agreement”\_) *is made* as of \_\_\_\_, 20 \_\_\_\_, by and between \_\_\_\_ (“Seller”) and \_\_\_\_, a \_\_\_\_ (“Buyer”).

Another example of a simple present passive which could be considered an absolute certainty can be found in the Artist Agent Agreement:

[159] **THIS ARTIST AGENT AGREEMENT** *is made* and executed on this the ...  
(Date) Day of ... (Month), .... (Year) by and between (...).

The purpose of examples [158] and [159] is to clarify that all the statements and agreements made after this opening statement become legally binding upon signing the contract.

Furthermore, these results are dependable because of the fact that example [158] and [159] were one of the many examples that were found within the English corpus.

### 3.2.2 Futurate constructions with modal verbs

Despite the fact that Garner (2011) and Adams (2013) prescribe that agreements in contract drafting should be in the present tense, many examples can be found in the corpus that appear to express pure futurity or epistemic modality by means of modal verbs. Surprisingly, such agreements created with these modal constructions seem to carry little to no modal meaning. It is debatable whether the modal verbs used in these examples are as unambiguous as would be desired within contract language. Therefore, each example in this section includes a brief analysis of what the verbs express and if any ambiguity is indeed present, an alternative solution will be provided in an attempt to resolve such ambiguity. I will start by discussing *shall* and *will* as these modal verbs (1) provide two common means of referring to future time within everyday English, and (2) because Garner (2011) points out that the inconsistent use of *shall* is most problematic. Notably, another modal verb was found referring to the future within this corpus, namely *may*. The unexpected and possibly inappropriate occurrences of this modal verb will be discussed at the end of this section. Furthermore, all sections start by discussing and exemplifying the proposed correct usages of these four modal verbs, followed by a discussion of a number of the incorrect uses throughout the English corpus.

### 3.2.2.1 Futurate constructions with shall

As can be noted from table 3.1, the modal verb *shall* is the most encountered modal verb within the English corpus. From section 2.3.3.4 it can be concluded that *shall* is commonly used to refer to the future in Standard English in a formal style. However, the proposed correct usage of *shall* within Legal English is when it is used to impose a formal duty on a party, as in example [160] which was taken from the Contract of Employment.

[160] i. the Employee *shall* give the Employer [Number of weeks or months] notice of his/her intention to terminate this employment.

In this example, *shall* describes that the Employee has a duty to provide timely notice and this sentence could therefore be paraphrased by *the Employee has a duty to give the Employer(...)*. The manner in which *shall* is used in this example is the use of *shall* that is recommended by Garner (2011) when it comes to drafting contracts. In line with Garner's predictions, the usage of *shall* has far from been restricted to convey this meaning alone. Throughout the English corpus, numerous examples can be found in which multiple meanings of *shall* are used within one contract. Moreover, there are even examples where multiple meanings can be found within the same paragraph. These multiple uses undeniably lead to both small and large degrees of ambiguity.

The following examples of *shall* found in the corpus all express a degree of futurity and it is therefore arguable that they should be replaced with an alternative solution to avoid ambiguity. Consider example [161], which was taken from the Real Estate Purchase Agreement.

[161] 4. **Buyer's Access To Property Before Closing.** Buyer *shall have* the right to enter upon the Property between the date of this Agreement and the Closing Date (as defined below) only in accordance with all of the following terms and conditions:

The situation in this example [161] neither includes duty nor is it a *potentialis*; a situation which may happen at some point in the future. Presumably, the drafter wanted to denote the buying party's right to enter upon the property immediately after the signing of the agreement. Therefore, the statement could be made factual by removing *shall* and using *has* as the finite verb: *Buyer has the right enter upon the Property (...)*. After all, no clear modal meaning is referred to in sentence [161].

The second example [162] taken from the Real Estate purchase agreement also has an epistemic interpretation but the actualisation of this situation seems to be somewhat less certain than in example [161]. A possible reason for this lack of certainty could be that the actualisation of the situation described takes place at a point further in the future. Consider example [162].

[162] 3. **Contingency** Buyer *shall have* until 4:00 p.m., \_\_\_ Time, on the date thirty (30) days after the date of this Agreement (the “Feasibility Period”) within which to inspect the Property and review the documents described in Section 4(c) herein to determine the Property’s suitability for Buyer’s intended use and to investigate all other aspects of this transaction, including any financing Buyer may seek to obtain.

Similar to example [161], example [162] neither includes duty nor is it a potentialis. The point at which the Buyer no longer has the right to inspect the property and review the documents is very specifically described. Due to this very specific description there seems to be no modal situation at all and it should thus be better presented as a factual, unmodalised statement by removing *shall* and replacing *have* with *has* as the finite verb: *Buyer has until 4:00 p.m. (...)*

### 3.2.2.2 Futurate constructions with will

Within Standard English, *shall* and *will* accomplish similar tasks when referring to future time, for reference see section 2.4.3. Within Legal English, however, these two modal verbs each serve a different purpose and the latter verb is discussed in this section. Garner (2011) discusses three possible meanings of *will* in his *Dictionary of Legal Usage*, namely that (1) it may denote an obligation between two parties that view themselves as equals, (2) that it may express “one’s own client’s obligations in an adhesion contract”, and (3) that it may be used “as to express a future contingency” (p. 954). Despite the fact that Garner considers this third option rare and undesirable since he prefers contracts drafted in the present tense, corpus analysis shows that *will* is actually very commonly used to indicate conditionality, futurity, and in some cases even permission or obligation. The purpose of Garner’s third option is the most relevant one for this paper because, regardless of Garner’s preference for the present tense, a certain degree of epistemicity is inevitable in conditionality. An example of the correlation between conditionality and epistemicity can be found in the Independent Contractor Agreement. Consider example [163].



[163] If the U.S. Government imposes a fine or penalty upon Foundation due to IC's failure to notify the Foundation as described above, IC *will* indemnify and hold Foundation harmless from any resulting fines and penalties from such omission.

It can be argued that the first half of this hypothetical proposition, or protasis, is not factual. The protasis implies that the imposition of a fine or penalty is possible but, of course, by no means certain and, as a result, the logical consequence, in other words apodosis, must also reflect this improbability as expressed by *will*. If we removed *will* and instead used the simple present *indemnifies*, both the protasis and the apodosis would become semantically and grammatically factual. This alteration would result in a semantically ungrammatical sentence for IC's failure of notification is purely conditional and its possible factuality relies upon events that may occur in the future. Therefore, it can be concluded that there is a clear correlation between conditionality and epistemicity. For the purpose of this analysis we shall therefore consider the use of *will* in relation to conditionality and epistemicity, or futurity, to be the correct one. In the following paragraphs I will provide an analysis of examples which, upon first glance, seem to denote futurity but which actually refer to, for example, obligation or permission.

The first example [164] taken from the Real Estate Purchase agreement contains three modal verbs. Consider the following example:

[164] On or before the date the Feasibility Period, as defined below, *will* expire, an additional \_\_\_ Dollars (\$\_\_\_) (the "Additional Earnest Money") *shall* be deposited into escrow.] Once the Feasibility Period (as defined below) has expired, the Earnest Money (3)*will* be non-refundable except in the event of Seller's default hereunder.

The first occurrence, namely *will expire*, is used to express that a certain extent of time will expire at a defined date in the future. In this case, it seems that the drafter has used *will* in order to express something that is actually a factual statement, in other words an absolute certainty about the future. A solution based on the proposed correct usage of *will* would be to rephrase this sentence as follows: *On or before the date the Feasibility Period, as defined below, expires, an additional (...)*. In this case, the simple present *expires* allows for a more appropriate factual representation of the situation.

The second odd occurrence of a modal verb in example [164] is the use of *shall* to express that a specific sum of money must be deposited into an escrow before a defined date in the future. First of all, because this sentence also represents a factual situation there is no room for the epistemic modality expressed by *shall* in this example. As discussed in section 2.7.2, *shall* can only impose an obligation on the subject of a sentence, more specifically on a legal entity, otherwise *must* is more appropriate. Therefore *shall* would be best replaced by *must*; a solution which is based on the discussion in section 2.7.3.

The sentence including the third instance within this example, namely *will be*, is grammatically highly ambiguous. The first clause within this sentence is semantically represented as factual: The Feasibility Period expires on a set date. The first part of the second clause could be interpreted as being the logical consequence to the first clause, due to the use of *will*, rendering the second clause the apodosis. However, the first clause does not semantically contain any conditionality and could therefore never perform the role of protasis. The second part of the second clause within the sentence does describe an exception which could arguably be considered a condition; if the seller fails to fulfil any of his or her obligations under this agreement, the Earnest Money is refundable to the buyer. In this case, *will* seems to denote both futurity and conditionality whereas the meaning of the sentence is purely factual. It is open to question whether replacing *will be* with simple present *is* would make this sentence sufficiently unambiguous but rewriting the entire example is beyond the purpose of this analysis. In addition, example [164] is not only difficult to comprehend because of the drafter's choice of modal verbs but also because, within two sentences, *will* actually denotes two different meanings.

### 3.2.2.3 Futurate constructions with may

From section 2.4.6.1 it became clear that, in Standard English, *may* commonly expresses epistemic possibility. In such cases, *may* can be paraphrased by *it is possible that*. Furthermore, Carter and McCarthy (2006) state that *may* is used in formal written English to describe things which are likely to occur and which normally do occur. As expected, plenty examples of *may* expressing epistemic possibility can be found within the corpus. Consider example [165] which was taken from the Contract of Employment.

[165] This applies to any gifts or services offered directly or indirectly from any person firm or company with whom the Employer conducts business or *may* conduct business.

In example [165], *may* is used to predict that it is possible that the Employee will be offered gifts or services by customers, suppliers, distributors and other such persons having a similar connection with the Employer. Furthermore, *may* expresses a small degree of deontic meaning and as Garner (2011) states that *may* means “has discretion to; is permitted to” (p. 954), *may* indeed seems to be the most appropriate option in this case as it comprises of a mix between epistemicity and a small degree of deonticity.

### 3.3 Futurity and modality in the English corpus

In this section, I will look at occurrences for which it was difficult to determine whether they involved either futurity or modality, or possibly both. From chapter 2.4, it could be concluded that pure futurity is something that rarely exists since statements about the future always contain a certain degree of uncertainty which means they carry modal meaning. However, from the following examples it can be noted that futurity does not only often co-occur with epistemic modality but that it sometimes also occurs with deontic and dynamic modality. The focus of this section will be (1) on examples using *will* or *shall* but which have a dynamic or deontic reading and (2) on examples with other modal verbs that seem to have an epistemic reading.

#### 3.3.1 Dynamic and deontic readings of will/shall

Considering deontic modality, one of the many instances in which *will* is incorrectly used instead of *shall* when *shall* is used to express duty or obligation can be found in example [166], which was found in the confidentiality and nondisclosure agreement.

[166] Receiving Party agrees that at all times Receiving Party *will* hold in trust, keep confidential, and *will* not duplicate or copy, or otherwise make use of the Confidential Information, except as required to evaluate a possible investment or business relationship with Company.

In this example, the drafter has probably opted for *will* because, by means of this statement, the Receiving Party agrees to having the future duty of holding in trust, keeping confidential and not duplicating, copying or otherwise making use of Confidential Information. Even though this construction may not be confusing to the reader, replacing *will* by *shall* would contribute to the plain language movement and the objective that words should not carry more than one meaning within a legal context.

Another form of deontic modality expressed by *will*, namely permission, can be found in example [167] which was found in the Residential Term Lease Agreement.

[167] Tenant is entitled to quiet enjoyment of the premises. Tenant and guests or invitees **will** not use the premises or adjacent areas in such a way as to: (...).

In example [167], *will* is used to express that the tenant is not allowed to violate laws or cause disturbances in the future. In section 2.4.3.3, I pointed out that the deontic use of *will* is “a matter of implicature” and that *will* expressing deontic modality strongly relates to futurity for it expresses future obligations (Huddleston and Pullum, 2002, p. 194). However, considering Garner’s (2011) statement on which modal verb to use when expressing discretion and permission, the use of *will* is undesirable here. In order to improve the degree of clarity, *will* is probably best replaced by *may*. *May* indicates that the tenant does not have the permission to use the premises or adjacent areas in such a way as described below the example within the Residential Term Lease Agreement.

The last example containing *will* illustrates a situation in which *will* and *shall* could have an epistemic, deontic, and dynamic reading. Consider example [167], which was taken from the Real Estate Purchase Agreement.

[168] BUYER HAS NOT RELIED UPON AND **WILL** NOT RELY UPON, AND SELLER EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO, AND **SHALL** NOT HAVE LIABILITY FOR: (...).

In example [168], *will* has become a highly ambiguous choice in which multiple modal readings are possible. First, it has an epistemic reading because it expresses the meaning of prediction; in the future, the buyer is not going to rely upon, for example, the condition of the property. Second, *will* could also have a deontic reading for, by means of this clause, it is expressed that the buyer is not allowed to rely upon the condition of the property. Third, it is even possible to consider that *will* carries a small degree of dynamic meaning in the sense that it expresses the willingness or intention of the buyer not to rely upon the condition of the property. Furthermore, we have to consider the second modal verb within example [168], namely *shall*, which also seems to represent a factuality rather than an obligation. To solve this threefold ambiguity, this situation is probably better presented as a factual, unmodalised statement. A possible solution to the ambiguity in example [168] could be to turn it into a

factual statement by replacing the modal verbs with the simple present and rephrasing it as *BUYER DOES NOT RELY UPON, AND SELLER EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO, AND DOES NOT HAVE LIABILITY FOR: (...)*.

### 3.3.1 Other ambiguous readings involving epistemicity

The following examples include modal verbs such as *may*, *must* and *can* expressing a degree of epistemicity which, considering the literature discussed in chapter two, do not or rarely have an epistemic reading. For each example I will provide an analysis and a possible solution.

In the following example [169] which is in some ways similar to the example in section 3.2.2.3, *may* seems to express both epistemic and deontic modality. This example was found in the Residential Term Lease Agreement.

[169] The Landlord, any person managing the premises, and anyone designated by the Landlord are authorized to accept services or process and receive other notices and demands, which *may* be delivered to (...).

In this sentence, *may* seems to express both the permission to and the possibility of delivering notices and demands to a certain address. However, the agreement in this example defines (1) who is authorized to perform the actions described, in other words permission, and (2) the location the results of these actions have to be delivered to, in other words obligation or duty. The element of permission is already expressed by *are authorized to* which means that only the element of duty is left to be expressed by the modal verb following *which*. In order to express this duty, the sentence is best rephrased as *shall be delivered* because the degree of epistemicity caused by *may* only produces an unnecessary degree of uncertainty as to whether any notices or demands will be delivered at all.

In section 2.4.7, it was discussed that *must* can be used epistemically to express that the speaker has drawn a conclusion from things already known or observed. This epistemic *must* can also be found in the following example [170] which was taken from the Real Estate Purchase and Sale Agreement and Joint Escrow Instructions.

[170] A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR

AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM **MUST** HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The purpose of the section which includes the agreement in example [170] is that the Buyer buys the property on an “AS IS,” “WHERE IS” AND “WITH ALL FAULTS” BASIS. Yet, the particular clause in example [170] protects the Creditor from any unknown claims at the time of the settlement. In other words, *must* refers to a logical conclusion about what the creditor would have done had he or she known about these claims. However, the manner in which *must* is used within example [170] is not in line with Garner’s (2011) statement that *must* should only be used to impose an obligation on an inanimate subject of a sentence which is not a legal entity. A possible solution would be to replace *must* with *would*, a modal verb which neither Garner (2011) nor Adams (2013) has included in the list of modal verbs which should only express one meaning.

The following example [171] includes a modal verb which not normally used to carry epistemic meaning but in this case does express a degree of possibility. Consider the following example which was taken from the Artist/Agent agreement.

[171] The Agreement **can** be terminated by the Artist for Breach of any of the terms specified herein with a notice of \_\_\_ days prior to such termination.

In example [171], there is no single and clear interpretation of what is expressed by *can* and its meaning is therefore highly ambiguous. First of all, *can* could arguably express that the Artist has the (1) permission to terminate the agreement under certain circumstances, and (2) that there is a predicted possibility that the agreement be terminated under certain circumstances. Moreover, if we consider the literature discussed in section 2.4.5.1, *can* is used to express possibility in a neutral sense. In other words, it is used to express dynamic modality because it is used in statements about events and states which are true or which are usually the case. This means that, in example [171] *can* could be interpreted in an epistemic, deontic, and dynamic sense. Furthermore, the literature on Legal English has not restricted the use of *can* to conveying one specific meaning. Depending on the meaning intended, the ambiguity could be solved by replacing *can* with *may* if the drafter aimed to express permission. Replacing *can* with *will* would eliminate the Artist’s option of not terminating the agreement if any of the

terms specified in the contract were breached, which therefore makes it a less desirable solution.

### 3.4 Introduction to the analysis of the Dutch corpus

According to the literature discussed in section 2.6, Dutch also has a number of futurate constructions. The first two of these constructions that will be discussed are the commonly used grammatical constructions which employ the presens, and *gaan* + infinitive. However, as mentioned in chapter 1 and in section 3.1, neither Wordsmith nor Microsoft Office is able to find, count or highlight all the occurrences of the presens. Consequently, I have chosen to provide insight into the relationship between futurity and the presens within the Dutch corpus through a number of randomly selected examples in which the presens selects or permits a future time interpretation in section 3.5.1. The second futurate construction, namely *gaan* + infinitive, was also found within the Dutch corpus and a discussion of the relevant instances can be found in section 3.5.2.

Table 3.2 Tokens modal verbs in corpus.

Zullen (107)	Zullen	24
	Zal	83
	Zult	0
Kunnen (73)	Kunnen	24
	Kan	48
	Kunt	1
Dienen (38)	Dienen	0
	Dient	38
Moeten (12)	Moeten	6
	Moet	6
Mogen (11)	Mogen	6

	Mag	5
Willen (5)	Willen	4
	Wil	1
	Wilt	0
Hoeven (1)	Hoeven	0
	Hoeft	1

Table 3.2 above shows the token count of the core modal verbs in the Dutch corpus according to the concordance listing of Wordsmith. The verbs have been ordered according to their frequency in the corpus, categorized under their infinitives. It was pointed out in the literature chapter that, next to the previously noted futurate constructions, only the modal verb *zullen* is used to indicate futurity. However, the analysis of what was expressed by each individual core modal verb within the corpus revealed that not only *zullen* was used to express epistemicity, but that *kan* was also used to indicate future possibility. Furthermore it needs to be pointed out that, despite the fact that the Dutch literature does not draw distinctions between epistemic, deontic, and dynamic modality, I will attempt to analyse the occurrences within the corpus in such a fashion so that it is in line with what I did in section 3.2.

Another remarkable difference between the Dutch and English corpus can be found in the number of tokens representing the selected core modal verbs and their inflections. The English corpus contains 561 of the selected core modal verbs, whereas the Dutch corpus only has a total token count of 292. This difference gives rise to the expectation that less ambiguity will occur amongst the Dutch modal verbs used in the corpus. Another expectation is that Legal and Standard Dutch may be more closely related than Legal and Standard American English.

Due to the lack of studies and works dedicated to the topic of Legal Dutch, as noted in section 2.6, the analysis of the Dutch corpus can unfortunately not be as extensive as that of the English corpus. As a result, there is no advice on all the possible different meanings expressed by Dutch core modal verbs within a legal context. Another problem which makes the analysis of the Dutch corpus more difficult is that Dutch modals are inflected for persons



which means that it is harder to denote patterns in the use of certain modals. However, the purpose of this analysis was to prove that futurity exists within contract language and that it is not unequivocally expressed in Dutch contract language which, in turn, often leads to ambiguity. Consequently, the analysis below will attempt to discuss whether the modal verbs selecting or permitting a future time interpretation are, at the same time, used to express other meanings and therefore become ambiguous. If such ambiguity is indeed present, I will attempt to provide a solution based on the grammar of Standard Dutch as discussed in section 2.5.

### 3.5 Futurity in the Dutch corpus

In this section, I will analyse the different types of futurity that were found in the Dutch corpus. The approach of this analysis will be similar to the analysis of the English corpus in section 3.2, meaning that it will focus on instances of pure futurity. However, as futurity and epistemic modality overlap within English, it can be expected that similar situations can be found within Dutch. Therefore, this section includes not only constructions with the presens and *gaan* + infinitive, but also epistemic constructions with modal verbs.

#### 3.5.1 Futurate constructions with the presens

Similar to English, Dutch uses the presens to indicate future time but only when the context and/or situation indicate that the actualisation of the proposition will take place in the future (Haeseryn, 1997). Numerous examples of this construction were found in the Dutch corpus. The following example [172] was taken from the *Overeenkomst Aankoop Tablets, Laptops, Smartpc's*.

[172] Tijdig voor afloop van onderhavige overeenkomst *stelt* XXXX aan VRK op eerste verzoek alle relevante data met betrekking tot de uitgevoerde Opdracht digitaal beschikbaar.

In example [172], presens *stelt* is combined with a specific reference to future time, in this case in good time before the agreement expires. As a result, this statement does not carry any modal meaning and can be considered a factual statement about the future.

Another example of pure futurity can be found in the *Huurovereenkomst Woonruimte*. Consider example [173].

[173] Aan huurder *komt* huurbescherming toe vanaf aanvang huurovereenkomst.

Despite the fact that this statement in itself does not include a specific date, it does refer to one and is therefore typical of a futurate construction that carries no modal meaning. As expected, there is a large variety within the expression of futurity within contracts. Whereas some contracts make use of the presens + specific date construction, other contracts repeatedly use the modal verb *zal* to refer to the future. A further discussion of these results can be found in chapter 4.

### 3.5.2 Futurate constructions with *gaan* + infinitive

As discussed in chapter 2, Broekhuis (2012) claims that English *going to* + infinitive shares similarities with Dutch *gaan* + infinitive. Surprisingly, then, the English corpus did not include a single instance of *going to* + infinitive whereas the Dutch corpus included eight instances of *gaan* + infinitive and two instances of *gaat* + infinitive. However, not all instances of this construction are relevant to this paper. In section 2.5.3, it was pointed out that the verb *gaan* can be divided in two main types of which the subcategory indicating ‘what the infinitive expresses will take place in the future’ is most relevant (Haeseryn, 1997). As a result of this restriction, only three entries of both *gaan* and *gaat* + infinitive proved relevant to this research of which one example will be discussed below. Consider example [173] which was taken from the *Koopovereenkomst Woning*.

[173] Indien de onroerende zaak door overmacht voor het tijdstip van risico-overgang wordt beschadigd dan wel geheel of gedeeltelijk verloren *gaat, is* deze koopovereenkomst van rechtswege ontbonden, tenzij (...).

The agreement in example [173] describes a contingent event concerning possible damage to or loss of the property caused by force majeure. In this example, *gaat verloren* is part of the protasis and the apodosis is expressed by means of a presens. This resolutive condition releases the Buyer of his or her obligation to purchase the property. A further discussion of the presens used in apodoses can be found in section 3.5.3.1 below.

### 3.5.3 Futurate constructions with modal verbs

In section 3.4, it was stated that because the Dutch corpus contains a lower number of modal verbs in comparison to the English corpus, the probability of ambiguity in such modal verbs is therefore less in Dutch. Yet, it cannot be said with absolute certainty that this lower number also guarantees that any ambiguity in the interpretation of Dutch modal verbs will be absent. Therefore, section 3.5.3.1 includes an analysis of one of the examples in which the Dutch

modal verb *zullen* permits a future time interpretation while at the same time carrying little to no modal meaning. In contrast, section 3.6 focuses on the cases for which it was difficult to determine whether they involved either futurity or modality, or possibly both.

### 3.5.3.1 Futurate constructions with *zullen*

Undoubtedly, one of the most problematic modal verbs in the corpus is *zullen*. The fact that the use of *zullen* is far from restricted to one meaning was to be expected, as the literature discussed in chapter 2 pointed out that, within Standard Dutch, *zullen* is used to convey multiple meanings. Section 2.5.2 summarizes that *zullen* (1) has both temporal and modal qualities and that it can be difficult to distinguish between them, (2) is used to express obligation, and (3) is able to express that something is probable. Furthermore, *zullen* can be used (4) in a conditional apodosis when referring to a future contingency. Arguably, the manner in which *zullen* is used throughout the Dutch corpus is comparable to the manner in which *shall* is used within the English corpus. It seems that, whenever Dutch drafters are not sure of which verb to use, they opt for *zullen*. This section includes the examples in which *zullen* (1) selects or permits a future time interpretation and (2) is used in a conditional apodosis. In section 3.6, a discussion of the more ambiguous cases of *zullen* can be found which express a certain degree of futurity but also modality.

If we consider that, as prescribed by Legal English handbooks, the best drafting is done in the present tense, the use of *zullen* to refer to future time would be undesirable. Another reason why the use of *zullen* is undesirable is when the agreements express a factual rather than a modal situation. In short, despite the fact that the meaning of some of the following examples may seem clear, it appears that the best way of avoiding any possible ambiguity would be to use this verb in a manner that it only conveys one meaning. As a resolution, I will consider the correct usage of *zullen* to be (1) in the apodosis of a conditional sentence or (2) in contingencies, and not to express futurity. Consider example [174], which was taken from the *Onderaannemingsovereenkomst*.

[174] Onderaannemer **zal** met de uitvoering van het werk een aanvang maken: in week \_\_\_\_ (weeknummer invullen) of op \_\_\_\_ (datum invullen).

In example [174], *zal* is combined with a specific future date and expresses that both parties have agreed that the commencement of the work takes place at a certain date in the future. Hence, this example carries no modal meaning and could therefore be considered a factual

statement. In line with the resolution made earlier in this section, the use of *zal* in this example should be considered incorrect. In order to factualise example [174], *zal* has to be replaced by the presens: *Onderaannemer maakt met de uitvoering van het werk aanvang: in week \_\_\_\_ (weeknummer invullen) of op \_\_\_\_ (datum invullen).*

The following example illustrates the first correct use of *zullen*, namely in the apodosis of a conditional sentence. Consider example [175] which was taken from the *Onderaannemingsovereenkomst*.

[175] Betaling van een termijn **zal** slechts plaatsvinden, nadat het gedeelte van het werk waarop de termijn betrekking heeft door Aannemer en de Principaal of diens vertegenwoordiger is opgenomen en goedgekeurd.

In example [175], the apodosis states that an installment will only be paid under the condition, or protasis, that the work affiliated with this installment has been recorded and approved.

The second correct use of *zullen*, specifically in contingencies, is illustrated in the following example [176] which was taken from the *Koopovereenkomst Woning*.

[176] Indien koper in staat van faillissement wordt verklaard of is toegelaten tot de schuldsaneringsregeling natuurlijke personen en de curator of bewindvoerder deze koopovereenkomst niet gestand wenst te doen, **zal** het in artikel 5.1 genoemde bedrag van de bankgarantie respectievelijk de waarborgsom van rechtswege als boete bedoeld in artikel 11.2 aan verkoper zijn verbeurd.

The statement in example [176] describes a contingent event, in other words an event that may happen in the future but it is not certain that it will happen. One could argue that the use of *zal* in this case is incorrect if it were interpreted as a factual statement. However, because it is very unlikely that the buyer will be placed in a state of bankruptcy this sentence expresses a high degree of epistemic modality and therefore we must consider this example [176] a statement relating to a future contingency. Hence, *zal* has been used correctly.

### 3.6 Futurity and modality in the Dutch corpus

As mentioned above, this section includes occurrences for which it was difficult to determine whether they involved either futurity or modality, or possibly both. In the same way that futurity and modality often co-occur in the English corpus, this co-occurrence can also be noted in the Dutch corpus. The focus of this section will be (1) on examples using *zullen* but

which have a deontic reading and (2) on examples with other modal verbs that seem to have an epistemic reading.

### 3.6.1 Deontic reading of *zullen*

From section 3.5.3.1 it can be concluded that there is a thin line between factuality and futurity when it comes to the use of *zullen*. In this section, it will become apparent that this thin line can be extended to obligation as well. Consider example [177] which was taken from the *Geheimhoudingsovereenkomst*.

[177] De Geheimhouder *zal* alle Vertrouwelijke Informatie volledig geheimhouden.

In example [177], *zal* is used to denote that the *Geheimhouder* has the present and future duty of keeping all confidential information confidential. Considering the previous resolution made in section 3.5.3.1, the use of *zal* could be regarded as incorrect; example [174] expresses a factual statement, moreover an obligation. A possible solution could be to use a presens and rephrase the sentence as *De Geheimhouder houdt alle Vertrouwelijke Informatie volledig geheim*.

Another deontic reading of *zullen* can be found in example [178] which was taken from the *Overeenkomst Inhuur Parkeerservicemedewerkers*.

[178] Opdrachtnemer *zal* slechts na voorafgaande schriftelijke toestemming van Opdrachtgever het recht hebben zijn verplichtingen uit deze Overeenkomst te cederen of over te dragen aan een derde.

In example [178], *zal* seems to express a degree of deontic modality, more specifically permission. The use of *zal* in this example is slightly problematic because the statement not only expresses permission but also conditionality and a mild degree of futurity. A possible solution to this ambiguity could be to rephrase it into a factual statement: *Opdrachtnemer heeft slechts na voorafgaande schriftelijke toestemming van Opdrachtgever het recht zijn verplichtingen uit deze Overeenkomst te cederen of over te dragen aan een derde*.

### 3.6.2 Other ambiguous readings involving epistemicity

In section 3.3.1, example [171] taken from the English corpus includes a modal verb which is not normally used to carry epistemic meaning, namely *can*. The Dutch modal verb that, in some ways, could be compared to English *can* is Dutch *kunnen*. However, the literature in section 2.5.4.2 points out that Dutch *kunnen* is able to express possibility and,

therefore, it is possible for *kunnen* to have an epistemic reading. Consider the following example [179] which was taken from the *Geheimhoudingsovereenkomst*.

[179] In plaats van een boete ***kan*** Angerenstein er ook voor kiezen om in plaats van de boete een volledige schadevergoeding te vorderen, voor zover dit bedrag hoger is dan de verbeurde boeten.

In example [179], *kan* is problematic because it has both a deontic and epistemic reading. Epistemic because 'it is possible that' Angerenstein chooses to claim full damages instead of a fine and deontic because Angerenstein has the permission to do so. Because this statement mostly expresses permission, a possible solution would be to replace *kan* with *mag*.

## Chapter 4 Discussion, conclusion and advice

### Introduction

In this thesis, the expression of futurity in a corpus of Dutch and English legal contracts has been examined in the context of the literature on Standard and Legal American English and Standard Dutch. A corpus of Dutch and English contracts was composed using specific terminology in Google Advanced Search. Relevant examples expressing futurity and epistemic modality were analysed and solutions were provided for possibly ambiguous cases in order to gain a broader understanding of the role of futurity within English and Dutch legal contracts. This chapter contains a summary of the main findings from chapters two and three, as well as a few points of advice to contract drafters and legal translators.

### 4.1 Main findings

The results of the study indicate that not only futurity but also epistemic, deontic, and dynamic modality are expressed in an inconsistent manner which often results in verbal ambiguity and, consequently, situations that can easily be misinterpreted by the reader. The corpus included many examples of these inconsistencies but the most problematic were the uses of English *shall* and *will*, and Dutch *zullen* since the uses of these modal verbs continuously creep in to contexts that have nothing to do with their proposed meaning.

The modal verbs used to express futurity in the English corpus were, for the greater part, *shall* and *will*. However, other modal verbs such as *may*, *must* and *can* were also used to express a degree of futurity or epistemic modality. For the Dutch corpus, the only modal verb that could actually be said to express futurity was *zullen*. However, as pointed out in section 3.6.2, *can* was also used to express a mild degree of epistemicity.

As expected, there was a large variety within the expression of futurity within contracts. Strikingly, however, is that the expression of futurity was different from contract to contract as well. Whereas some contracts made use of the present tense in combination with a specific date, other contracts repeatedly made use of modal verbs to refer to the future. These individual inclinations were found in both the English and the Dutch corpus.

### 4.2 Answering the research questions

1. *Is there such a thing as futurity in legal contracts or are all agreements, considering the works of Garner (2011) and Adams (2013), drafted in the present tense?*

At the start of this research paper, it was expected that most of the agreements presented in the contracts in the corpus would be drafted in the present tense. On the basis of the token count and further analysis it can now be concluded that futurity is not only expressed by means of the English simple present or the Dutch presents but also by means of several modal verbs and to a certain degree by Dutch *gaan* + infinitive. The purest forms of futurity were found whenever futurate constructions were combined with future dates. Hence, it could be argued that, within the scope of futurity and epistemicity, such situations can be seen as absolute certainties and therefore belong to the realm of pure futurity.

### *2. Is futurity unequivocally expressed in English and Dutch contract language?*

The results that were discussed in chapter three provide clear evidence that futurity is not unequivocally expressed in English and Dutch contract language but rather by means of many different constructions, often leading to verbal ambiguity.

While some of the contracts indicated a strong preference for the use of the present tense, there were other contracts in which futurity was expressed by means of modal verbs. It can be stated that neither the present tense constructions nor the modal verbs are used in an unequivocal manner, even within the same contract.

### *3. Within Dutch and English legal contracts, how are modality and temporality related and can they be separated?*

The fact that none of the contracts within the corpora expressed, for example futurity, in one single and consistent manner points to the conclusion that legal drafters are not able to distinguish between and thus cannot separate temporality and modality. Hence, the fact that they fail to do so could mean that these drafters are unaware of the relationship between modality and temporality. Barring drafters' abilities, there seems to be no clear line between temporality and modality within Dutch and English legal contracts. In other words, as the literature was only able to draw a very fine line between temporality and modality, the erratic use of multiple constructions within the corpora makes it impossible to do so for Legal language. Another result of this was that it was impossible to compose a schematic overview of the corpus similar to the one created based on the findings in chapter 2.



### 4.3 Limitations, shortcomings, and further research

While this study certainly renders insightful results, it also shows certain limitations and shortcomings. For instance, the examples discussed in chapter three and the corpora used for this research paper are limited in comparison to the number of Dutch and English contracts used worldwide. One problem with my topic, therefore, is that it is not quite clear whether futurity actually exists aside from in conditional clauses and contingent statements. A more extensive corpus and analysis, and perhaps even a manual token count for the present tense, would have allowed for more detailed quantification of the results and whether the use of certain constructions to express futurity are structural or incidental. However, such extensive research was beyond the scope of this paper.

This study was rather new in the field of comparative translation and there is currently little other research with which it can be compared. It would certainly be interesting to conduct more research into whether it is possible to restrict the meaning of Dutch modals to one meaning alone. Furthermore, it would be interesting to investigate whether people felt less commitment or obligation depending on the remoteness of the future date involved in the agreement they sign.

### 4.4 Conclusion

The result that the corpora contain a large amount of verbal ambiguity leads to the conclusion that it is, overall, hard to interpret and convey the specific meaning of futurate constructions and modal verbs. Despite the fact that legal scholars are trying to encourage legal writers to maintain a consistent and clear writing style by restricting the use of these constructions to specific situations alone, it appears that the gap between what is ideal and what is real remains yet to be bridged.

### 4.5 Advice

As a result of the extensive analysis of both literature and practice, I would like to provide drafters, users and, most importantly, translators with a few points of advice.

- Anyone attempting to draft, interpret, or even translate a legal text should be aware that the meaning of modal verbs in these texts is not necessarily the same as the one they are familiar with in Standard English or Standard Dutch. A good trick is to paraphrase the modal verbs by, for example, (1) *it is possible that...* or (2) *has a duty to*, in order to determine what is conveyed by the modal verb used.

- When aiming to select or permit a future time interpretation, without carrying any degree of modal meaning, writers should opt for the present tense combined with a clear date instead of a modal verb.
- When aiming to express a contingency or condition, writers should opt for a modal verb linked to such a situation, namely English *will* or Dutch *zullen*.
- Only use the model verbs and futurate constructions in the proposed meanings as set out in the analysis chapter.

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## Appendices

Table 1

		Dutch	English	Legal English
I	Future plan	<ol style="list-style-type: none"> <li>1. Presens (2.5.1)</li> <li>2. <i>Zullen</i> (2.5.2)</li> <li>3. <i>Gaan</i> + infinitive (2.5.3)</li> </ol>	<ol style="list-style-type: none"> <li>1. Simple present (2.4.1b)</li> <li>2. Present progressive (2.4.2)</li> <li>3. Idiomatic <i>be going to</i> (2.4.2)</li> <li>4. <i>Will</i> (2.4.3.2)</li> <li>5. <i>Shall</i> (2.3.3.4)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>will be deemed</i> (2.7.4 future performance)</li> </ol>
II	Future prediction	<ol style="list-style-type: none"> <li>1. <i>Zullen</i> (2.5.2.2)</li> <li>2. <i>Gaan</i> + infinitive (2.5.3)</li> <li>3. <i>Willen</i> (2.5.8.2)</li> </ol>	<ol style="list-style-type: none"> <li>1. Simple present (2.4.1a)</li> <li>2. Idiomatic <i>be going to</i> (2.4.2)</li> <li>3. <i>Will</i> (2.4.3.1)</li> <li>4. <i>Shall</i> (2.4.4.1)</li> </ol>	
III	Future possibility	<ol style="list-style-type: none"> <li>1. <i>Zullen</i> (2.5.2.2)</li> <li>2. <i>Gaan</i> + infinitive (2.5.3)</li> <li>3. <i>Kunnen</i> (2.5.4.2)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Will</i> (2.4.3.1)</li> <li>2. <i>Can</i> (2.4.5.1)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Will</i> (2.7.4)</li> </ol>
IV	Possibility	<ol style="list-style-type: none"> <li>1. <i>Zullen</i> (2.5.2.2)</li> <li>2. <i>Kunnen</i> (2.5.4.2)</li> <li>3. <i>Moeten</i> (2.5.5.2)</li> <li>4. <i>Mogen</i> (2.5.7.2)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Can</i> (2.4.5.1)</li> <li>2. <i>May/Might</i> (2.4.6.1)</li> <li>3. <i>May</i> (2.4.6.1)</li> </ol>	
V	Ability	<ol style="list-style-type: none"> <li>1. <i>Kunnen</i> (2.5.4.1)</li> <li>2. <i>Mogen</i> (2.5.7.1)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Can</i> (2.4.5.1)</li> </ol>	
VI	Necessity	<ol style="list-style-type: none"> <li>1. <i>Moeten</i> (2.5.5.1)</li> <li>2. <i>Hoeven</i> (2.5.6.2)</li> <li>3. <i>Mogen</i> (2.5.7.1)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Can</i> (2.4.5.3)</li> <li>2. <i>Must</i> (2.4.7.2)</li> </ol>	

VI I	Permission	<ol style="list-style-type: none"> <li>1. <i>Zullen</i> (2.5.2.2)</li> <li>2. <i>Kunnen</i> (2.5.4.1)</li> <li>3. <i>Mogen</i> (2.5.7.1)</li> <li>4. <i>Willen</i> (2.5.8.1)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Can</i> (2.4.5.2)</li> <li>2. <i>May/Might</i> (2.4.6.2)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>May</i> (2.7.5)</li> <li>2. <i>May not</i> (2.7.5.1)</li> </ol>
VI II	Obligation	<ol style="list-style-type: none"> <li>1. <i>Zullen</i> (2.5.2.1)</li> <li>2. <i>Kunnen</i> (2.5.4.1)</li> <li>3. <i>Moeten</i> (2.5.5.1)</li> <li>4. <i>Mogen</i> (2.5.7.1)</li> <li>5. <i>(be)horen/dienen</i> (2.5.9)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Will</i> (2.4.3.3)</li> <li>2. <i>Shall</i> (2.4.4.1)</li> <li>3. <i>May</i> (2.4.6.2)</li> <li>4. <i>Must</i> (2.4.7.1)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Shall</i> (2.7.2)</li> <li>2. <i>Must</i> (2.7.3)</li> <li>3. <i>Will</i> (2.7.4)</li> <li>4. <i>Must not</i> (2.7.5.1)</li> </ol>
IX	Wish/liking	<ol style="list-style-type: none"> <li>1. <i>Moeten</i> (2.5.5.1)</li> <li>2. <i>Hoeven</i> (2.5.6.2)</li> <li>3. <i>Willen</i> (2.5.8.1)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Shall</i> (2.4.4.2)</li> </ol>	
X	Conditionality	<ol style="list-style-type: none"> <li>1. <i>Mogen</i> (2.5.7.2)</li> <li>2. <i>Willen</i> (2.5.8.2)</li> </ol>	<ol style="list-style-type: none"> <li>1. Simple present (2.4.1c)</li> <li>2. <i>Will</i> (2.4.3.1)</li> </ol>	<ol style="list-style-type: none"> <li>1. <i>Will</i> (2.7.4)</li> </ol>
XI	Entitlement			<ol style="list-style-type: none"> <li>1. <i>Is entitled to</i> (2.7.6)</li> </ol>