

Rebuttal:

## A Response to Asprey

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My conclusions were fairly modest.

The drafter has a choice. If you want a single word to specify a duty, then you might better use *must* and specify conditions and consequences. Occasionally, though, you might want different words for different degrees or kinds of duties. Whatever your choice, consistency within the document is the cardinal rule.

Michèle Asprey objects to defining plain-language words. Normally, so do I. But sometimes it serves a purpose — clarity or economy. We define *plain language* in plain-language statutes. We define *roadway* and *motor vehicle* in traffic codes. We might define *employee* as “a full-time employee” in an employment context. Examples abound. There is absolutely nothing wrong with stipulating to a particular meaning of a word when the drafter has a good reason and follows the principles for defining terms.

Asprey also objects to the idea of using *will* to express a promise in contracts. She would save *will* exclusively for simple future tense. I acknowledge this problem on page 69 of my article. The problem, however, is slight. We both agree that documents should be drafted in the present tense; so you don't often need the simple future. And if you do, you can draft around *will*. In my examples, for instance, you could easily substitute *is going to* for *will*.

I share my friend's exasperation with *shall*. But I would not deny it to the drafter who can make good use of it.

