

USING **MUST** TO EXPRESS DUTY AND PROBABILITY

The modal auxiliary **must** is used to show **strong obligation** – even a **command** - in the **affirmative**:

- All guests **must** vacate their rooms by noon on the day of departure.
- You **must** apply for a work visa there, even if you're only going for a couple of days to close a deal.

Must not is used to indicate that an action is **prohibited** or **forbidden**:

- You **must not** reveal any of the information in this file. It is strictly confidential.
- They **must not** let any of the potential buyers know who the other bidders are.

Attorney's Note:

Think of **must** as a translation of **shall** when speaking to your client.

- Laws frequently use the modal **shall** as a command form.
 - The defendant *shall file* a response within 30 days of receipt ...
- Judges can also use **shall** because they represent the law.
 - The judgment of the court below is reversed, and the case shall be remanded for further proceedings consistent with this opinion.
- Attorneys cannot command their clients, however. Therefore, when *explaining* a “legal command” – that is, a legal obligation to act [affirmative] or a legal obligation to refrain from acting [prohibition] to your client, use **must**.
 - We must file our response within 30 days.
 - You must not use that trademark until the infringement issues have been settled.
- When giving **straightforward advice** based on the law, rather than explaining a legal command, use **should**.
 - You **should** talk to some patent appraisers before you let the accountants arbitrarily value those patents.
- To give more **tentative advice**, particularly in business transactions, you can also use the expression *you might want to* + **infinitive**.
 - You **might want to** see if the investment bankers know some good patent appraisers.

USING “MUST” TO EXPRESS DUTY OR PROHIBITION

EXERCISES

Directions: Re-phrase the following sentences showing the legal duty or prohibition of taking the action indicated.

Example -

The law requires that you pass the bar examination in order to practice law.

You must pass the bar examination in order to practice law.

1. The franchisor has a duty to disclose his financial statements and other key business information to the franchisee.
2. Rule 10(b)(5) of the Securities and Exchange Act prohibits parties with inside information from trading their shares.
3. Although partnerships are not taxable entities under federal law, the partnership is required to file an information return and the partners are required to pay taxes on their income.
4. The Foreign Corrupt Practices Act (“FCPA”) prohibits publicly traded firms from bribing government officials in order to obtain business.
5. U.S. companies and their foreign subsidiaries are prohibited from doing any business with Cuba under the *Helms-Burton Act*.
6. U.S. companies and their foreign subsidiaries are not allowed to do business with specific entities, specific individuals, or specific countries listed on the FinCen’s website. (FinCen is an agency of the U.S. Department of the Treasury.)

USING “MUST” TO EXPRESS DUTY OR PROHIBITION

ANSWERS TO EXERCISES

Directions: Re-phrase the following sentences showing the legal duty or prohibition of taking the action indicated.

Example -

The law requires that you pass the bar examination in order to practice law.

You must pass the bar examination in order to practice law.

1. The franchisor has a duty to disclose his financial statements and other key business information to the franchisee.

The franchisor must disclose his financial statements and other key business information to the franchisee.

2. Rule 10(b)(5) of the Securities and Exchange Act prohibits parties with inside information from trading their shares.

Parties with inside information must not trade their shares under Rule 10(b)(5).

Under Rule 10(b)(5), parties must disclose or refrain from trading.

3. Although partnerships are not taxable entities under federal law, the partnership is required to file an information return and the partners are required to pay taxes on their income.

Although partnerships are not taxable entities, the partnership must file an information return and the partners must pay taxes on their income.

- alternatively –

Although partnerships do not have to pay taxes, partnerships must file an information return and the partners must (have to) pay taxes on their income.

4. The Foreign Corrupt Practices Act (“FCPA”) prohibits publicly traded firms from bribing government officials in order to obtain business.

Under the FCPA, publicly traded firms must not (may not) bribe government officials in order to obtain business.

5. U.S. companies and their foreign subsidiaries are prohibited from doing any business with Cuba under the *Helms-Burton Act*.

U.S. companies and their foreign subsidiaries must not (may not) do any business with Cuba under the *Helms-Burton Act*.

6. U.S. companies and their foreign subsidiaries are not allowed to do business with specific entities, specific individuals, or specific countries listed on the FinCen’s website.

U.S. companies and their foreign subsidiaries must not (may not) do business with specific entities, specific individuals, or specific countries listed on the FinCen’s website.

Please continue to the next page to review another high-frequency use of must that is very useful for attorneys.

MUST OF PROBABILITY

There is **another frequent use** of **must**. Read the following example:

Tim: Mike has just been notified of his promotion.

Joe: He **must be** very happy.

In this context, **must** means **probably**. The verb (*be*) describes the **probable result** of the facts presented. This usage of **must** is **high frequency**, but colloquial. As a result, it is typically used in casual conversation outside the law; it is often used to state the obvious.

You: I've been studying English since I was a kid. I thought I knew it pretty well. Then I came to Chicago and I can barely understand what people are saying to me.

Me: You **must be** sick and tired of English by now. Don't give up, though! You'll get a breakthrough very soon.

Attorneys Note:

When **arguing** or **analyzing** facts – that is, when making a reasoned analysis – **must** can be used to **deduce** a situation based on surrounding evidence.

- That inventor had filed for over ten patents in the past five years. He **must have known** the correct procedures for doing so!!

The **evidence** here is that -

- ✓ the inventor had already filed for ten patents.
- ✓ He had been filing them for a period of five years.
- ✓ That's a lot of experience with the procedures. .

Therefore – you can **deduce** from the evidence, the extreme likelihood that he knew the procedures required to file a patent.

Another example:

The witness testified that it was raining at the time of the murder.

- “Did you see or hear the rain?” the attorney asked.
- “No, I didn't,” the witness responded. “I looked out my window and I saw that **people on the sidewalk were all carrying their umbrellas**. Thus, I knew that **it must be raining / it must have been raining**.”

Directions: Make a **comment** that draws a **likely/probable conclusion** to the following statements.

Example:

The Smiths' oldest daughter was appointed to the federal bench.

They must be very proud of her.

1. Joe just found out that he made partner.¹

2. The court reporter should have been here an hour ago. She's actually a very reliable person. I wonder where she is.

3. Mike worked for years on that case, and then on the appeal. He lost them both.

4. I'm taking the New York Bar this summer.

5. I lost my wallet with \$200 cash in it last night at a bar. The police just called and said that my wallet was found with all the money in it!

¹ "Make partner" means "to be promoted to the partnership."

ANSWERS
MUST OF PROBABILITY

Directions: Make a comment that draws a likely/probable conclusion to the following statements.

Example:

The Smiths' oldest daughter was appointed to the federal bench.

They must be very proud of her.

1. Joe just found out that he made partner.²

He must be thrilled.

2. The court reporter should have been here an hour ago. She's actually a very reliable person. I wonder where she is.

She must be stuck in traffic. / Her cell phone must be broken.

3. Mike worked for years on that case, and then on the appeal. He lost them both.

He must be disappointed.

4. I'm taking the New York Bar this summer.

You must be nervous. / You must be studying 24/7.³

5. I lost my wallet with \$200 cash in it last night at a bar. The police just called and said that my wallet was found with all the money in it!

You must be. . . .
thrilled.
shocked.
really lucky.

² "Make partner" means "to be promoted to the partnership."

³ Slang expression meaning "all the time." 24 stands for 24 hours a day. 7 stands for 7 days a week.

MUST HAVE (+ PAST PARTICIPLE)
EXPRESSING PROBABILITY ABOUT THE PAST

Larry: They found out that their attorney had been disbarred.
Louise: They **must have been** very surprised.

Function

The semantic function of this form is the same as that of *must* of *probability*. It is used in casual conversation to mean *probably*.

The only *distinction* between *must* and *must have* is *time*.

Form

You **must** **have** **been** very surprised.
PROBABILITY | TIME | ACTION

Situation: You and a colleague are supposed to meet a client, named Steve, at his favorite restaurant for lunch. The two of you are waiting, but Steve is half an hour late.

You: I wonder where Steve is. It's not like him to be late.
Colleague: He **must have gotten** tied up at the last minute.

NOTE

- *must have*
- *must not have* [+ past participle⁴]

cannot be used to express obligation, command, prohibition, or forbidden action in the past.

e.g.

You **must pay** that fine within thirty days. [present tense command]
You **had to pay** that fine within thirty days. [past tense form of command]

⁴ Third form of the verb, such as *been*; *gone*; *had*; *walked*.

EXERCISES

Directions: **Respond** to the following situation with a **probable conclusion** about what has been said.

1. I walked out of that movie after 15 minutes.

2. Don got all 20 questions on the test wrong.

3. I had dinner with my friend last night. I hadn't seen her in almost a year.

4. I asked the waiter to bring the check over 20 minutes ago.

5. I had the opportunity to speak personally to Chief Justice Ginsburg for ten minutes at a small gathering last spring.

ANSWERS TO EXERCISES

Directions: **Respond** to the following situation with a probable conclusion about what has been said.

1. I walked out of that movie after 15 minutes.

It must have been a terrible movie!

2. Don got all 20 questions on the test wrong.

**He must have misunderstood the directions.
He must not have studied at all.**

3. I had dinner with my friend last night. I hadn't seen her in almost a year.

**You must have been happy to see her.
You must have had a great time.**

4. I asked the waiter to bring the check over 20 minutes ago.

**He must have forgotten.
He mustn't (must not) have heard you.**

5. I had the opportunity to speak personally to Chief Justice Ginsburg for ten minutes at a small gathering last spring.

**That must have been exciting / very interesting.
You must have been thrilled.**