

# THE POWER OF ATTORNEY

## A creatively conventional genre in legal discourse?

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**Abstract** – The power of attorney is one of the most frequently used instruments in international legal practice, both in Common Law and Civil Law contexts. Internationally known as a legal-lay contractual agreement, it is locally adapted and drafted to suit specific, local realities. Generally, contracts lie within those genres which combine ‘highly formal traits with features typical of the written mode’ (Gotti 2005, p. 21). Additionally, as contracts, powers of attorney can be considered as highly codified and standardised, with easily predictable sentences and constructions, rich in formulaic expressions (Gotti 2005, p. 21), thus showing a crystallized and conventional use of certain routines. Starting from the assumption that legal language is inherently complex, obscure and over sophisticated (Di Renzo Villata 2007, p. 4), the present study investigates the power of attorney as a legal genre, identifying its particular move structure (Bhatia 1993). The qualitative and quantitative analysis of a corpus of different typologies of powers of attorney, drafted ad hoc for specific actions, endeavours to ascertain whether and to what extent specific generic features, macrostructures, moves, along with lexical expressions, archaic formulas and clichés can be placed on a creativity-conventionality cline. The investigation aims to determine whether powers of attorney can be representative of the dynamic interaction between conservatism and lexical productivity.

**Keywords:** power of attorney; legal English; creativity; conventionality.

*“Passion was part of what made us human. I wanted  
to be more than just a lawyer.  
I wanted to be a human too!”*  
(N.M. Silber, Power of Attorney,  
The Lawyers in Love Series Book 5)

## 1. Introduction

The power of attorney is one of the most frequently used instruments in international legal practice, both in Common Law and Civil Law contexts. It entitles the Holder, the Attorney or the Agent to act on behalf of the Principal or the Mandator, defend their legal rights and interests and represent them in court where necessary (Alcaraz and Hughes 2002; Di Renzo Villata 2007). This type of legal-lay contractual agreement is internationally known and used, but it is locally adapted and drafted to suit specific, local realities. All types of power of attorney are usually terminated when the Principal dies or becomes legally «incapable». The powers can however be revoked at any time, by using the same legal document used to confer them in the first place.

The power of attorney of contractual agreement, i.e. a mandate, therefore it is highly formal and codified. The powers conferred specify the acts, or kinds of acts, the attorney may perform. It must be drafted (even online nowadays) and signed in a valid form, in order to give the power to another person to carry out many types of transactions (such as to purchase or sell property, to act in a succession, to deal with financial affairs and bank accounts or to set up a company).

The power of attorney can or must be acknowledged in the presence of a solicitor or notary public. Notarisation and legalisation are forms of legal certification which certify that a document or a signature is authentic or a true copy. For some countries, formal documents may need to be notarised (i.e. certified by a Notary Public) and then legalised (i.e. certified again) by that country's foreign consulate or embassy. For other countries, which are members of the Hague Convention of 1961, formal documents may need to be notarised (certified by a Notary Public) and then legalised by Apostille stamp (certified again by the Foreign and Commonwealth Office).<sup>1</sup>

As is the case for the majority of legal documents, especially legislation (i.e. prescriptive texts), contracts and wills, the drafting of powers of attorney is seen by lawyers as "preventive law" and "by skilful drafting they hope to be able to prevent litigation" (Trosborg 1997, p. 19). Therefore, the drafting of the power of attorney is very important, since the wording of the document will be open to interpretation.

## 2. Theoretical background

The theoretical framework within which this study has been conducted includes seminal works about genre and genre analysis such as those by Bhatia (1993) and Swales (1990). Bhatia takes into consideration the sociological aspect intrinsic to genre analysis, which

"... makes it possible for the analyst to understand how a particular genre defines, organizes and finally communicates social reality. This aspect of genre analysis emphasizes that text by itself is not a complete object possessing meaning on its own; it has to be regarded as an ongoing process of negotiation in the context of issues like social roles, group purposes, professional and organizational preferences and prerequisites, and even cultural constraints" (Bhatia 1993, p. 18).

This implies of course a thorough analysis of "the linguistic behaviour of any speech community, academic or professional" (Bhatia 1993, p. 18).

Regarding the level of linguistic analysis that Bhatia takes into consideration, this paper will carry out an investigation of lexico-grammatical features that are predominantly used in the context of legal contracts to which the text belongs. Unfortunately, machine-readable documents were not available at hand for a large-scale corpus-based statistical analysis so the investigation conducted was rather manual. Before this, a structural interpretation of the text-genre was performed which helps highlight "the cognitive aspect of language organization" (Bhatia 1993, p. 29). The author explains that:

"Specialist writers seem to be fairly consistent in the way they organize their overall message in a particular genre, and analysis of structural organization of the genre reveals preferred ways of communicating intention in specific areas of inquiry" (Bhatia 1993, p. 29).

<sup>1</sup> "If you have to produce a Notarised Power of Attorney internationally (that is in a Country different from the one in which it was issued), then it has to be legalised by a Consular Officer of the Country from which the Power of Attorney was granted. However, if the relevant Countries are parties to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, such legalisation is not necessary. The only necessary formality is an Apostille by the relevant Public Authorities of the Country in which the Power of Attorney was granted" (Di Renzo Villata 2007, pp.165-166).

Together with Bhatia's insightful considerations, the definition of genre given by Swales (1990, p. 58) was one of the points of departure for the present study:

“A genre comprises a class of communicative events, the members of which share some set of communicative purposes. These purposes are recognized by the expert members of the parent discourse community, and thereby constitute the rationale for the genre. This rationale shapes the schematic structure of the discourse and influences and constrains choice of content and style” (Swales 1990, p. 58).

By 1981 Swales had already developed the idea of rhetorical moves to functionally define a part or section in Research Articles. His model of moves can be applied with ease to other genres since it helps subdivide a text into particular segments. The move analysis aims at categorizing the different text units and assign a purpose to each one of these units. Each move, or each section in the text, reveals a particular communicative purpose which contributes to the general, overall objective of the whole text or genre. To use Bhatia's words, “(j)ust as each genre has a communicative purpose that it tends to serve, similarly, each move also serves a typical communicative intention which is always subservient to the overall communicative purpose of the genre” (1993, p. 30).

Further useful insight about the specific genre of powers of attorney was gained from the fundamental works by Alcaraz and Hughes (2002) and Di Renzo Villata (2007), which investigate them from a structural and lexico-grammatical perspective.

### 3. Methodology and corpus

The present investigation aims to determine whether powers of attorney can be representative of the dynamic interaction between conservatism (the permanence of traditional linguistic traits) and lexical productivity (the redefinition of existing terms and creation of new concepts).

The study will start by explaining what a power of attorney is, as well as the different typologies and the different purposes it may have. The corpus gathered so far will provide instances for the conventionality-creativity cline that can be presumably found in this type of legal instrument. Following that, the general macrostructure and moves in this particular legal genre will be looked at. Some excerpts will be shown which can be representative either of conservatism (permanence of traditional legal linguistic traits) or of creativity (lexical productivity, redefinition of existing terms, and creation of new concepts)

The corpus gathered so far (Table 1) includes fourteen bilingual powers of attorney (English and Italian) for the application for patents and trademarks. Then some different types of templates from Canada and the USA were added (PoA15-PoA28): powers of attorney for sale and real estate, some delegating parental powers, some for the administration of property. No specific time span has been taken into consideration so far for the selection of the corpus. These documents are currently available on the web and are still easily retrievable (they were last accessed in November 2019). Additionally, two original documents (PoA29 and PoA30) were obtained from some acquaintances in the UK, one for property and financial affairs and one for health and welfare, both of which differ somewhat from the templates in the corpus. These two last powers of attorney were signed by the Mandators in 2017, therefore they can be considered quite recent. As a matter of fact, the texts in the corpus are in fact quite varied and heterogeneous at this initial stage of the research.

The gathering of official documents was by no means easy or straightforward, due to the fact that despite the diffusion of many websites, forums and blogs equipped with downloadable forms or online templates, these are almost always only obtainable at a cost, further underscoring the closure of the legal profession, which aims at maintaining its own prestige, privileges and control.

PoA01-PoA14	Italy	Bilingual (English-Italian)	Application for patents and trademarks	templates
PoA15	Ontario	English	Continuing Power of Attorney for Property	template
PoA16	Ontario	English	Power of Attorney for Personal Care	template
PoA17	Québec	English	Power of Attorney for the Administration of Property	template
PoA18	USA-California	English	California Uniform Statutory Power of Attorney	template
PoA19	Embassy of the USA in Italy	English	Power of Attorney	template
PoA20	USA	English	Durable Financial Power of Attorney	template
PoA21	USA	English	General Power of Attorney	template
PoA22	USA	English	Durable Power of Attorney for Sale of Real Estate	template
PoA23	USA	English	Power of Attorney-Limited	template
PoA24	USA	English	Durable Power of Attorney for Health Care	template
PoA25	USA	English	Power of Attorney Delegating Parental Powers	template
PoA26	USA-Wisconsin	English	Wisconsin Statutory Power of Attorney for Finances and Property	template
PoA27	USA-New York	English	Power of Attorney N.Y. Statutory Short Form	template
PoA28	USA-Oregon	English	Temporary Power of Attorney for Minor Children	template
PoA29	UK	English	Lasting power of attorney for health and welfare	original document
PoA30	UK	English	Lasting power of attorney for property and financial affairs	original document

Table 1  
Corpus of Powers of Attorney.

#### 4. Typologies and categories

According to Di Renzo Villata (2007, p. 164) “there are two main kinds of Power of Attorney:

- 1) **The General Power of Attorney** is the broadest type: it provides the Attorney extensive powers to handle all the Principal’s affair during a specified time frame [...].
- 2) **The Special Power of Attorney** provides the Attorney the specific powers indicated by the Principal and/or allows the Attorney to handle the specific situations named by the Principal during the specified time frame [...]”.

It could be argued that a certain amount of creativity can already be found in the various names which refer to different types of powers of attorney: of course, different concepts are implied. These names specify how and when these documents are generally used, thus the following types can be identified:

- Special PoA (aka limited): It grants to the attorney only the powers defined in the document.
- General PoA: It gives an attorney the power and authority to act for the Principal in all business and personal matters.
- Durable PoA: It does not end when the Principal becomes disabled. It can also be called Power of attorney with durable provisions (in the USA) or Enduring power of attorney (elsewhere and in the UK).
- Springing PoA (aka Conditional or Enduring): It gives the agent the power to act for the Principal only after a certain event, such as when the Principal becomes disabled. The Principal specifies exactly how and when the power “springs into effect”.
- Lasting PoA: It must be registered with the Office of the Public Guardian in the UK; it was introduced in 2007 and replaced the former enduring PoA.
- Ordinary PoA: Only valid while the Principal is capable of making decisions. It becomes invalid in the event that the Principal becomes incapacitated.
- Continuing PoA: It gives powers to deal with money and/or property (especially used in Scotland).
- Welfare PoA: It gives powers to make decisions involving health or personal welfare matters (especially in Scotland).
- Combined PoA: It gives continuing and welfare powers (especially used in Scotland).

Due to the fact that the powers of attorney can be drafted for different purposes, another possible categorization is one which keeps into account specific actions and transactions such as

- a) Purchase, sale of a property or real estate
- b) Personal care in case of mental incapability
- c) Health and welfare
- d) Applications for patents and trademarks
- e) Administration of property and financial affairs
- f) Delegation of parental powers
- g) Setting up of a company
- h) Succession

Regarding the rules underlying the drafting of powers of attorney, it can be affirmed that they resemble the framework of legal contracts and “as they serve a range of recurring codified situations governed by specific norms, are often based on pre-printed forms with spaces for the parties’ names and special clauses to meet individual requirements. Even when printed forms are avoided, the alternative is a checklist of textual provisions, from which the user can draw those required in a given situation” (Gotti 2005, p. 116).

## 5. The Power of Attorney: genre and moves

Following Bhatia (1993, p. 30) and as underlined earlier in this study, each genre has a communicative purpose that it tends to serve, and in the same way, each move in the structure serves a typical communicative intention which is always compliant with the general communicative purpose of the genre. The power of attorney displays a particular general macrostructure which includes:

- a) **The commencement and performative act:** “the power habitually refers to itself as such in the opening phrase (‘By this power of attorney...’) and goes on to identify the Donor and the attorney, yoked together by the performative verb (‘appoint’), which both describes and activates the legal relationship” (Alcaraz and Hughes 2002, p. 145).

**BY THIS POWER OF ATTORNEY, John Taylor, hereinafter called the Donor, does appoint James Wallis as his general attorney, to whom he gives all the necessary powers and more particularly...**

- b) **The operative part:** In this section the attorney’s rights and duties are explicitly outlined, usually under a list of headings. This part has to be carefully and clearly expressed and the powers conferred on the agent or agents must be sufficient for the purposes for which the power of attorney is issued.

Depending on the format, the power of attorney can display different moves which produce a certain conventionalized and standardized organization of the text:

- identification of the Mandator;
- identification and appointment of the Mandatary or designation of an agent;
- identification and appointment of an alternative Mandatary;
- revocation of a prior power of attorney;
- grant of general authority or list of powers conferred or responsibilities delegated;
- inventory of property;
- limits, conditions and terminations;
- instructions on the validity and use of the document;
- effective date and termination of the power of attorney;
- acceptance of the appointment;
- Mandatary’s remuneration or compensation;
- witnesses’ signatures;
- signatures and acknowledgements;
- notarization and/or legalization.

## 6. Conventionality: permanence of traditional linguistic traits

As contracts, powers of attorney can be considered as highly codified and standardised, and thus they show a crystallized and conventional use of certain routines. Legal language in general, and the language of contracts in particular, is “intensely conservative” (Gotti

2005, p. 41). As explained by Gotti, “fear that new terms may lead to ambiguity favours the permanence of traditional linguistic traits, which are preserved even when they disappear from general language” (2005, p. 41). He goes on to point out that some disciplines, such as legal language, are “conservative to the utmost degree, producing a language whose subservience to tradition leads to empty archaic formulae” (Gotti 2005, p. 42).

Some of these archaic formulae are the textual mapping devices proposed by Bhatia (1987), which include a set of archaic adverbs, i.e. a mix of deictic elements, *here*, *there* and *where* with certain prepositions such as *of*, *after*, *by*, *under*, etc. The reasons for such conservatism are safety and convenience. These are referential devices which serve a text-cohering function in that they indicate textual relations between various (sub)sections of the same document (Bhatia 1987, p. 2). As Gotti puts it, “(t)hese adverbials generally refer to a document or a part of it and specify its exact location or identification” (2005, p. 106). The use of this archaic and antiquated terminology is driven by the need to avoid troublesome and difficult changes where legal lexical meaning is concerned.

Archaic adverbials
forthwith
henceforth
hereafter
hereby
herein
hereinafter
hereto
hereunder
hereunto
hitherto
therefor
therefrom
therein
thereof
theretofore
therewith
wherefore
whereof
wheresoever
whereto
whosoever

Table 2  
Archaic adverbials.

The following are excerpts from the powers of attorney under scrutiny in which the use of archaic adverbials is clearly shown:

“For this purpose the undersigned elect their domicile at the above address, *whereto* all communications, requests and all documents, which shall prove required by the law, shall be directly delivered or notified” (PoA01)

“In witness *whereof* I have *hereunto* set my hand and official seal the day and year above written” (PoA19)

“I grant my Attorney-in-fact the powers set forth *herein* immediately upon the execution of this document” (PoA20)

“I *hereby* ratify and confirm whatever my Attorney-in-fact shall lawfully do under this instrument” (PoA21)

The same text-cohering function is also fulfilled by a vast array of referential qualifications such as *aforesaid* or *below-listed*, or *pursuant to* and *in compliance with*, which indicate preceding or postponed sections in the text or even intertextual connections. Some of the text-cohering formulae which are more frequently used in this kind of texts are listed in Table 2.

Text-cohering formulae
aforesaid
above mentioned
above said
below-named
below-listed
pursuant to
in compliance with
as foreseen by existing laws
(referring to existing laws) in force
for this purpose
to this purpose

Table 3  
Text-cohering formulae.

The following are some excerpts drawn from the actual powers of attorney under scrutiny:

“**To this purpose**, I/We the undersigned, elect domicile with [...] the **aforesaid** representatives, to whom I/We request that the Italian Patent and Trade Mark Office and all other qualified Authorities direct all communications, requests and deliveries of documents which may be necessary, also **pursuant to** the last paragraphs of Art. 120 D. Lgs. Dated 10-2-2005, n° 30” (PoA2)

“Principal, the parent or guardian of the children **listed below**, hereby appoints the **below-named** Agent/Attorney-in-fact to act in name and place of Principal, parent or guardian to have parental authority and to perform general responsibilities of a parent and execute any of the **below-listed** specific acts, EXCEPT for authorizing the marriage or adoption of the minor children” (PoA25)

Some of these archaic formulae, along with doublets and triplets analysed later in the present study, can be found in this type of texts: they help the legal draftsmen to reduce prolixity in their documents while writing precisely, clearly and unambiguously to make their legal instruments certain, technically accurate and all-inclusive, by providing several possibilities or alternatives for interpretation and application (Bhatia in Frade 2005, p. 139). Some examples of doublets and triplets taken from the powers of attorney follow now, but their innovative character and all-inclusive function will be explained in a later section of this paper.

“..., I intend that this instrument be given **full force and effect** in any **state or country** in which I may find myself or in which I may own property, whether **real or personal**” (PoA21)

“I give my attorney(s) the AUTHORITY to make any personal care decision for me that I am mentally incapable of making for myself, including the **giving or refusing** of consent to any matter to which the *Health Care Consent Act, 1996* applies, subject to the *Substitute Decision Act, 1992* and any **instructions, conditions or restrictions** contained in this form” (PoA16)

## 7. *Shall*: deontic modality, performativity and promiscuity

Garzone (2001) and Garzone and Santulli (2008) discuss the relationship between deontic modality and performativity in English legal texts by focusing on the use of the modal *shall*. *Shall* is the most frequent modal in legislative texts and it is essentially deontic, agent-oriented: laws, regulations, commands are seen as “inherently directive in nature, imposing rules which incontestably influence people’s behaviour” (Garzone 2001, p. 156). Garzone goes further by suggesting that, together with prescriptive and descriptive discourse, performative discourse can be recognized in legal language. The two meanings of the modal *shall*, performative and deontic, are suggested to stand in a continuous relationship to each other, “involving a degree of indeterminacy, presenting cases of merger” (Garzone 2001, p. 170).

Quoting Garner, Williams (2005, p. 116) underlines that *shall* represents *traditional promiscuity* in the sense that it is used to cover a wide range of meanings. In the language of contracts in particular *shall* represents the Principal means of expressing obligation by expressing authoritativeness. Obligations and intentions are in fact the main aspects dealing with a contract in general and a power of attorney in particular. As can be seen from the excerpts below, *shall* is rarely used to indicate future time, it is mostly used to impose obligation on the subject of a sentence, which generally is a non-human subject as indicated by Trosborg (1997, pp. 45-46), and it conveys the meaning “has a duty to”.

“For this purpose the undersigned elect their domicile at the above address, whereto all communications, requests and all documents, which **shall** prove required by the law, **shall** be directly delivered or notified” (PoA01)

“This Power of Attorney **shall be** effective on the date of...[INSERT DATE]” (PoA23)

“This Power of Attorney **shall** terminate on the date of... [INSERT DATE], unless I revoke it sooner” (PoA23)

“This Power of Attorney **shall** be governed by the State of ...[INSERT STATE]” (PoA23)

“This document is to be treated as a Durable Power of Attorney and **shall** survive my disability or incapacity” (PoA24)

“Photostatic copies of this document, after it is signed and witnessed, **shall** have the same legal force as the original document” (PoA24)

As can be seen from the examples just given, *shall* occurs with inanimate subjects very often and typically refers to functions of the legal instrument or explains how far the act extends in time or how a term is to be understood.

The following excerpts show examples of the use of *shall* with human agents (Attorney-in-fact, advocate) where the modal verb indicates obligation and specifies the person that is bound to carry it out:

“My Attorney-in-fact **shall** exercise powers in my best interests and for my welfare, as a fiduciary. My Attorney-in-fact **shall** have the following powers...” (PoA20)

“With respect to my personal care, my advocate **shall** have the power to make each and every judgment necessary for the proper and adequate care and custody of my person” (PoA24)

*Shall* is also used in its negative form, both with a non-human agent and with a human agent. In some of these cases, the regulation of behaviour can take place by issuing prohibitions (Trosborg 1997, p. 47):

“This Durable Power of Attorney **shall not** be affected by my disability, incapacity, or incompetence, except as provided by statute” (PoA22)

“A witness **shall not** sign this Durable Power of Attorney unless the person appears to be of sound mind and under no duress, fraud or undue influence” (PoA24)

Differently from the cases just seen above, the following excerpt seems to imply futurity since no obligation or prohibition is implied in the use of the negative form of the modal verb *shall*. However, this is actually the only example found in the corpus which appears to indicate primarily future tense and does not carry the meaning of a duty on the part of the attorney.

“My Attorney-in-fact **shall not** incur any liability to me under this power except for a breach of fiduciary duty” (PoA20)

The modal *will* is more frequently used to mark future time in situations where there is no implicit suggestion of obligation (Williams 2005, p. 132), as can be seen in the following examples:

“This Power of Attorney [**WILL OR WILL NOT**] continue to be effective even though I become incapacitated” (PoA23)

“If your Mandatary ceases to act, is no longer able to act or his mandate is revoked, the following person **will** automatically replace him upon accepting the mandate in writing” (PoA17)

“This Power of Attorney is effective immediately and **will** continue until I revoke it” (PoA23)

In conclusion, to say it with Williams “*shall* continues to constitute one of the most characteristic features of legal English today, whereas its use outside legal discourse is on the decline in favour of *will* (Gotti 2003b; Leech 2003)” (2005, p. 115).

## 8. Lexical productivity: designation of an agent

Differently from the legal formulae which continue to be used in legal documents in general and which are to be found also in powers of attorney, there are elements which account for a certain degree of lexical productivity, showing creativity and inventiveness and conferring originality, precision, and accuracy to the texts.

The designation of an agent is one of the sections in which the majority of newly coined terminology is present. Elements of novelty are to be found in the terms indicating the Donor or the grantor who can be the **Mandator** (PoA17) or the **Principal** (PoA18), (PoA20), (PoA21) and (PoA25). The **Mandatary** (PoA17) can be indicated by the terms **Attorney(s)** such as in (PoA02), (PoA06), (PoA08), (PoA12), (PoA16) and (PoA22), **Agent(s)** as in (PoA05), (PoA18) and (PoA26), or **Authorized Agent(s)** as in (PoA14). In other texts, the Mandatary is designated as a **Representative(s)** such as in (PoA03), (PoA04), (PoA10) and (PoA11) or **Professional Representative** as in (PoA01). The term **Attorney-in-fact** is used in (PoA19) and (PoA20), **Patient Advocate** is utilized in (PoA24) which is a Durable Power of Attorney for Health Care, and **Patent Attorney** is used in (PoA04) which is a Power of Attorney for Applications for Patents and Trademarks. If the Mandatary ceases to act, is no longer able to act or his mandate is

revoked, an **Alternate Mandatary** will automatically replace him, such as in (PoA17).

For the sake of precision, it must be underlined that the term **Attorney-in-fact** is used in several countries in place of the term **Agent** and should be distinguished from the term Attorney-at-law who is a lawyer. As an agent, the Attorney-in-fact is a fiduciary of the Principal.

The Agents or Mandataries can act as a sole attorney, joint attorneys or substitute attorneys, meaning that they can make decisions on their own or with the help of other attorneys. In the exercise of their powers they can perform their duties **separately or jointly** as in (PoA19), **together or separately** as in (PoA27), **jointly and severally** such as in (PoA15) and (PoA16), **independently and severally** as in (PoA07), **with free and separate signature** as in (PoA01), (PoA05) and (PoA11), **disjointedly** in (PoA02) and (PoA10), **with independent and disjoined signature** such as in (PoA04).

Additionally they can operate **with authority to appoint substitutes** as in (PoA02), **with possibility of substitution** as in (PoA01), **with the power to appoint (a) substitute(s)** as in (PoA07) and (PoA10), **with (full) power of substitution** such as in (PoA06), (PoA08) and (PoA11), or **even by means of substitutes** such as in (PoA12).

## 9. Performatives: variation and creativity

Another section in which creativity is at its utmost is that of the identification and appointment of the Mandatary, in the commencement part. Here, performative verbs are used to describe and activate the legal relationship between Donor and Attorney-in-fact and represent explicit performative acts bearing an illocutionary force as indicated by Williams (2005). Explicit performative acts tend to be associated with the spoken language and are generally uttered in the first person singular or the first person plural (Williams 2005, p. 55). In the following excerpts taken from the powers of attorney under scrutiny, the verbs *appoint*, *designate*, *confer*, *grant*, *nominate*, *authorize* and *revoke* are performative in character:

“I, \_\_\_\_\_ hereby **appoint** \_\_\_\_\_” (PoA27)

“The undersigned do hereby **appoint** \_\_\_\_\_” (PoA03)

“I, the Principal, hereby **designate** \_\_\_\_\_ my Attorney-in-fact...” (PoA20)

“I **confer** upon my Attorney-in-fact the power to act on my behalf and in my stead, as if I were present” (PoA21)

“I **grant** authority to my agents with respect to the following subjects ...” (PoA27)

“I **grant** my agent and any successor agent general authority to act for me with respect to the following subjects...” (PoA26)

“If it becomes necessary for a court to appoint a guardian of my estate or guardian of my person, I **nominate** the following person(s) for appointment...” (PoA26)

“I **AUTHORIZE** my attorney(s) for property to do on my behalf anything in respect of property...” (PoA15)

“I, \_\_\_\_\_ **revoke** any previous continuing power of attorney for property made by me and **APPOINT** \_\_\_\_\_ to be my attorney(s) for property” (PoA15)

“I **give** my attorney(s) the AUTHORITY to make any personal care decision for me that I am mentally incapable of making for myself...” (PoA16)

In some of the examples, the illocutionary force is expressed through the use of doublets or triplets of performative verbs:

“I hereby **indemnify and hold harmless** any and all third parties who rely on this Durable Power of Attorney...” (PoA22)

“By this durable power of attorney, I, \_\_\_\_\_, **make, constitute and appoint** \_\_\_\_\_” (PoA22)

The witnesses as well perform a certain action through their declaration and their testimony before the notary public, using in this case the performative verb *declare*:

“We, the witnesses, each do hereby **declare** in the presence of the Principal (...) that the Principal signed it willingly...” (PoA20)

The Attorney-in-fact in his turn accepts his appointment as agent or representative for the duties listed in the PoA:

“I, \_\_\_\_\_, the Attorney-in-fact named above, hereby **accept** appointment as Attorney-in-fact in accordance with the foregoing instrument. (PoA20)

By accepting or acting under the appointment, the agent assumes the fiduciary and other legal responsibilities of an agent (see PoA18).

Finally, the notary public officially verifies the identity of the parties who are signing the contract and certifies the validity, trueness and correctness of the legal act:

“I hereby **certify** that on this day before me, an officer duly qualified to take acknowledgments, personally appeared \_\_\_\_\_, who is personally known to me...” (PoA22)

“I **certify** under PENALTY OF PERJURY under the laws of the State that the foregoing paragraph is true and correct” (PoA23)

The witnesses' and the Notary Public's signatures follow along with official seals, as a further action to acknowledge and formalize the legal instrument, make it official and legalize or notarize it according to the regulations of the country where the power of attorney is being signed.

From the examples just given it can be noticed that the adverbial *hereby* is strongly associated with performativity (as underlined by Williams 2005, p. 56) and it is often found in powers of attorney together with the first person singular and the simple present tense, especially in the commencement part and in the signature section.

The use of the first person singular and expressions uttered directly by the speaker/Donor/Mandator gives a stronger and more solid illocutionary force and performative character to the assertions and promises in the designation of an agent and in the granting of authorities. Powers to the agent are conferred by the Mandator so that the Mandatary can act and perform duties **in my name, place and stead** (PoA22), **in my name, in my stead and for my benefit** (PoA20), **on my behalf** (PoA17) and (PoA23), **in my best interests and for my welfare** (PoA20), **on my behalf and in my stead** (PoA21), **for me and in my name and place** (PoA28), **in my name and for my benefit** (PoA24)

Performatives are also present in the signature section of the legal instrument, where the verbs *sign*, *declare*, *execute* and *accept* make the nature of the act clear and show that the Donor is not just asserting something but he/she is actually “doing” something verbally:

I, \_\_\_\_\_, the Principal, **sign** my name to this power of attorney this \_\_\_\_ day of \_\_\_\_\_ and, being first duly sworn, **do declare** to the undersigned authority that I **sign** and **execute** this instrument as my power of attorney and that I **sign** it willingly, or willingly direct another to sign for me, that I **execute** it as my free and voluntary act for the purposes expressed in the power of attorney that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence” (PoA25)

“I voluntarily **sign** this Durable Power of Attorney after careful consideration. I **understand** its meaning and **accept** its consequences” (PoA24)

The adverbs **willingly** and **voluntarily**, along with expressions such as **free and voluntary act, of sound mind, under no constraint or undue influence** further reinforce and strengthen the illocutionary character of the actions expressed by the performatives.

Performatives appear to be a conventional and traditional element in the drafting of powers of attorney, but their frequent and reiterative use in long sentences mitigates the conservatism of legal language through the variation of lexical items and verbal structures which confer dynamicity and novelty. The excerpt just shown above from (PoA25) contains almost 90 words and Gotti explains that “(t)he considerable sentence length of legal texts is due to the high number of items required to minimise ambiguity and misunderstandings. Each mention is supported by specifications that clarify its identity” (2005, p. 85).

## 10. Powers conferred: doublets, triplets and longer lists

In the operative part, where the Mandator confers powers to the attorney, newly coined lexical structures can be found in the form of doublets (or binomials), triplets (or trinomials), or longer lists of adjectives, adverbs, verbs and nouns. The variety of these new combinations, or multinomials as Frade calls them (2005, pp. 133-155), accounts for the several types and purposes of the powers of attorney, i.e. real estate, property, health care, minor children and/or delegation of parental powers and the lexical assortment is directly, and semantically, correlated to the field at stake.

(PoA22) is a Durable Power of Attorney for Sale of Real Estate in which the powers granted to the Attorney are expressed through a long list of verbs and regulated by such legal doublets and combinations as **include, but are not limited to, at public or private sale, any and all, now or in the future**:

“The powers of the Attorney include, but are not limited to, at public or private sale, the right to **buy, sell, convey, bargain, assign, grant, transfer, lease** and **grant** options or **amend** or **modify** any leases or options, on any and all real property owned by me now or in the future, including my homestead” (PoA22)

In the same power of attorney, shown in Fig. 1, a triplet can be found regulating the use of the legal instrument in the event of the Donor’s incapability:

“This Durable Power of Attorney shall not be affected by my **disability, incapacity, or incompetence**, except as provided by statute” (PoA22)

**DURABLE POWER OF ATTORNEY FOR SALE OF REAL ESTATE**

BY THIS DURABLE POWER OF ATTORNEY, I \_\_\_\_\_, make, constitute, and appoint \_\_\_\_\_, who is my \_\_\_\_\_ (relation), and who I will refer to as my "Attorney", as my true and lawful attorney to act for me and in my name, place and stead. I intend this instrument to be exercisable until revoked. My Attorney's powers are limited to the following:

**REAL PROPERTY:** The powers of the Attorney include, but are not limited to, at public or private sale, the right to buy, sell, convey, bargain, assign, grant, transfer, lease and grant options or amend or modify any leases or options, on any and all real property owned by me now or in the future, including my homestead. Also, my Attorney may exchange, borrow against or mortgage any real property owned by me. Also, my Attorney may obtain liability, property damage, theft, flood, and any other type insurance. It is unnecessary to identify each piece of real property as my holdings might change over time.

Or

**REAL PROPERTY:** The powers of the Attorney include the right to contract for the sale and execute all documents necessary to sell or transfer the following described property:

Street Address of Property: \_\_\_\_\_

Legal Description of Property, if known: \_\_\_\_\_

\_\_\_\_\_

**INDEMNIFY THIRD PARTIES:** I hereby indemnify and hold harmless any and all third parties who rely on this Durable Power of Attorney and who have no knowledge of its revocation or its having been amended.

This is intended as a "Durable Power of Attorney" within the meaning of Section 709.08, Florida Statutes. This Durable Power of Attorney shall not be affected by my disability, incapacity, or incompetence, except as provided by statute.

IN WITNESS WHEREOF, I have executed this power of attorney on \_\_\_\_\_.

Signed, sealed and delivered  
in the presence of:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed \_\_\_\_\_  
Address: \_\_\_\_\_

STATE OF \_\_\_\_\_;  
COUNTY OF \_\_\_\_\_;

I HEREBY CERTIFY that on this day before me, an officer duly qualified to take acknowledgments, personally appeared \_\_\_\_\_, who is personally known to me or who has presented a driver's license as identification, to me known to be the person described in and who executed the foregoing and acknowledged before me that he/she executed the same.

WITNESS my hand and official seal in the County and State last aforesaid on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public Signature  
MY COMMISSION EXPIRES: \_\_\_\_\_

Figure 1  
Durable Power of Attorney for Sale of Real Estate, (POA22) in the corpus.

Along with the very frequently used and conventional combinations **terms and conditions, instructions, conditions or restrictions, including but not limited to, under**

**seal or otherwise**, real estate powers of attorney include productive lists such as **assignments, transfers, deeds, papers, documents or instruments** (PoA22) while the section regarding personal property, which can be **tangible or intangible**, includes **shares of stock, bonds, securities and other personal property** (PoA22).

In (PoA18) the powers granted to the attorney by the document are **broad and sweeping**, and in (PoA19) a **true and lawful** Attorney-in-fact is given “**full authority and power to do and perform any and all** other acts **necessary or incident** to the **performance and execution** of the powers herein expressly granted” (PoA19). The powers of attorney are generally executed “**freely and voluntarily** for the **uses and purposes** therein mentioned” (PoA19).

Multinomials are formed with adjectives, adverbs, verbs and nouns linked through the use of conjunctions such as *and* and *or*. Frade explains that some scholars argue that multinomials or long lists are needed to put everything in explicit terms so that all evasions can be prevented. Some others argue that they are unnecessary and they can be dropped from the legal texts with a gain in precision, brevity and clarity (Frade 2005, p. 139). The examples in this study show that they contemplate various possibilities in order to avoid doubt or ambiguity and to prevent litigation in the future. Tiersma himself asserts that lists can lead to greater precision and a lesser degree of vagueness (2005, p. 117).

Additionally, in some cases, rhetorical devices such as alliteration enrich the lexical combinations, conveying rhythm and tempo to the Donor’s utterances pronounced in the first person singular, as they were spoken statements. Examples can be seen in the following excerpts taken respectively from a Durable Power of Attorney for Health Care (PoA24), with the repetition of the prefix un-, and a Temporary Power of Attorney for Minor Children (PoA28) with the repetition of the sound /c/ at the beginning of three subsequent words:

“If the first individual is **unable, unwilling or unavailable** to serve as my patient advocate, then I designate \_\_\_\_\_ to serve as my patient advocate” (PoA24)

“I temporarily appoint \_\_\_\_\_ to act lawfully and with full authority for me and in my name and place (...) to have the **care, custody and control** of the above child/ren and their property” (PoA28)

Other newly coined lexical combinations include **care, custody or medical treatment** and **proper and adequate care and custody** in (PoA24) and **medical, dental, psychological, or psychiatric examinations, care or treatment** in (PoA28).

The powers of attorney under investigation show a broad variety of new concepts and wider meanings and the consequent lexical density in both short or longer lists appears to justify and give a reason for less ambiguity and improved clarity and precision.

## 11. Powers of attorney and Plain English

As anticipated in the paragraphs dedicated to methodology and corpus in the present study, two original powers of attorney were obtained from some acquaintances in the UK. (PoA29) is for health and welfare and (PoA30) is for property and financial affairs. Already from a cursory glance, it can be noticed that these two original documents differ in their drafting and format from the templates of the powers of attorney analysed so far. It is clear that Legalese is substituted for Plain English, therefore many of the considerations made about conservatism and standardization juxtaposed to novelty and creativity in

powers of attorney do not apply in this case. The strategies of traditional legal discourse are not present in these documents and the language used is notably different. As explained by Williams (2005), calls for the use of plain language in drafting legal documents continue to be a major issue. The Plain Language Movement originated in 1970s and it called for a radical overhaul and reform of *officialese* and *legalese* in order to make legal instruments and acts more comprehensible and accessible to ordinary citizens. There has been the publication of a huge number of manuals dedicated to the techniques of drafting legal documents in order to make them clear and understandable to the wider public.

What can be observed in these two English documents under scrutiny here is the simplification of grammatical and semantic elements which were present in the powers of attorney from (PoA01) to (PoA28), that is the Italian-English templates and the American and Canadian ones, which clearly used *legalese* in their drafting and format. What is expressed by the commencement and the designation of an agent in the previous powers of attorney through the first person singular is substituted for a statement in the second person singular in both Section 1, dedicated to the Donor, and Section 2, dedicated to the attorneys. Section 1 starts with the statement

“You are appointing other people to make decisions on your behalf. You are ‘the Donor’”  
(PoA29) and (PoA30)

Section 2 designates the attorneys utilizing a statement in the second person singular and addressing the reader directly:

“The people you choose to make decisions for you are called your ‘attorneys’. Your attorneys don’t need special legal knowledge or training. They should be people your trust and know well. Common choices include your husband, wife or partner, son or daughter, or your best friend” (PoA29) and (PoA30)

Archaic adverbials and text-cohering formulae used in the templates analysed so far are not found in these two original documents. The overall organizational structure is not distributed into parts or moves in a single text of one or few pages as in the previous powers of attorneys, but, more explicitly, is subdivided into numbered sections with headings and subheadings. (PoA29) and (PoA30) are 20 pages long and include numbered sections, tables, boxes and frames in which the Donor can tick his/her options. The documents are ordered and organized logically and the format is reader-friendly. Terms are defined carefully and the acronyms are fully explained and explicated. Sentences are short and paragraphs are concise because unnecessary words have been eliminated.

Regarding verbs, the active voice and the present tense are utilized and *shall* is never used. Redundancy is avoided, doublet, triplets and multinomials are absent. As said earlier, the pronoun *you* is used most of the time and a colloquial style renders the text easily spoken and understood by the ordinary citizen.

As shown in Table 4, each of these two powers of attorney includes 15 sections, which are all the same except for Section 5 which is more specific for the field of the legal instrument under consideration.

Sections	<b>Lasting power of attorney for health and welfare (PoA29)</b>	<b>Lasting power of attorney for property and financial affairs (PoA30)</b>
1.	The Donor	The Donor
2.	The attorneys	The attorneys
3.	How should your attorneys make decisions?	How should your attorneys make decisions?
4.	Replacement attorneys	Replacement attorneys
5.	Life-sustaining treatment	When can your attorneys make decisions?
6.	People to notify when the LPA is registered	People to notify when the LPA is registered
7.	Preferences and instructions	Preferences and instructions
8.	Your legal rights and responsibilities	Your legal rights and responsibilities
9.	Signature: Donor	Signature: Donor
10.	Signature: certificate provider	Signature: certificate provider
11.	Signature: attorney or replacement	Signature: attorney or replacement
12.	Register your lasting power of attorney. The applicant	Register your lasting power of attorney. The applicant
13.	Who do you want to receive the LPA?	Who do you want to receive the LPA?
14.	Application fee	Application fee
15.	Signature	Signature

Table 4  
(PoA29) and (PoA30).

In (PoA29) Section 5 deals with “life-sustaining treatment” and the topic is introduced by the statement in the second person singular.

“You must choose whether your attorneys can give or refuse consent to life-sustaining treatment on your behalf” (PoA29)

Then a question is asked:

“Who do you want to make decisions about life-sustaining treatment?” (PoA29)

Two options are given, as shown in Fig. 2, “Option A- I give my attorneys authority” and “Option B-I do not give my attorneys authority”. Then signatures follow, both by the applicant and by the witness. In (PoA30) Section 5 asks the applicant the direct question:

“When can your attorneys make decisions? (PoA30)

The question is resumed and rephrased in the frame which follows on the same page:

“When do you want your attorneys to be able to make decisions?” (PoA30)

Only one answer can be marked between “As soon as my LPA has been registered (and also when I don’t have mental capacity)” and “Only when I don’t have mental capacity”. Fig. 2 and Fig. 3 show how these two documents bear a clear and straightforward layout, they avoid ambiguity and can be clearly understood by ordinary citizens.

**Who do you want to make decisions about life-sustaining treatment?** (sign only one option)

**Option A - I give my attorneys authority** to give or refuse consent to life-sustaining treatment on my behalf.

If you choose this option, your attorneys can speak to doctors on your behalf as if they were you.

Signature or mark

Date signed or marked

Day    Month    Year

**Option B - I do not give my attorneys authority** to give or refuse consent to life-sustaining treatment on my behalf.

If you choose this option, your doctors will take into account the views of the attorneys and of people who are interested in your welfare as well as any written statement you may have made, where it is practical and appropriate.

Signature or mark

Date signed or marked

Day    Month    Year

**Witness**  
 The witness must not be an attorney or replacement attorney appointed under this LPA, and must be aged 18 or over.

Signature or mark

Full name of witness

Address

Postcode

Figure 2  
 Lasting power of attorney for health and welfare (PoA29), Section 5.

**When do you want your attorneys to be able to make decisions?**  
 (mark one only)

**As soon as my LPA has been registered (and also when I don't have mental capacity)**  
 Most people choose this option because it is the most practical.  
 While you still have mental capacity, your attorneys can only act **with your consent**. If you later lose capacity, they can continue to act on your behalf for all decisions covered by this LPA.  
 This option is useful if you are able to make your own decisions but there's another reason you want your attorneys to help you - for example, if you're away on holiday, or if you have a physical condition that makes it difficult to visit the bank, talk on the phone or sign documents.

**Only when I don't have mental capacity**  
**Be careful** - this can make your LPA a lot less useful. Your attorneys might be asked to prove you do not have mental capacity each time they try to use this LPA.

Figure 3  
 Lasting power of attorney for property and financial affairs (PoA30), Section 5.

## 12. Conclusions

The analysis of a corpus of powers of attorney (used in Civil Law and Common Law countries) has revealed the co-existence of both instances of conservatism and creativity, old and new structures, fixed meanings and novel implications. Archaic adverbials (such as *hereby*, *whereto*, *herein*), text-cohering formulae (such as *aforsaid*, *pursuant to*, *in compliance with*), the frequent repetition of particular words and structures (such as *terms and conditions*), long complex sentences with intricate coordination and subordination, modals such as *shall* to show obligation, are juxtaposed and used at once with binomials, trinomials and longer lists bearing new wider and more accurate concepts. The lexical variation implicit in designations such as *Mandator*, *Mandatory*, *Donor*, *Attorney-in-fact* and the lexical and semantic productivity in the use of long lists of verbs (*buy*, *sell*, *convey*, *bargain*, *assign*, *grant*, *transfer*, *lease*...), the choice among synonymic adverbs (*separately*, *independently*, *severally*, *disjointedly*) and the use of *ad hoc* expressions (*under no constraints or undue influence*) leads to the redefinition of existing terms and concepts, and concurs to the improvement of clarity and preciseness. The reduction of vagueness and ambiguity, two of the main features characterizing legalese, is strongly aimed at if the drafting of a contract or a legal instrument seeks to avoid discordant and contradictory interpretations and prevent litigation.

The use of Plain English in two of the documents investigated in the present study would deserve a separate discussion: as shown through the examples given, the language used is completely different and even the format and layout changes entirely. Understanding and clarity are certainly encouraged and advanced but still many myths about Plain English persist. Two of these myths are that “Plain English is impossible because the law deals with complicated ideas that require great precision” and “Plain English does not allow for literary effect or recognize the ceremonial value of legal language” (Trosborg 1997, p. 143): both assertions are implicitly but powerfully connected to the permanence of traditional and conventional traits and their co-existence with creative and innovative structures in contemporary legal documents.

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