

# **Gender-Free Legal Writing**

## **Managing the Personal Pronouns**

**British Columbia Law Institute**

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The Institute offices are located at Suite 300, 845 Cambie Street, Vancouver, B.C. V6B 5T2  
Telephone: Voice (604) 602 1682 Fax (604) 602 1683  
Internet: E-mail [bcli@bcli.org](mailto:bcli@bcli.org) WWW <http://www.bcli.org>

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### PART I

### PRELIMINARY OBSERVATIONS

The law applies to persons, a notion that embraces individuals of both sexes and a variety of entities, such as corporations, that are endowed with legal personality. Some laws, or statements about the law are, by their nature, capable of application to persons of one particular sex or to natural or artificial persons. Statements concerning the legal position of husbands, mothers and companies are examples. The vast majority of laws, however, apply to persons of all kinds. Similarly, most words used to designate a person who has a particular legal status are not concerned with the characteristics of sex or artificiality. The word “trustee” may be used to designate a person who is male, female or a corporation.

Where a statement of any complexity is made about a person, the maker of the statement may face decisions about how further references should be framed. This may pose no problem if the maker can appropriately use any of the pronouns:

he, she, him, her, his, hers, himself, herself, it, its, itself

The use of these pronouns is appropriate when the statement can only apply to a particular sex or kind of person. For example:

A married woman has a legal personality that is distinct from that of **her** husband.

An unwed father now has the same legal relationship to **his** child that would have resulted if **he** had been married to the child’s mother.

A company must maintain **its** registered office in the province or **it** is liable to be struck off.

These pronouns can also be used when the context has established that the particular person referred to is of a particular sex or capacity. For example:

The trustee, when **he** made that investment, was in breach of **his** duty to the beneficiary.

The trustee, when **she** made that investment, was in breach of **her** duty to the beneficiary.

The trustee, when **it** made that investment, was in breach of **its** duty to the beneficiary.

Any of these formulations is acceptable provided we already know that the particular trustee is a male, female, or corporation, as the case may be.

Proper usage becomes more problematic when the person has no characteristics that dictate the use of particular pronouns. How should this sentence be completed?

The trustee, when [ ] makes that kind of investment, is in breach of [ ] duty to the beneficiary.

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For many, the answer is clear and straightforward -- the masculine pronouns embrace all entities and filling the blanks with “he” and “his” is acceptable and appropriate. Others challenge this view, suggesting that the use of the masculine pronouns in general statements involves unsustainable assumptions about the legal system and those who interact with it. They would advocate moving toward a style of writing that does not involve such assumptions - a style sometimes referred to as “gender-neutral.” At bottom, the choice of whether or not to adopt a gender-neutral writing style is an individual or institutional one. The clear communication of ideas is the ultimate goal and it does not require the selection of one style in preference to another.

For those who wish to do so, adopting a style of writing that does not rely on the exclusive use of masculine pronouns can present a challenge. Some writers adopt the feminine pronouns, either exclusively, as a kind of linguistic affirmative action, or in a mixture with the masculine pronouns, achieving a balance of sorts. Other writers favour setting out both forms of the pronoun in a “he or she” and “him or her” kind of formulation. In some contexts these approaches may be satisfactory. Frequently, however, the result is a document that is so “self-consciously” gender-neutral that this detracts from its clarity and distracts the reader.

We suggest that a better approach is to adopt a “gender-free” style of writing - one that avoids the pronouns entirely. For example, the sentence set out above is not difficult to recast in a way that does not rely on pronouns of either gender:

The trustee who makes that kind of investment is in breach of a duty to the beneficiary.

This manual explores a number of techniques that may be used in the creation of documents that are free of gender-specific pronouns. It is intended to serve three functions. The first is to convince those who entertain doubts, that it is possible to write in this way without significant distortion or loss of content. The second is to serve as a guide to those who require instruction in this area. The third is to provide a source-book with answers for writers who currently adhere to a gender-free style, but encounter specific problems.

This manual had its origins in a document prepared for internal use by the Law Reform Commission of British Columbia. On taking a decision to adopt a gender-free style, the Commission found there were few materials with a “how to” approach that would provide assistance and guidance. There was an obvious need for a source that would provide concrete examples and give some description and classification, however crude, of the techniques that may be employed in achieving gender-free writing.

The examples in Part II and the Appendix were all drawn from documents that were prepared without regard to achieving a gender-free style. This explains their subject matter and the exclusive use of the “he, his, him” language in the examples.

Writers must also be aware that achieving a gender-free style is only one of a number of competing concerns that may influence a particular choice of words or formulation. Some of the techniques described in Part II may conflict with applicable writing conventions. The rules that legislative drafters must observe, for example, may limit the extent to which plural constructions can be used. Use of the first or second person may conflict with the need to maintain a highly impersonal tone in a document.

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Other concerns arise out of “plain language” considerations. An alteration in structure that achieves freedom from gender-specific references may result in a sentence that is uncomfortably long or that employs the passive voice. Competitions like these must be resolved in the context of the entire document. The occasional use of the passive voice is not offensive; the evil is overuse. Similarly, the sparing use of lengthy sentences is not a problem. The question, essentially, is one of balance.

**A. Structural Solutions**

**1. Dealing With Possessives**

A typical construction involves the identification of a person [the performer] with the later reference to an object belonging to or associated with the performer. The words “his [object]” must be dealt with. There are a number of techniques.

*(a) Eliminate the Reference to the Object*

Is the reference to the object really necessary? If you can eliminate it your problem is solved.

A well-advised testator will do **his** best to provide for anticipated changes.

A well-advised testator will provide for anticipated changes.

*(b) Eliminate the Possessive Relationship*

Is it necessary to characterize the relationship between the performer and the object as one of possession? If not, eliminate the possessive relationship.

If the seal is attached at, or close to, the time of execution, then it is likely the maker of the instrument directed **his** mind to the process of sealing.

If the seal is attached at, or close to, the time of execution, then it is likely the maker of the instrument had in mind the process of sealing.

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The problem addressed by section 29 of British Columbia’s *Wills Act* is the failure of gifts intended for close relatives of the testator who predecease **him**.

The problem addressed by section 29 of British Columbia’s *Wills Act* is the failure of gifts intended for close relatives who predecease the testator.

*(c) Leave the Possessive Relationship to Implication*

*(i) Eliminate the “his”*

Sometimes the possessive “his” is unnecessary and can be eliminated from the passage. It can be left to be implied.

At common law, a will operated to pass real property belonging to the testator when the will was made and personal property owned at **his** death.

At common law, a will operated to pass real property belonging to the testator when the will was made and personal property owned at death.



### *(ii) Replace “his” with “the” or “a”*

If it is clear from the context that the object belongs to the performer, or the performer is no person in particular, a substitution may be made. Again, the possessive is by implication.

A well-advised testator will review **his** will from time to time to ensure that it continues to provide for an appropriate distribution of **his** estate.

A well-advised testator will review the will from time to time to ensure that it continues to provide for an appropriate distribution of the estate.

---

This Report focuses on a number of miscellaneous rules that apply when circumstances change after a testator has made **his** will.

This Report focuses on a number of miscellaneous rules that apply when circumstances change after a testator has made a will.

### *(d) The “whose” Solution*

Occasionally it will be possible to use the gender-free “whose” to resolve a drafting problem.

But the will confers no immediate authority on the executor. **His** powers remain dormant until the occurrence of the contingency that awakens them -- the testator’s death.

But the will confers no immediate authority on the executor, whose powers remain dormant until the occurrence of the contingency that awakens them -- the testator’s death.

---

Any third party would be justified in exercising great caution in dealings with an attorney who derives **his** authority from an instrument framed in this fashion.

Any third party would be justified in exercising great caution in dealings with an attorney whose authority is based on an instrument framed in this fashion.

### *(e) Other Structural Solutions*

It may also be possible to revise the construction of the passage so the performer can become the possessive word.

If a testator has not addressed the possibility of a lapse, the courts must resolve how the will is to take effect without any clue as to **his** intent.

If a will does not address the possibility of a lapse, the courts must resolve how it is to take effect without any clue as to the testator’s intent.

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A practical safeguard against any premature exercise of the power by the attorney is to arrange matters so that the instrument only comes into **his** possession at the time it is intended to become operational.

A practical safeguard against any premature exercise of the power is to arrange matters so that the instrument only comes into the attorney’s possession at the time it is intended to become operational.

Revisions may also employ the use of the passive voice to eliminate “his.”

P mitigates **his** losses by reselling the goods for \$10,000 to another purchaser.

P’s losses are mitigated by resale of the goods for \$10,000 to another purchaser.

---

If, in these examples, P pursues **his** claim against D in the British Columbia courts,...

If, in these examples, P’s claim against D is pursued in the British Columbia courts,...

The final example would be better if it read “... P pursues a claim...”

It may also be possible to find an alternative word or phrase that avoids the possessive form.

... if a testator makes a gift in **his** will..

... if a testator makes a bequest...

## 2. Dealing With the Reference Back

Many passages and constructions will involve multiple references to the same performer. Repeated references to “the performer” results in a cumbersome and unreadable style. Using the personal pronouns “he” and “him” results in a better style but is an unacceptable departure from gender-free language.

Achieving gender-free language when the context seems to require references back to the performer poses one of the most difficult problems the writer can face. Set out below are a few techniques that may be of assistance.

In many cases substantial changes in the structure of a passage may be necessary to achieve the desired result. Many of the examples below also contain possessive pronouns - “his” problems - that must also be resolved. These provide further examples of the techniques described earlier.

### *(a) Eliminate the Reference Back*

Frequently the reference back is unnecessary and the desired result can be achieved through revisions to the structure of the passage.

Proceeds may still be outstanding on a disposition of property made a number of years before the testator’s death, giving **him** ample time to alter **his** will if **he** intends to continue to benefit the person to whom the gift of the property was made.

Proceeds may still be outstanding on a disposition of property made a number of years before the testator’s death, giving ample time to alter the will where there is a continuing intent to benefit the person to whom the gift of the property was made.

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In the case of class or joint gifts, the testator's intention is self-evident. **He** intends that the beneficiaries in the group should also stand as substitutional beneficiaries for the share of any member that fails.

In the case of class or joint gifts, the testator's intention is self-evident: the beneficiaries in the group should also stand as substitutional beneficiaries for the share of any member that fails.

---

If these requirements are not met, the attorney may have grave difficulty in persuading anyone that **he** is clothed with the authority **he** claims.

If these requirements are not met, the attorney may have grave difficulty in persuading anyone of the authority claimed.

### *(b) Use an Alternative Word or Phrase*

A synonym or alternative phrase may eliminate the need for a reference back.

It is open to question how often this rule achieves a result the testator would have intended had **he** turned **his** mind to the problem.

It is open to question how often this rule achieves a result the testator would have intended had the problem been foreseen.

---

The plaintiff should, as far as possible, be put in the same position **he** would have been in had the breach not occurred.

The plaintiff should, as far as possible, be put in the same position that would have prevailed if the breach had not occurred.

### *(c) Use the Passive Voice*

While the excessive use of the passive voice is not encouraged, some constructions lend themselves to a solution that employs it. The form: " ... [performer] ... "he" ... [action <active voice>] ... [object acted on] ... " becomes " ... [performer] ... object ... [action<passive voice>] ..."

It is perfectly legitimate to order the defendant to pay the German debt in Deutschmarks. **He** can satisfy the judgment by paying the Deutschmarks.

It is perfectly legitimate to order the defendant to pay the German debt in Deutschmarks. The judgment can be satisfied by paying the Deutschmarks.

---

... property the testator owned when **he** made **his** will.

... property the testator owned when the will was made.

### *(d) - The "who" Solution*

The word "who" is a gender-free pronoun that can be useful in avoiding a reference back containing a "he."

### *(i) References Involving Conditionals*

A typical construction is of the form: "... if ... performer ... then ... he ...". The reference back "he" can be eliminated using the form: "... performer who ...".

If a testator makes a bequest with the intention that the beneficiary dispose of **his** own property in a particular way, **he** would ordinarily make this condition express. **He** would not leave it to be inferred from an unrelated disposition of property that **he** does not own.

A testator who makes a bequest intending that the beneficiary's own property be disposed of in a particular way, will ordinarily make the condition express and not leave it to be inferred from an unrelated disposition of property someone else owns.

---

When one person makes a representation with the intention that another rely upon it, in some cases **he** may not later dispute the representation.

A person who makes a representation with the intention that another rely upon it may not, in some cases, later dispute the representation.

### *(ii) Other Examples*

With an appropriate change in structure, a "who" may be used to replace the "he."

Unlike the latter group, the landlord is essentially a captive creditor. **He** has no option but to deal with the trustee and allow **him** to occupy the premises.

Unlike the latter group, the landlord is essentially a captive creditor who has no option but to deal with the trustee and allow continued occupancy of the premises.

### *(e) Other Structural Solutions*

Specific problems often yield specific solutions that resist classification. A further selection of examples is set out in Appendix A.

## **3. Dealing with the Self-referential "himself"**

The self-referential word "himself" occurs from time to time. Hints on dealing with it are set out below.

### *(a) Use "personally" where Appropriate*

In some contexts "personally" is an acceptable synonym for "himself."

This liability will arise even though the owner is guilty of no wrongful act **himself**.

This liability will arise even though the owner is not personally guilty of a wrongful act.

*(b) Where “himself” is the Object of a Verb,  
use a Different Form*

Where there has been a breach the innocent party may, depending on the nature of the breach, also be entitled to terminate the contract and thereby excuse **himself** from further performance of **his** own obligations under the contract.

Where there has been a breach the innocent party may, depending on the nature of the breach, also be entitled to terminate the contract and thereby be excused from further performance of obligations under the contract.

---

To permit or require a landlord to wait until **he** finds a new tenant willing to bind **himself** to the terms of the original tenancy agreement would render the duty to mitigate meaningless.

To permit or require a landlord to wait until a new tenant is found, who is willing to be bound to the terms of the original tenancy agreement, would render the duty to mitigate meaningless.

*(c) Other Solutions Based on Structural Changes*

The obligation of the trustee to pay occupation rent is a personal one. **He** may indemnify **himself** from the assets of the estate.

While the obligation of the trustee to pay occupation rent is a personal one, indemnification from the assets of the estate is permissible.

---

Note that the “superior landlord” need not be the holder of the title to the property. **He** may, **himself**, be a tenant or subtenant who is one, or several, steps removed from ownership of the legal title through a “string” of subtenancies.

Note that the “superior landlord” need not be the holder of the title to the property. A tenant or subtenant who is one, or several, steps removed from ownership of the legal title through a “string” of subtenancies also satisfies the definition.

## B. Generic Solutions

There are three approaches to achieving gender-free drafting that are general in the sense that they can be used to deal with more than one of the problem categories identified above. We refer to these as “generic” solutions.

### 1. Move Away from Third Person Singular References

*(a) Draft in the Third Person Plural Form*

The plural forms of the pronouns are gender-free. The context may permit the plural forms to be used. While drafting in the singular is to be preferred this may provide an acceptable solution in difficult cases.

### *(i) Possessive*

The borrower who is not prompt in making the payments due under **his** mortgage risks losing **his** home through a fore closure proceeding.

Borrowers who are not prompt in making the payments due under their mortgage s risk losing their homes through foreclosure proceedings.

### *(ii) Reference Back*

The original policy underlying section 79 appears to have been aimed at diminishing the possibility that an injured person will find there is no solvent defendant against whom **he** can successfully assert a claim for damages.

The original policy underlying section 79 appears to have been aimed at diminishing the possibility that injured persons will find there is no solvent defendant against whom they can successfully assert a claim for damages.

### *(iii) Mixed examples of (i) and (ii)*

The client wants, through the medium of an enduring power of attorney, to provide for a substitute decision maker to deal with **his** affairs when **he** is no longer capable of doing so. But a general power of attorney, in its enduring form, such as one of those set out in the Schedule to the Act, may go further than **he** would wish.

Such clients want, through the medium of an enduring power of attorney, to provide for a substitute decision maker to deal with their affairs when they are no longer capable of doing so. But a general power of attorney, in its enduring form, such as one of those set out in the Schedule to the Act, may go further than they would wish.

---

... the testator has made a mistake. **His** intention is not in doubt but **he** has mistakenly assumed an ability to do something which, in fact, **he** can not do of **his** own volition.

... such testators are mistaken. Their intention is not in doubt but they have assumed an ability to do something which, in fact, they can not do of their own volition.

---

Legislation should make it clear that the landlord's duty to mitigate does not require **him** to re-let abandoned premises in preference to letting vacant premises of **his** own.

Legislation should make it clear that the landlords' duty to mitigate does not require them to re-let abandoned premises in preference to letting vacant premises of their own.

### *(iv) Self-referential "himself"*

Section 12(11) of the *Bankruptcy Act* allows the trustee, with the permission of the inspectors, to divest **himself** of an interest in the real property of the bankrupt.

Section 12(11) of the *Bankruptcy Act* allows trustees, with the permission of the inspectors, to divest themselves of an interest in the real property of the bankrupt.

### *(b) Other Pronouns*

In most cases the pronouns will be cast in the third person. Occasionally, however, the first person plural pronouns (we/us/ our/ourselves) or the second person singular pronouns (you/your/yourself) may also work. Set out below is an example in which the problem passage has been recast in different ways:

The problem passage:

The mystique of wax and wafer, the fact that the maker of the instrument, when executing it, has engaged in an independent overt act or ceremony, is said to impress upon **his** mind the seriousness of the occasion and leads to an awareness that **his** action has put **himself** in a new legal relationship with another.

The passage recast using third person plural:

The mystique of wax and wafer, the fact that the makers of instruments, when executing them, have engaged in an independent overt act or ceremony, is said to impress upon *their* minds the seriousness of the occasion and leads to an awareness that *their* actions have put *themselves* in new legal relationships with others.

The passage recast using first person plural:

The mystique of wax and wafer, the fact that when executing these instruments *we* have engaged in an independent overt act or ceremony, is said to impress upon *our* minds the seriousness of the occasion and leads to an awareness that *our* actions have put *us* in new legal relationships with others.

The passage recast using second person singular:

The mystique of wax and wafer, the fact that when executing these instruments *you* have engaged in an independent overt act or ceremony, is said to impress upon *your* mind the seriousness of the occasion and leads to an awareness that *your* action has put *you* in a new legal relationship with another.

The passage recast with structural changes - the best solution:

The mystique of wax and wafer, the fact that in executing an instrument the maker engages in an independent overt act or ceremony, is said to bring home the seriousness of the occasion and leads to an awareness that the action has created a new legal relationship with another.

## 2. Identify the Performer a Second Time

Sometimes a solution may be to name the performer a second time.

### *(a) Possessive*

A person may not sue, or be sued, upon an indenture unless named or described in it as a party and it is executed in **his** name.

A person may not sue, or be sued, upon an indenture unless named or described in it as a party and it is executed in the person's name.

This approach seems appropriate (or even necessary) for this example because there is a special need for clarity.

It was recommended that relevant extrinsic evidence of the testator's intent should be more readily admissible to assist in the interpretation of **his** will.

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It was recommended that relevant extrinsic evidence of the testator's intent should be more readily admissible to assist in the interpretation of the testator's will.

In this example, it would be preferable to refer to "the will."

### *(b) Reference Back*

P sues D in British Columbia for 1000 Utopian dollars that were payable January 1, 1981. **He** obtains judgment on January 1, 1983.

P sues D in British Columbia for 1000 Utopian dollars that were payable January 1, 1981. P obtains judgment on January 1, 1983.

### **3. Use a "he or she" "his or her" Formulation**

It is also possible to use a formulation that refers to both genders, although this is sometimes hard to avoid. This is the least satisfactory solution since it is not truly gender-free.

#### *(a) Possessive*

The seal at that time was merely a means of "signing" used by a person who was illiterate and unable to write **his** name.

The seal at that time was merely a means of "signing" used by a person who was illiterate and unable to write his or her name.

#### *(b) Reference Back*

They prefer to allow the authority to remain dormant so long as the principal is of full capacity but to allow the instrument to operate with full vigour when **he** ceases to be of full capacity.

They prefer to allow the authority to remain dormant so long as the principal is of full capacity but to allow the instrument to operate with full vigour when he or she ceases to be of full capacity.



### PART III

### GUIDELINES

Where a writer must frame a passage that is free of gender-specific pronouns several approaches may be open. It is not possible to set out any universal rules for selecting which of the available techniques should be selected. The preferences of the individual writer and the context in which the passage occurs must dictate the final choice.

Still, it is possible to identify certain techniques as being superior to others in most cases. A group of flexible guidelines are set out below that may assist the writer in making an appropriate choice.

1. A solution based on revising the sentence structure is usually preferable to a generic solution.
2. As between available structural solutions:
  - (a) eliminating a possessive or reference back is preferable to retaining it but dealing with it in a gender-free manner, and
  - (b) a solution that uses the active voice is preferable to one that uses the passive voice.
3. “Generic solutions” should be adopted in the following order of preference:
  - (a) Draft in the third person plural form
  - (b) Identify the performer a second time
  - (c) Use the “we/us/our/ourselves” or the “you/your/yourself” formulation
  - (d) Use the “he or she” or the “him/ his or her” formulation.

## Appendix

### More Examples of Text Revised to a Gender-free Style

A testator makes three gifts, representing the bulk of **his** estate, to **his** three children, one of whom predeceases **him**.

The bulk of an estate consists of gifts to each the testator's three children. One child predeceases the testator.

or

A testator is predeceased by one of the three children whose gifts comprise the bulk of the estate.

-----

It is assumed that when property cannot be found in the testator's estate after **his** death, **he** intended to revoke the gift of it in **his** will.

It is assumed that a testator intends to revoke a gift made in a will when the property given cannot be found in the estate after death.

-----

Why should the Swiss plaintiff have been concerned whether the pound was going through a good time or a bad time? Surely, only the performance of **his** own currency should affect **his** recovery. **He** should neither suffer a loss nor gain a windfall through distortions that affect the performance of a currency in which **he** is essentially disinterested.

Why should the Swiss plaintiff have been concerned whether the pound was going through a good time or a bad time? Surely, only the performance of Swiss currency should affect the amount recovered. Distortions that affect the performance of a currency in which the plaintiff is essentially disinterested should result in neither a loss nor a windfall.

-----

... what technique should be adopted to measure that claim and give P the relief **he** seeks?

... what technique should be adopted to measure that claim and give P the relief sought?

-----

This, arguably, is unfair to the defendant, although one is less sympathetic to **his** plight because **he** is the party in breach. In other cases, the defendant's delay or failure in paying may have prevented the plaintiff from mitigating the consequences of the decline in **his** currency and the date of breach rule may come closer to restoring **his** position than any alternative.

This, arguably, is unfair to defendants, although one is less sympathetic to their plight, because they are the ones in breach. In other cases, delay or failure in paying may prevent mitigation of the consequences of a decline in the plaintiff's currency and the date of breach rule may come closer to achieving full restitution than any alternative.

-----

On its face **it** would appear that P has been severely prejudiced by D's delay. If **he** were paid \$100 on July 1, 1983 **he** would receive only half the purchasing power **he** would have received had D fulfilled **his** part of the bargain promptly.

On its face it would appear that P has been severely prejudiced by D's delay. Payment of \$100 on July 1, 1983 would provide only half the purchasing power P would receive if D paid promptly.

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... where a currency other than the currency of Canada will most truly express a person's loss or claim and will most fully and exactly compensate **him** then a court should...

... where a currency other than the currency of Canada will most truly express a person's loss or claim and will most fully and exactly compensate for it then a court should...

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## Gender-Free Legal Writing: Managing the Personal Pronouns

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The position of the custodian of the instrument may be eased somewhat if **he** is acting under written instructions that require **him** to surrender it to the attorney in precisely defined circumstances (for example, on receiving one or more doctors' affidavits attesting to the principal's incompetence) or that make it clear that the determination is purely a matter of discretion to be exercised by **him**.

The position of the custodian of the instrument may be eased somewhat if there are written instructions that require that it be surrendered to the attorney in precisely defined circumstances (for example, on receiving one or more doctors' affidavits attesting to the principal's incompetence) or that make it clear that the determination is purely a matter of discretion.

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The attorney's authority would come into being immediately. In practice, however, **he** would be unable to satisfy third parties that **he** has that authority unless **he** also has possession of the instrument itself.

The authority would come into being immediately. In practice, however, without possession of the instrument itself, the attorney would usually be unable to satisfy third parties as to the existence and extent of the authority.

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If these requirements are not met, the attorney may have grave difficulty in persuading anyone that **he** is clothed with the authority **he** claims.

If these requirements are not met, the attorney may have grave difficulty in persuading anyone of the authority claimed.

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Problems relating to the appointment of an agent, and whether **he** can enter into an arrangement under seal that is binding on **his** principal, are historical in nature.

Problems relating to an agent's appointment and capacity to enter into an arrangement under seal that is binding on the principal, are historical in nature.

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Under a conditional sale agreement, the buyer does not become full owner of the goods until **he** has satisfied **his** contractual obligations

Under a conditional sale agreement, the buyer only becomes full owner of the goods on payment of the purchase price and satisfaction of any other contractual obligations

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What kinds of defences should be available to an owner liable for the acts of another? What kind of conduct, if any, should excuse **him** from liability?

What kinds of defences should be available to an owner liable for the acts of another? What kind of conduct, if any, should negate liability?

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The evidentiary burden shifts to O to make out what defence **he** can. **He** might wish to continue to insist that the vehicle was stolen, but the burden is on **him** to lead evidence to displace the Crown's case. **He** may or may not succeed depending on the cogency and credibility of that evidence.

The evidentiary burden shifts to O to make out a defence. O might continue to insist that the vehicle was stolen, but now faces the burden of leading evidence to displace the Crown's case. The cogency and credibility of that evidence will dictate the success of O's defence.