

## O

**O. C.** An abbreviation, in the civil law, for "*ope consilio*" (q. v.). In American law, these letters are used as an abbreviation for "Orphans' Court."

**O. E. O.** Office of Economic Opportunity.

**O. K.** A conventional symbol, of obscure origin much used in commercial practice and occasionally in indorsements on legal documents, signifying "correct," "approved," "accepted," "satisfactory," or "assented to." *Getchell & Martin Lumber Co. v. Peterson*, 124 Iowa, 599, 100 N.W. 550; *Morganton Mfg. Co. v. Ohio River, etc., Ry. Co.*, 121 N.C. 514, 28 S.E. 474, 61 Am.St.Rep. 679.

**O. N. B.** An abbreviation for "Old Natura Brevium." See *Natura Brevium*.

**O. NI.** It was the course of the English exchequer, as soon as the sheriff entered into and made up his account for issues, amerciaments, etc., to mark upon each head "*O. Ni.*," which denoted *oneratur, nisi habeat sufficientem exonerationem*, and presently he became the king's debtor, and a *debet* was set upon his head; whereupon the parties *paravaile* became debtors to the sheriff, and were discharged against the king, etc. 4 Inst. 116; Wharton.

**O. S.** An abbreviation for "Old Style," or "Old Series."

**OATH.** Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully. *Vaughn v. State*, 146 Tex.Cr.R. 586, 177 S.W.2d 59, 60. An affirmation of truth of a statement, which renders one willfully asserting untrue statements punishable for perjury. *U. S. v. Klink*, D.C.Wyo., 3 F. Supp. 208, 210. An outward pledge by the person taking it that his attestation or promise is made under an immediate sense of responsibility to God. *Morrow v. State*, 140 Neb. 592, 300 N.W. 843, 845. A solemn appeal to the Supreme Being in attestation of the truth of some statement. *State v. Jones*, 28 Idaho 428, 154 P. 378, 381; *Tyler*, Oaths 15. An external pledge or asseveration, made in verification of statements made, or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party, or with an invocation to a supreme being to witness the words of the party, and to visit him with punishment if they be false. *June v. School Dist. No. 11, Southfield Tp.*, 283 Mich. 533, 278 N.W. 676, 677, 116 A.L.R. 581. In its broadest sense, the term is used to include all forms of attestation by which a party signifies that he is bound in conscience to perform the act faithfully and truly. In a more restricted sense, it excludes all those forms of attestation or promise which are not accompanied by an imprecation.

The term has been variously defined: as, "a solemn invocation of the vengeance of the Deity upon the witness if he do not declare the whole truth, so far as he knows it," 1 Stark.Ev. 22; or, "a religious asseveration by which

a person renounces the mercy and imprecates the vengeance of Heaven if he do not speak the truth," 1 Leach 430; or, as "a religious act by which the party invokes God not only to witness the truth and sincerity of his promise, but also to avenge his imposture or violated faith, or, in other words, to punish his perjury if he shall be guilty of it," 10 Toullier, n. 343; *Puffendorff*, b. 4, c. 2, § 4. The essential idea of an oath would seem to be, however, that of a recognition of God's authority by the party taking it, and an undertaking to accomplish the transaction to which it refers as required by his laws.

See *Kissing the Book*.

**Assertory Oath.** One relating to a past or present fact or state of facts, as distinguished from a "promissory" oath which relates to future conduct; particularly, any oath required by law other than in judicial proceedings and upon induction to office, such, for example, as an oath to be made at the custom-house relative to goods imported.

**Corporal Oath.** See *Corporal*.

**Decisive or Decisory Oath.** In the civil law, where one of the parties to a suit, not being able to prove his charge, offered to refer the decision of the cause to the oath of his adversary, which the adversary was bound to accept, or tender the same proposal back again, otherwise the whole was taken as confessed by him. Cod. 4, 1, 12.

**Extrajudicial Oath.** One not taken in any judicial proceeding, or without any authority or requirement of law, though taken formally before a proper person. *State v. Scatena*, 84 Minn. 281, 87 N.W. 764.

**False Oath.** See titles "False Oath" and "Perjury."

**Judicial Oath.** One taken in some judicial proceeding or in relation to some matter connected with judicial proceedings. One taken before an officer in open court, as distinguished from a "non-judicial" oath, which is taken before an officer *ex parte* or out of court. *State v. Dreifus*, 38 La. Ann. 877.

**Official Oath.** One taken by an officer when he assumes charge of his office, whereby he declares that he will faithfully discharge the duties of the same, or whatever else may be required by statute in the particular case.

**Poor Debtor's Oath.** See *Poor*.

**Promissory Oaths.** Oaths which bind the party to observe a certain course of conduct, or to fulfill certain duties, in the future, or to demean himself thereafter in a stated manner with reference to specified objects or obligations; such, for example, as the oath taken by a high executive officer, a legislator, a judge, a person seeking naturalization, an attorney at law. *Case v. People*, 6 Abb. N. C., N.Y., 151. A solemn appeal to God, or, in a wider sense, to some superior sanction or a sacred or revered person in witness of the inviolability of

a promise or undertaking. *People ex rel. Bryant v. Zimmerman*, 241 N.Y. 405, 150 N.E. 497, 499, 43 A.L.R. 909.

**Purgatory Oath.** An oath by which a person purges or clears himself from presumptions, charges or suspicions standing against him, or from a contempt.

**Qualified Oath.** One the force of which as an affirmation or denial may be qualified or modified by the circumstances under which it is taken or which necessarily enter into it and constitute a part of it; especially thus used in Scotch law.

**Solemn Oath.** A corporal oath. *Jackson v. State*, 1 Ind. 184.

**Suppletory Oath.** In the civil and ecclesiastical law, the testimony of a single witness to a fact is called "half-proof," on which no sentence can be founded; in order to supply the other half of proof, the party himself (plaintiff or defendant) is admitted to be examined in his own behalf, and the oath administered to him for that purpose is called the "suppletory oath," because it supplies the necessary *quantum* of proof on which to found the sentence. 3 Bl. Comm. 370.

This term, although without application in American law in its original sense, is sometimes used as a designation of a party's oath required to be taken in authentication or support of some piece of documentary evidence which he offers, for example, his books of account.

**Voluntary Oath.** Such as a person may take in extrajudicial matters, and not regularly in a court of justice, or before an officer invested with authority to administer the same. *Brown*.

**OATH AGAINST BRIBERY.** One which could have been administered to a voter at an election for members of parliament. Abolished in 1854. *Wharton*.

**OATH EX OFFICIO.** The oath by which a clergyman charged with a criminal offense was formerly allowed to swear himself to be innocent; also the oath by which the compurgators swore that they believed in his innocence. 3 Bl. Comm. 101, 447; *Mozley & Whiteley*.

**OATH IN LITEM.** In the civil law, an oath permitted to be taken by the plaintiff, for the purpose of proving the value of the subject-matter in controversy, when there was no other evidence on that point, or when the defendant fraudulently suppressed evidence which might have been available. *Greenl. Ev. § 348*; 1 *Eq. Cas. Abr.* 229; *Herman v. Drinkwater*, 1 *Greenl., Me.*, 27.

**OATH OF ALLEGIANCE.** An oath by which a person promises and binds himself to bear true allegiance to a particular sovereign or government, *e. g.*, the United States; administered generally to high public officers and to soldiers and sailors, also to aliens applying for naturalization, and, occasionally, to citizens generally as a prerequisite to their suing in the courts or prosecuting claims before government bureaus. *Rev.St. U.S. §§ 3478, 31 U.S.C.A. § 204*.

**OATH OF CALUMNY.** In the civil law, an oath which a plaintiff was obliged to take that he was not prompted by malice or trickery in commencing his action, but that he had *bona fide* a good cause of action. *Poth. Pand. lib. 5, tt. 16, 17, s. 124*.

**OATH-RITE.** The form used at the taking of an oath.

**OB.** Lat. On account of; for. Several Latin phrases and maxims, commencing with this word, are more commonly introduced by "in" (*q. v.*).

**OB CAUSAM ALIQUAM A RE MARITIMA ORTAM.** For some cause arising out of a maritime matter. 1 *Pet. Adm.* 92. Said to be Selden's translation of the French definition of admiralty jurisdiction, "*pour le fait de la mer.*" *Id.*

**OB CONTINENTIAM DELICTI.** On account of contiguity to the offense, *i. e.*, being contaminated by conjunction with something illegal.

For example, the cargo of a vessel, though not contraband or unlawful, may be condemned in admiralty, along with the vessel, when the vessel has been engaged in some service which renders her liable to seizure and confiscation. The cargo is then said to be condemned *ob continentiam delicti*, because found in company with an unlawful service. 1 *Kent, Comm.* 152.

**OB CONTINGENTIAM.** On account of connection; by reason of similarity. In Scotch law, this phrase expresses a ground for the consolidation of actions.

**OB FAVOREM MERCATORUM.** In favor of merchants. *Fleta, lib. 2, c. 63, § 12*.

**OB INFAMIAM NON SOLET JUXTA LEGEM TERRÆ ALIQUIS PER LEGEM APPARENTEM SE PURGARE, NISI PRIUS CONVICTUS FUERIT VEL CONFESSUS IN CURIA.** *Glan. lib. 14, c. ii.* On account of evil report, it is not usual, according to the law of the land, for any person to purge himself, unless he have been previously convicted, or confessed in court.

**OB TURPEM CAUSAM.** For an immoral consideration. *Dig. 12, 5*.

**OBÆRATUS.** Lat. In Roman law, a debtor who was obliged to serve his creditor till his debt was discharged. *Adams, Rom. Ant.* 49.

**OBEDIENCE.** Compliance with a command, prohibition, or known law and rule of duty prescribed; the performance of what is required or enjoined by authority, or the abstaining from what is prohibited, in compliance with the command or prohibition. *Webster*.

**OBEDIENTIA.** An office, or the administration of it; a kind of rent; submission; obedience.

**OBEDIENTIA EST LEGIS ESSENTIA.** 11 *Coke*, 100. Obedience is the essence of the law.

**OBEDIENTIAL OBLIGATION.** See *Obligation*.

**OBEDIENTIARIUS; OBEDIENTIARY.** A monastic officer. *Du Cange*; see 1 *Poll. & Maitl.* 417.

## OBIT

**OBIT.** A funeral solemnity, or office for the dead. Cowell. The anniversary of a person's death; the anniversary office. Cro. Jac. 51.

**OBIT SINE PROLE.** Lat. [He] died without issue. Yearb. M. 1 Edw. II. 1.

**OBITER.** Lat. By the way; in passing; incidentally; collaterally.

**OBITER DICTUM.** Words of a prior opinion entirely unnecessary for the decision of the case. Noel v. Olds, 78 U.S.App.D.C. 155, 138 F.2d 581, 586.

Statements in opinions wherein courts indulged in generalities that had no actual bearing on issues involved. Graham v. Jones, 198 La. 507, 3 So. 2d 761, 774.

A remark made, or opinion expressed, by a judge, in his decision upon a cause, "by the way," that is, incidentally or collaterally, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. See Dictum.

**OBJECT, v.** In legal proceedings, to object (*e. g.*, to the admission of evidence) is to interpose a declaration to the effect that the particular matter or thing under consideration is not done or admitted with the consent of the party objecting, but is by him considered improper or illegal, and referring the question of its propriety or legality to the court.

**OBJECT, n.** End aimed at, the thing sought to be accomplished, the aim or purpose, the thing sought to be attained. State v. Banks, 33 Idaho 765, 198 P. 472, 474; Miller v. Tucker, 142 Miss. 146, 105 So. 774, 777.

Anything which comes within the cognizance or scrutiny of the senses, especially anything tangible or visible. Moore v. Union Mut. Fire Ins. Co., 112 Vt. 218, 22 A.2d 503, 505. That which is perceived, known, thought of, or signified; that toward which a cognitive act is directed. Cent. Dict.

The term includes whatever may be presented to the mind as well as to the senses; whatever, also, is acted upon or operated upon affirmatively, or intentionally influenced by anything done, moved, or applied thereto. Wells v. Shook, 8 Blatchf. 257, Fed.Cas.No.17,406; it may be used as having the sense of effect, Harland v. Territory, 3 Wash.T. 131, 13 P. 453.

**OBJECT OF AN ACTION.** Legal relief to prevent or redress the wrong. Ophuls & Hill v. Carolina Ice & Fuel Co., 160 S.C. 441, 158 S.E. 824, 827. The thing sought to be obtained by the action; the remedy demanded or the relief or recovery sought or prayed for; not the same thing as the cause of action or the subject of the action. Scarborough v. Smith, 18 Kan. 406; Lassiter v. Norfolk & C. R. Co., 136 N.C. 89, 48 S.E. 643.

**OBJECT OF A STATUTE.** Aim or purpose of its enactment. Pinder v. Board of Sup'rs of Election of Calcasieu Parish, La.App., 146 So. 715, 718; Nichols v. Yandre, 151 Fla. 87, 9 So.2d 157, 158, 144 A.L.R. 1351. End or design which it is meant to accomplish, while the "subject" is the matter to which it relates and with which it deals. Medical Examiners v. Fowler, 50 La. Ann. 1358, 24 So. 809;

McNeely v. South Penn Oil Co., 52 W.Va. 616, 44 S.E. 508, 62 L.R.A. 562. Matter or thing forming groundwork of statute. Moats v. Cook, 113 W.Va. 151, 167 S.E. 137, 138.

**OBJECTION.** Act of objecting; that which is, or may be, presented in opposition; an adverse reason or argument; a reason for objecting or opposing; a feeling of disapproval. 131 Ken Ave. Co. v. Gross, 125 N.J.L. 513, 16 A.2d 469, 470.

The act of a party who objects to some matter or proceeding in the course of a trial, (see Object, *v.*) or an argument or reason urged by him in support of his contention that the matter or proceeding objected to is improper or illegal.

By the term "objections" by the Governor to a statute, as used in a state constitution, is meant his disapproval. State v. Forsyth, 21 Wyo. 359, 133 P. 521, 529.

It is directed to thing done by one other than judge or court, and "exception" going to action or ruling of court. State ex rel. Brockman Mfg. Co. v. Miller, 241 S.W. 920, 922.

**OBJECTIVE SYMPTOM.** Those which a surgeon or physician discovers from an examination of his patient, "subjective symptoms" being those which he learns from what his patient tells him. Schroeder v. Western Union Telegraph Co., Mo.App., 129 S.W.2d 917, 922.

**OBJECTS OF A POWER.** Those among whom donee is given power to appoint. Restatement, Property, § 319(3); Mozley & Whiteley.

**OBJURGATRIX.** In old English law, scolds or unquiet women were referred to as objurgatrices and were punished with the cucking-stool (*q. v.*).

**OBLATA.** Gifts or offerings made to the king by any of his subjects; old debts, brought, as it were, together from preceding years, and put on the present sheriff's charge. Wharton.

**OBLATA TERRÆ.** Half an acre, or, as some say, half a perch, of land. Spelman.

**OBLATE.** See Oblati.

**OBLATE ROLLS.** Chancery Rolls (1199-1641), called also Fine Rolls, containing records of payments to the king by way of oblate or fine for the grant of privileges, or by way of amercement for breach of duty. 2 Holdsw. Hist. E. L. 141.

**OBLATI.** In old European law, voluntary slaves of churches or monasteries.

**OBLATI ACTIO.** In the civil law, an action given to a party against another who had *offered* to him a stolen thing, which was found in his possession. Inst. 3, 1, 4.

**OBLATIO.** Lat. In the civil law, a tender of money in payment of a debt made by debtor to creditor. Whatever is offered to the church by the pious. Calvin.

**OBLATION.** Oblations, or obventions, are offerings or customary payments made, in England, to the minister of a church, including fees on marriages, burials, mortuaries, etc., (*q. v.*) and Easter offerings. 2 Steph. Comm. 740; Phillim. Ecc. Law, 1596. They may be commuted by agreement.

**OBLATIONES DICUNTUR QUÆCUNQUE A PIIS FIDELIBUSQUE CHRISTIANIS OFFERTUR DEO ET ECCLESIAE, SIVE RES SOLIDAE SIVE MOBILES.** 2 Inst. 389. Those things are called "oblations" which are offered to God and to the Church by pious and faithful Christians, whether they are movable or immovable.

**OBLIGATE.** To bind or constrain; to bind to the observance or performance of a duty; to place under an obligation. To bind one's self by an obligation or promise; to assume a duty; to execute a written promise or covenant; to make a writing obligatory. Wachter v. Famachon, 62 Wis. 117, 22 N.W. 160; Maxwell v. Jacksonville Loan & Imp. Co., 45 Fla. 425, 34 So. 255.

**OBLIGATIO.** Lat. In Roman law, a legal bond which obliges the performance of something in accordance with the law of the land. Ortolan, Inst. 2, § 1179. It corresponded nearly to our word contract. The legal relation existing between two certain persons whereby one (the creditor) is authorized to demand of the other (the debtor) a certain performance which has a money value. In this sense *obligatio* signifies not only the duty of the debtor, but also the right of the creditor. The fact establishing such claim and debt, as also the instrument evidencing it, is termed "obligation." Mackeld. Rom. Law, § 360.

That legal relation subsisting between two persons by which one is bound to the other for a certain performance. The passive relation sustained by the debtor to the creditor is likewise called an "obligation." Sometimes, also, the term "*obligatio*" is used for the *causa obligationis*, and the contract itself is designated an "obligation." There are passages in which even the document which affords the proof of a contract is called an "obligation." Such applications, however, are but a loose extension of the term, which, according to its true idea, is only properly employed when it is used to denote the debt relationship, in its totality, active and passive, subsisting between the creditor and the debtor. Tomk. & J. Mod. Rom. Law, 301.

**OBLIGATIO CIVILIS.** An obligation enforceable by action, whether it derives its origin from the *jus civile*, as the obligation engendered by formal contracts or the obligation enforceable by bilaterally penal suits, or from such portion of the *jus gentium* as had been completely naturalized in the civil law and protected by all its remedies, such as the obligation engendered by formless contracts.

**OBLIGATIO EX CONTRACTU.** An obligation arising from contract, or an antecedent *jus in personam*. In this there are two stages,—first, a primary or sanctioned personal right antecedent to wrong, and, afterwards, a secondary or sanctioning personal right consequent on a wrong. Poste's Gaius' Inst. 359.

**OBLIGATIO EX DELICTO, or OBLIGATIO EX MALEFICIO.** An obligation founded on wrong or tort, or arising from the invasion of a *jus in rem*. In this there is the second stage, a secondary or sanctioning personal right consequent on a wrong, but the first stage is not a personal right, (*jus in personam*,) but a real right, (*jus in rem*,) whether a primordial right, right of *status*, or of property. Poste's Gaius' Inst. 359.

**OBLIGATIO NATURALIS.** An obligation not immediately enforceable by action; one deriving its validity from the law of nature, or one imposed by that portion of the *jus gentium* which is only imperfectly recognized by civil law.

These had not the binding force of the other classes, not being capable of enforcement by action, and are, therefore, not noticed by Justinian in his classification; but they had, nevertheless, a certain efficacy even in the civil law: for instance, though a debt founded upon a natural obligation could not be recovered by an action, yet if it was voluntarily paid by the debtor he could not recover it back, as he might do in the case of money paid by mistake, etc., where no natural obligation existed. L. 38, pr. D. 12. 6; Ortolan 2, § 1180.

**OBLIGATIO PRÆTORIÆ.** The Romans considered that obligations derived their validity solely from positive law. At first the only ones recognized were those established in special cases in accordance with the forms prescribed by the strict *jus civile*. In the course of time, however, the prætorian jurisdiction, in mitigation of the primitive rigor of the law, introduced new modes of contracting obligations and provided the means of enforcing them; hence the twofold division made by Justinian of *obligationes civiles* and *obligationes prætoriae*. Inst. 1. 3. 13.

**OBLIGATION.** A generic word, derived from the Latin substantive "obligatio," having many, wide, and varied meanings, according to the context in which it is used. Eneyart v. City of Lincoln, 136 Neb. 146, 285 N.W. 314, 318. That which a person is bound to do or forbear; any duty imposed by law, promise, contract, relations of society, courtesy, kindness, etc. Goodwin v. Freadrich, 135 Neb. 203, 280 N.W. 917, 923. Duty. Rucks-Brandt Const. Co. v. Price, 165 Okl. 178, 23 P.2d 690. Duty imposed by law. Helvering v. British-American Tobacco Co., C.C.A., 69 F.2d 528, 530. Law or duty binding parties to perform their agreement. An undertaking to perform. State v. Citrus County, 116 Fla. 676, 157 So. 4, 97 A.L.R. 431. That which constitutes a legal or moral duty and which renders a person liable to coercion and punishment for neglecting it; a word of broad meaning, and the particular meaning intended is to be gained by consideration of its context. An obligation or debt may exist by reason of a judgment as well as an express contract, in either case there being a legal duty on the part of the one bound to comply with the promise. Schwartz v. California Claim Service, 52 Cal.App.2d 47, 125 P.2d 833, 888. Liabilities created by contract or law, Rose v. W. B. Worthen Co., 186 Ark. 205, 53 S.W.2d 15, 16, 85 A.L.R. 212; or tort. Exchange Bank v. Ford, 3 P. 449, 451, 7 Colo. 314. As legal term word originally meant a sealed bond, but it now extends to any certain written promise to pay money or do a specific thing. Lee v. Kenan, C.C.A.Fla., 78 F.2d 425, 100 A.L.R. 869. A formal and binding agreement or acknowledgment of a liability to pay a certain sum or do a certain thing. United States v. One Zumstein Briefmarken Katalog 1938, D.C. Pa., 24 F.Supp. 516, 519.

The binding power of a vow, promise, oath, or contract, or of law, civil, political, or moral, independent of a promise; that which constitutes legal or moral duty, and which

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renders a person liable to coercion and punishment for neglecting it. Webster.

A tie which binds us to pay or do something agreeably to the laws and customs of the country in which the obligation is made. Inst. 3, 14.

Obligation is (1) legal or moral duty, as opposed to physical compulsion; (2) a duty incumbent upon an individual, or a specific and limited number of individuals, as opposed to a duty imposed upon the world at large; (3) the right to enforce such a duty, (*jus in personam*), as opposed to such a right as that of property, (*jus in rem*), which avails against the world at large; (4) a bond containing a penalty, with a condition annexed, for the payment of money, performance of covenants, or the like. Mozley & Whitley.

"Obligation" is the correlative of "right." Taking the latter word in its politico-ethical sense, as a power of free action lodged in a person, "obligation" is the corresponding duty, constraint, or binding force which should prevent all other persons from denying, abridging, or obstructing such right, or interfering with its exercise. And the same is its meaning as the correlative of a "*jus in rem*." Taking "right" as meaning a "*jus in personam*," (a power, demand, claim, or privilege inherent in one person, and incident upon another,) the "obligation" is the coercive force or control imposed upon the person of incidence by the moral law and the positive law, (or the moral law as recognized and sanctioned by the positive law,) constraining him to accede to the demand, render up the thing claimed, pay the money due, or otherwise perform what is expected of him with respect to the subject-matter of the right.

A penal bond or "writing obligatory," that is, a bond containing a penalty, with a condition annexed for the payment of money, performance of covenants, or the like, and which differs from a bill, the latter being generally without a penalty or condition, though it may be obligatory. Co.Litt. 172.

A deed whereby a man binds himself under a penalty to do a thing. Com.Dig. *Obligation* (A); Taylor v. Glaser, 2 Serg. & R., Pa., 502; Denton v. Adams, 6 Vt. 40. The word has a very broad and comprehensive legal significance and embraces all instruments of writing, however informal, whereby one party contracts with another for the payment of money or the delivery of specific articles. State v. Campbell, 103 N.C. 344, 9 S.E. 410; Morrison v. Lovejoy, 6 Minn. 353, Gil. 224; Sinton v. Carter Co., 23 F. 535.

In English expositions of the Roman law, and works upon general jurisprudence, "obligation" is used to translate the Latin "*obligatio*." In this sense its meaning is much wider than as a technical term of English law. See *Obligatio*.

**Absolute obligation.** One which gives no alternative to the obligor, but requires fulfillment according to the engagement.

**Conjunctive or alternative obligation.** The former is one in which the several objects in it are connected by a copulative, or in any other manner which shows that all of them are severally comprised in the contract. This contract creates as many different obligations as there are different objects; and the debtor, when he wishes to discharge himself, may force the creditor to receive them separately. But where the things which form the object of the contract are separated by a disjunctive, then the obligation is alternative, and the performance of either of such things will discharge the obligor. The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that it shall belong to the creditor. Civ.Code La. art. 2068; Dougl. 14; 1 Ld. Raym. 279; Galloway v. Legan, 4 Mart. N. S. (La.) 167. A promise to deliver a certain thing or to pay a specified sum of money is an example

of an alternative obligation. Civ.Code La. arts. 2063, 2066, 2067.

**Contractual obligation.** One which arises from a contract or agreement.

**Determinate or indeterminate obligation.** A determinate obligation is one which has for its object a certain thing; as, an obligation to deliver a certain horse named Bucephalus, in which case the obligation can be discharged only by delivering the identical horse. An indeterminate obligation is one where the obligor binds himself to deliver one of a certain species; as, to deliver a horse, where the delivery of any horse will discharge the obligation.

**Divisible or indivisible obligation.** A divisible obligation is one which, being a unit, may nevertheless be lawfully divided, with or without the consent of the parties. An indivisible obligation is one which is not susceptible of division; as, for example, if I promise to pay you one hundred dollars, you cannot assign one-half of this to another, so as to give him a right of action against me for his share.

**Express or implied obligation.** Express or conventional obligations are those by which the obligor binds himself in express terms to perform his obligation, while implied obligations are such as are raised by the implication or inference of the law from the nature of the transaction.

**Failure to meet obligations.** See Failure to Meet Obligations.

**Joint or several obligation.** A joint obligation is one by which two or more obligors bind themselves jointly for the performance of the obligation. France v. France, 94 Or. 414, 185 P. 1108. A several obligation is one where the obligors promise, each for himself, to fulfill the engagement.

**Moral obligation.** A duty which is valid and binding in conscience and according to natural justice, but is not recognized by the law as adequate to set in motion the machinery of justice; that is, one which rests upon ethical considerations alone, and is not imposed or enforced by positive law. Taylor v. Hotchkiss, 81 App.Div. 470, 80 N. Y.S. 1042; Bailey v. Philadelphia, 167 Pa. 569, 31 A. 925, 46 Am.St.Rep. 691. A duty which would be enforceable by law, were it not for some positive rule, which, with a view to general benefit, exempts the party in that particular instance from legal liability. Backhaus v. Lee, 49 N.D. 821, 194 N.W. 887, 890; Longstreth v. City of Philadelphia, 245 Pa. 233, 91 A. 667.

**Natural or civil obligation.** A natural obligation is one which cannot be enforced by action, but which is binding on the party who makes it in conscience and according to natural justice; Blair v. Williams, 4 Litt., Ky., 41. As, for instance, when the action is barred by the act of limitation, a natural obligation still subsists, although the civil obligation is extinguished; Sturges v. Crowninshield, 4 Wheat. 197, 4 L.Ed. 529; Ogden v. v.

Saunders, 12 Wheat. 318, 337, 6 L.Ed. 606. A civil obligation is a legal tie, which gives the party with whom it is contracted the right of enforcing its performance by law. Civ.Code La. art. 1757; Poth. Obl. 173, 191.

**Obediential obligation.** One incumbent on parties in consequence of the situation or relation-ship in which they are placed. Ersk. Prin. 60.

**Perfect or imperfect obligation.** A perfect obligation is one recognized and sanctioned by positive law; one of which the fulfillment can be enforced by the aid of the law. Aycock v. Martin, 37 Ga. 124, 92 Am.Dec. 56. But if the duty created by the obligation operates only on the moral sense, without being enforced by any positive law, it is called an "imperfect obligation," and creates no right of action, nor has it any legal operation. The duty of exercising gratitude, charity, and the other merely moral duties are examples of this kind of obligation. Civ.Code La. art. 1757; Edwards v. Kearzey, 96 U.S. 600, 24 L.Ed. 793.

**Personal or heritable obligation.** An obligation is heritable when the heirs and assigns of one party may enforce the performance against the heirs of the other. Civ.Code La. art. 1997. It is personal when the obligor binds himself only, not his heirs or representatives. An obligation is strictly personal when none but the obligee can enforce the performance, or when it can be enforced only against the obligor. Civ.Code La. art. 1997. An obligation may be personal as to the obligee, and heritable as to the obligor, and it may in like manner be heritable as to the obligee, and personal as to the obligor. Civ.Code La. art. 1998. For the term *personal obligation*, as used in a different sense, see the next paragraph.

**Personal or real obligation.** A personal obligation is one by which the obligor binds himself to perform an act, without directly binding his property for its performance. A real obligation is one by which real estate, and not the person, is liable to the obligee for the performance.

Thus, when an estate owes an easement, as a right of way, it is the thing, and not the owner, who owes the easement. Another instance of a real obligation occurs when a person buys an estate which has been mortgaged, subject to the mortgage; he is not liable for the debt, though the estate is. In these cases the owner has an interest only because he is seized of the servient estate or the mortgaged premises, and he may discharge himself by abandoning or parting with the property. The obligation is both personal and real when the obligor has bound himself and pledged his estate for the fulfillment of the obligations. In the civil law and in Louisiana, a real obligation is one which is attached to immovable property, and it passes with such property into whatever hands the property may come, without making the third possessor personally responsible. Civ.Code La. art. 1997.

**Primary obligation.** An obligation which is the principal object of the contract.

For example, the primary obligation of the seller is to deliver the thing sold, and to transfer the title to it. It is distinguished from the accessory or secondary obligation to pay damages for not doing so. 1 Bouv.Inst. no. 702. The words "primary" and "direct," contrasted with "secondary," when spoken with reference to an obligation, refer to the remedy provided by law for enforcing the obli-

gation, rather than to the character and limits of the obligation itself. Kilton v. Providence Tool Co., 22 R.I. 605, 48 A. 1039.

**Primitive or secondary obligation.** A primitive obligation, which in one sense may also be called a principal obligation, is one which is contracted with a design that it should itself be the first fulfilled. A secondary obligation is one which is contracted and is to be performed in case the primitive cannot be. For example, if one sells his house, he binds himself to give a title; but if he finds he cannot as when the title is in another, then his secondary obligation is to pay damages for non-performance of the obligation.

**Principal or accessory obligation.** A principal obligation is one which arises from the principal object of the engagement of the contracting parties; while an accessory obligation depends upon or is collateral to the principal. See Poth. Obl. no. 182.

For example, in the case of the sale of a house and lot of ground, the principal obligation on the part of the vendor is to make title for it; the accessory obligation is to deliver all the title-papers which the vendor has relating to it, to take care of the estate until it is delivered, and the like. See, further, the title Accessory Obligation.

**Pure obligation.** One which is not suspended by any condition, whether it has been contracted without any condition, or, when thus contracted, the condition has been accomplished. Poth. Obl. no. 176. See simple obligation.

**Simple or conditional obligation.** Simple obligations are such as are not dependent for their execution on any event provided for by the parties, and which are not agreed to become void on the happening of any such event. Conditional obligations are such as are made to depend on an uncertain event. If the obligation is not to take effect until the event happens, it is a suspensive condition; if the obligation takes effect immediately, but is liable to be defeated when the event happens, it is then a resolutive condition. Civ.Code La. arts. 2020, 2021; Moss v. Smoker, 2 La. Ann. 989. A simple obligation is also defined as one which is not suspended by any condition, either because it has been contracted without condition, or, having been contracted with one, the condition has been fulfilled; and a conditional obligation is also defined as one the execution of which is suspended by a condition which has not been accomplished, and subject to which it has been contracted.

**Single or penal obligation.** A penal obligation is one to which is attached a penal clause, which is to be enforced if the principal obligation be not performed. A single obligation is one without any penalty: as where one simply promises to pay another one hundred dollars. This is called a single bill, when it is under seal.

**Solidary obligation.** In the law of Louisiana, one which binds each of the obligors for the whole debt, as distinguished from a "joint" obligation, which binds the parties each for his separate proportion of the debt. Groves v. Sentell, 14 S.Ct. 898, 153 U.S. 465, 38 L.Ed. 785. See Solidary.

## OBLIGATION OF

**OBLIGATION OF A CONTRACT.** That which law in force when contract is made obliges parties to do or not to do, and remedy and legal means to carry it into effect. *Harris v. Monroe Building & Loan Ass'n*, La.App., 154 So. 503, 505.

As used in Const.U.S. art. 1, § 10, the term means the binding and coercive force which constrains every man to perform the agreements he has made; a force grounded in the ethical principle of fidelity to one's promises, but deriving its legal efficacy from its recognition by positive law, and sanctioned by the law's providing a remedy for the infraction of the duty or for the enforcement of the correlative right. *Story*, Const. § 1378; *Black, Const.Prohib.* § 139; *Ogden v. Saunders*, 12 Wheat. 213, 6 L.Ed. 606.

The "obligation of a contract" is its binding force according to the standards of law in existence when it was made. *Colby v. City of Medford*, 85 Or. 485, 167 P. 487, 499. The "obligation of a contract" is the duty of performance. *Hays v. Port of Seattle*, D.C.Wash., 226 F. 287, 293. The term includes everything within the obligatory scope of the contract, and it includes the means of enforcement. *E. J. Lander & Co. v. Deemy*, 46 N.D. 273, 176 N.W. 922, 925; *Franklin Sugar Refining Co. v. Martin-Nelly Grocery Co.*, 94 W.Va. 504, 119 S.E. 473, 476.

**OBLIGATION SOLIDAIRE.** This, in French law, corresponds to joint and several liability in English law, but is applied also to the joint and several rights of the creditors parties to the obligation.

**OBLIGATIONES EX DELICTO or EX MALEFICIO.** Obligations arising from the commission of a wrongful injury to the person or property of another.

"*Delictum*" is not exactly synonymous with "tort," for, while it includes most of the wrongs known to the common law as torts, it is also wide enough to cover some offenses (such as theft and robbery) primarily injurious to the individual, but now only punished as crimes. Such acts gave rise to an *obligatio*, which consisted in the liability to pay damages.

**OBLIGATIONES EX VARIIS CAUSARUM FIGURIS.** Although Justinian confined the divisions of obligations to four classes, namely *obligationes ex contractu, quasi ex contractu, ex maleficio* and *quasi ex maleficio*, there are many species of obligations which cannot properly be reduced within any of these classes. Some authorities have, consequently, established a fifth class, to receive the odds and ends which belonged nowhere else, and have given to this class the above designation, borrowed from Gaius, l. 1, pr. § 1, D. 44, 7; *Mackeldey* § 474; *Hadley*, Rom. Law 209, etc.

**OBLIGATIONES QUASI EX CONTRACTU.** Often persons who have not contracted with each other, under a certain state of facts, are regarded by the Roman law as if they had actually concluded a convention between themselves. The legal relation which then takes place between these persons, which has always a similarity to a contract obligation, is therefore termed *obligatio quasi ex contractu*.

Such a relation arises from the conducting of affairs without authority, (*negotiorum gestio*) or unauthorized agency; from the management of property that is in common when the community arose from casualty, (*communio incidens*); from the payment of what was not due (*solutio indebiti*); from tutorship and curatorship (*tutela* and *cura*), resembling the relation of guardian and ward; from taking possession of an inheritance (*aditio hereditatis* and *agnitio bonorum possessionis*); and in many other cases. *Mackeldey*, Rom. Law, § 491.

**OBLIGATIONES QUASI EX DELICTO, or OBLIGATIONES QUASI EX MALEFICIO.** This class embraces all torts not coming under the denomination of *delicta* and not having a special form of action provided for them by law. They differed widely in character, and at common law would in some cases give rise to an action on the case, in others to an action on an implied contract. *Ort*. Inst. §§ 1781-1792.

**OBLIGATORY PACT.** See *Pact*.

**OBLIGATORY RIGHTS.** See *Right*.

**OBLIGATORY WRITING.** See *Writing Obligation*.

**OBLIGEE.** The person in favor of whom some obligation is contracted, whether such obligation be to pay money or to do or not to do something. Code La. art. 3522, no. 11 (Civ.Code, art. 3556, subd. 20). *Jenkins v. Williams*, 191 Ky. 165, 229 S.W. 94, 95. The party to whom a bond is given.

Obligees are either *several* or *joint*. An obligee is several when the obligation is made to him alone; obligees are joint when the obligation is made to two or more; and in that event each is not a creditor for his separate share, unless the nature of the subject or the particularity of the expression in the instrument lead to a different conclusion. 2 *Pothier*, Obl., *Evans* ed. 56; *Hob.* 172; *Cro.Jac.* 251.

The words obligee and payee have been held to have a technical and definite meaning under an act relative to promissory notes, bonds, etc., and apply only to notes, bonds, or bills whether given for the payment of money or for the performance of covenants and conditions, and not to mortgages; *Hall v. Bryne*, 1 *Scam.*, Ill., 142.

**OBLIGOR.** The person who has engaged to perform some obligation. Code La. art. 3522, no. 12, Civ.Code, art. 3556, subd. 21. One who makes a bond.

Includes person liable for tort. *Sarine v. American Lumbermen's Casualty Co. of Illinois*, 258 App.Div. 653, 17 N.Y.S.2d 754, 756.

Obligors are *joint* and *several*. They are joint when they agree to pay the obligation jointly. They are several when one or more bind themselves and each of them separately to perform the obligation. In order to become an obligor, the party must actually, either himself or by his attorney, enter into the obligation and execute it as his own.

**OBLIQUUS.** Lat.

In the old law of descents, oblique; cross; transverse; collateral. The opposite of *rectus*, right, or upright.

In the law of evidence, indirect; circumstantial.

**OBLITERATED CORNER.** See *Corner*.

**OBLITERATION.** Erasure or blotting out of written words.

Lines drawn through the signatures of the witnesses to a will amount to an "obliteration," though the signatures be discernible. In *re Kutzner's Will*, 19 N.Y.S.2d 13, 16, 173 Misc. 776. Same where line is drawn through writing. *Glass v. Scott*, 14 Colo.App. 377, 60 P. 186; *Evans' Appeal*, 58 Pa. 244; *Townshend v. Howard*, 86 Me. 285, 29 A. 1077.

When the testator of a holographic will wrote across its face "Will revoked," and "This will is hereby revoked," and signed his name with lines beneath the signature, the will was canceled, defaced, and obliterated, within Decedent Estate Law, § 34, subds. 5, 6 (Consol.Laws, c. 13). In *re Parsons' Will*, 195 N.Y.S. 742, 745, 119 Misc. 26.

**OBLIVION.** Act of forgetting, or fact of having forgotten; forgetfulness. Official ignoring of offenses; amnesty, or general pardon; as, an act of oblivion. State or fact of being forgotten. Webster, Dict. A kind of annihilation. Gilbert v. Missouri Pac. Ry. Co., 92 Kan. 281, 140 P. 883.

**OBLIVIOUS.** Evincing oblivion; forgetful; forgetting. Webster, Dict. Where thing is extinguished from mind. Gilbert v. Missouri Pac. Ry. Co., 92 Kan. 281, 140 P. 883.

**OBLOQUY.** Censure and reproach. Bettner v. Holt, 70 Cal. 275, 11 Pac. 716. Blame, reprehension, being under censure, a cause or object of reproach, a disgrace. Burr v. Winnett Times Pub. Co., 80 Mont. 70, 258 P. 242, 246.

**OBNOXIOUS.** "Obnoxious" and "offensive" in ordinary use are synonymous, and mean objectionable, disagreeable, displeasing, and distasteful. City of Muskogee v. Morton, 128 Okl. 17, 261 P. 183, 184.

**OBRA.** In Spanish law, work. *Obras*, works or trades; those which men carry on in houses or covered places. White, New Recop. b. 1, tit. 5, c. 3, § 6.

**OBREPTIO.** Lat. The obtaining a thing by fraud or surprise. Calvin. Called, in Scotch law, "*obreption*."

**OBREPTION.** Obtaining anything by fraud or surprise. Acquisition of escheats, etc., from the sovereign, by making false representations. Bell. See, also, Subreption.

**OBROGARE.** Lat. In the civil law, to pass a law contrary to a former law, or to some clause of it; to change a former law in some part of it. Calvin.

**OBROGATION.** In the civil law, the annulling a law, in whole or in part, by passing a law contrary to it. The alteration of a law. Calvin.

**OBSCENE.** Material is "obscene" if to average person, applying contemporary community standards, dominant theme of material taken as a whole appeals to prurient interest, if it is utterly without redeeming social importance, if it goes substantially beyond customary limits of candor in description or representation, if it is characterized by patent offensiveness, and if it is hard-core pornography. Roth v. United States, 354 U.S. 476, 77 S.Ct. 1304; Jacobellis v. Ohio, 378 U.S. 184, 84 S.Ct. 1676; Manual Enterprises, Inc. v. Day, 370 U.S. 478, 82 S.Ct. 1432; U. S. v. Klaw, C.A.N.Y., 350 F.2d 155, 164.

Offensive to chastity of mind or to modesty, expressing or presenting to the mind or view something that delicacy, purity, and decency forbids to be exposed; calculated to corrupt, deprave, and debauch the morals of the people, and promote violation of law; licentious and libidinous and tending to excite feelings of an impure or unchaste character; tending to stir the sex impulses or to lead to sexually impure and lustful thoughts; tending to corrupt the morals of youth or to lower the standards of right and wrong especially as to the sexual relation. Parmelee v. United States, 72 App.D.C. 203, 113 F.2d 729, 730.

**OBSCENE BOOK or PAPER.** An obscene book or paper within the act relating to nonmailable matter means one which contains immodest and indecent matter, the reading whereof would have a tendency to deprave and corrupt the minds of those in whose hands the publication might fall, and whose minds are open to such immoral influences; U. S. v. Clarke, D.C.Mo., 38 Fed. 732.

**OBSCENITY.** The character or quality of being obscene; conduct tending to corrupt the public morals by its indecency or lewdness. State v. Pfenninger, 76 Mo.App. 313; U. S. v. Males, D.C. Ind., 51 Fed. 41.

**OBSCURE.** When applied to words, statements or meanings, it signifies not perspicuous, not clearly expressed, hard to understand. Western Union Telegraph Co. v. Geo. F. Fish, Inc., 148 Md. 210, 129 A. 14, 16.

**OBSERVE.** In the civil law, to perform that which has been prescribed by some law or usage. Dig. 1, 3, 32; Marshall County v. Knoll, 102 Iowa 573, 69 N.W. 1146.

**OBSES.** Lat. In the law of war, a hostage. *Obsides*, hostages.

**OBSIGNARE.** Lat. In the civil law, to seal up; as money that had been tendered and refused.

**OBSIGNATORY.** Ratifying and confirming.

**OBSOLESCENCE.** Condition or process of falling into disuse. State Line & Sullivan R. Co. v. Phillips, D.C.Pa., 17 F.Supp. 607, 609, 610.

**OBSOLESCENT.** Becoming obsolete; going out of use; not entirely disused, but gradually becoming so.

**OBSOLETE.** That which is no longer used. Becker v. Anheuser-Busch, Inc., C.C.A.Mo., 120 F. 2d 403, 416. Disused; neglected; not observed.

The term is applied to statutes which have become inoperative by lapse of time, either because the reason for their enactment has passed away, or their subject-matter no longer exists, or they are not applicable to changed circumstances, or are tacitly disregarded by all men, yet without being expressly abrogated or repealed. Lemen v. Kansas Flour Mills Co., 122 Kan. 574, 253 P. 547, 548.

**OBSTA PRINCIPIIS.** Lat. Withstand beginnings; resist the first approaches or encroachments. Bradley, J., Boyd v. U. S., 116 U.S. 635, 6 Sup.Ct. 535, 29 L.Ed. 746.

**OBSTANTE.** Withstanding; hindering. See Non Obstante.

**OBSTETRICS.** The branch of medical science which has to do with the care of women during pregnancy and parturition. Stoike v. Weseman, 167 Minn. 266, 208 N.W. 993.

**OBSTINATE DESERTION.** "Obstinate" as used of desertion, which is a ground for divorce, means determined, fixed, persistent. Mitchell v. Mitchell, 91 Fla. 427, 107 So. 630, 631. Persisted in against the willingness of the injured party to have it concluded. Laing v. Laing, 110 N.J.Eq. 411, 160 A. 510, 511.

**OBSTRUCTION.** Obligation; bond.



## OBSTRUCT

**OBSTRUCT.** To hinder or prevent from progress, check, stop, also to retard the progress of, make accomplishment of difficult and slow. *Conley v. United States*, C.C.A.Minn., 59 F.2d 929, 936. To be or come in the way of or to cut off the sight of an object. *Silva v. Waldie*, 42 N.M. 514, 82 P.2d 282, 286. To block up; to interpose obstacles; to render impassable; to fill with barriers or impediments; as to obstruct a road or way. *U. S. v. Williams*, 28 Fed.Cas. 633; *Chase v. Oshkosh*, 81 Wis. 313, 51 N.W. 560, 15 L.R.A. 553, 29 Am.St.Rep. 898. To impede; to interpose impediments, to the hindrance or frustration of some act or service; as to obstruct an officer in the execution of his duty. *Davis v. State*, 76 Ga. 722; *Lamon v. Gold*, 72 W.Va. 618, 79 S.E. 728, 730, 51 L.R.A., N.S., 883.

As applied to navigable waters, to "obstruct" them is to interpose such impediments in the way of free and open navigation that vessels are thereby prevented from going where ordinarily they have a right to go or where they may find it necessary to go in their maneuvers. *The City of Richmond, D.C.S.D.N.Y.*, 43 F. 88; *Terre Haute Drawbridge Co. v. Halliday*, 4 Ind. 36; *The Vancouver*, 28 F. Cas. 960.

**OBSTRUCTING JUSTICE.** Impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein. *People v. Ormsby*, 310 Mich. 291, 17 N.W. 2d 187, 190.

The act by which one or more persons attempt to prevent, or do prevent, the execution of lawful process. The term applies also to obstructing the administration of justice in any way—as by hindering witnesses from appearing. *Melton v. Commonwealth*, 160 Ky. 642, 170 S.W. 37, 42, L.R.A.1915B, 689; *People v. Hebbard*, 162 N.Y.S. 80, 89, 96 Misc.Rep. 617. Any act, conduct, or directing agency pertaining to pending proceedings, intended to play on human frailty and to deflect and deter court from performance of its duty and drive it into compromise with its own unfettered judgment by placing it, through medium of knowingly false assertion, in wrong position before public, constitutes an obstruction to administration of justice. *State v. Shumaker*, 200 Ind. 623, 157 N.E. 769, 774, 58 A.L.R. 954; *Toledo Newspaper Co. v. U. S.*, 247 U.S. 402, 38 S.Ct. 560, 564, 62 L.Ed. 1186.

**OBSTRUCTING AN OFFICER.** Implies forcible resistance; *State v. Le Blanc*, 115 Me. 142, 93 A. 119, 120; *contra*, *State v. Estes*, 185 N.C. 752, 117 S.E. 581, 582.

To "obstruct" a public officer means to oppose that officer. It does not mean to oppose or impede the process with which the officer is armed, or to defeat its execution, but that the officer himself shall be obstructed. *Knoff v. State*, 18 Okl.Cr. 36, 192 P. 596, 597; *Ratcliff v. State*, 12 Okl.Cr. 448, 153 P. 293, 294.

**OBSTRUCTING PROCEEDINGS OF LEGISLATURE.** The term embraces not only things done in the presence of the legislature, but those done in disobedience of a committee. *Ex parte Youngblood*, 94 Tex.Cr.R. 330, 251 S.W. 509, 512.

**OBSTRUCTING PROCESS.** In criminal law, the act by which one or more persons attempt to prevent or do prevent the execution of lawful process.

**OBSTRUCTING THE RECRUITING OR ENLISTMENT SERVICE.** The phrase in Espionage Act, tit. 1, § 3 (50 USCA § 33 note), should be given a broad meaning, and includes to hinder, impede, embarrass, and retard, in whole or in part. *Doe v. U. S.*, C.C.A.Colo., 253 F. 903, 906. The term

does not necessarily mean actual prevention of enlistments or recruiting, it being sufficient if one interferes with such service or renders it more difficult. *Rhuberg v. United States*, C.C.A.Or., 255 F. 865, 869; *U. S. v. Pierce*, D.C.N.Y., 245 F. 878, 884. It contemplates more than a physical obstruction. *O'Hare v. U. S.*, C.C.A.N.D., 253 F. 538, 540.

**OBSTRUCTION.** A hindrance, obstacle, or barrier. *Carder v. City of Clarksburg*, 100 W.Va. 605, 131 S.E. 349, 352. Delay, impeding or hindering. *State v. Malpass*, 189 N.C. 349, 127 S.E. 248, 250.

This is the word properly descriptive of an injury to anyone's incorporeal hereditament, *e. g.*, his right to an easement, or *profit à prendre*; an alternative word being "disturbance." On the other hand, "Infringement" is the word properly descriptive of an injury to any one's patent rights or to his copyright. But "obstruction" is also a very general word in law, being applicable to every hindrance of a man in the discharge of his duty, (whether official, public, or private.) *Brown*.

"Obstruction" in highway includes anything interfering with highway easement. *Andrew B. Hendryx Co. v. City of New Haven*, 104 Conn. 632, 134 A. 77, 79.

"Obstruction," within a statute requiring certain precautions by those in charge of train on appearance of obstruction, means obstacle, impediment, hindrance, bar, barrier, clog, or check. *Howard & Herrin v. Nashville, C. & St. L. Ry. Co.*, 153 Tenn. 649, 284 S.W. 894, 896, 46 A.L.R. 1530; *Turner v. Southern Ry. Co.*, 112 Miss. 359, 73 So. 62, 63.

As applied to the operation of railroads, an "obstruction" may be either that which obstructs or hinders the free and safe passage of a train, or that which may receive an injury or damage, such as it would be unlawful to inflict, if run over or against by the train, as in the case of cattle or a man approaching on the track. *Louisville N. & G. R. Co. v. Reidmond*, 11 Lea, Tenn., 205; *South & North Alabama R. Co. v. Williams*, 65 Ala. 77.

**OBSTRUCTION TO NAVIGATION.** Any unnecessary interference with the free movements of vessels. *The Steam Dredge No. 6, D.C.N.Y.*, 222 F. 576, 579.

**OBTAIN.** To get hold of by effort; to get possession of; to procure; to acquire, in any way. *State v. Bowdry*, 346 Mo. 1090, 145 S.W.2d 127, 129.

The word in statute relating to obtaining money or property by false pretenses, is not limited to getting, securing, or appropriating money or property as owner. It includes as well the getting or securing of money or property by way of a loan. *Tingue v. State*, 90 Ohio St. 368, 108 N.E. 222, 223, Ann.Cas.1916C, 1156. As used in a confidence game statute it means to acquire the possession of, or control of, and not necessarily to acquire title to. *People v. Miller*, 278 Ill. 490, 116 N.E. 131, 138, L.R.A.1917E, 797.

**OBTAINING MONEY BY FALSE PRETENSES.** See False Pretenses.

**OBTEMPER.** See Obtemperare.

**OBTEMPERANDUM EST CONSUETUDINI RATIONABILI TANQUAM LEGI.** A reasonable custom is to be obeyed as a law. 4 Coke, 38.

**OBTEMPERARE.** Lat. To obey. Hence the Scotch "*obtemper*," to obey or comply with a judgment of a court.

**OBTEST.** To protest.

**OBORTO COLLO.** In Roman law, taken by the neck or collar; as a plaintiff was allowed to drag a reluctant defendant to court. Adams, Rom. Ant. 242.

**OBTULIT SE.** Offered himself. In old practice, the emphatic words of entry on the record where one party offered himself in court against the other, and the latter did not appear. 1 Reeve, Eng. Law, 417.

**OBVENTIO.** Lat. (from *obvenire*, to fall in).

In the civil law, rent; profits; income; the return from an investment or thing owned; as the earnings of a vessel. Generally used in the plural.

In old English law, the revenue of a spiritual living, so called. Also, in the plural, "offerings."

**OBVENTION.** See Obventio; Oblation.

**OBVIOUS.** Easily discovered, seen, or understood, readily perceived by the eye or the intellect, plain, synonymous with the words "plain," "clear," and "evident." Combs v. Colonial Casualty Co., 73 W. Va. 473, 80 S.E. 779, 781, 50 L.R.A., N.S., 1218. Apparent; evident; manifest. Fandek v. Barnett & Record Co., 161 Wis. 55, 150 N.W. 537, 541; Tolfree v. Wetzler, D.C.N.J., 22 F.2d 214.

**OBVIOUS DANGER.** Apparent in exercise of ordinary observation and disclosed by use of eyes and other senses. Patterson v. Cleveland Cliffs Iron Co., 37 Ohio App. 316, 174 N.E. 592, 594. Plain and apparent to a reasonably observant person. Combs v. Colonial Casualty Co., 73 W. Va. 473, 80 S.E. 779, 780, 50 L.R.A., N.S., 1218.

**OBVIOUS RISK.** One so plain that it would be instantly recognized by a person of ordinary intelligence. City of Atlanta v. Trussell, 21 Ga. App. 340, 94 S.E. 649, 653. Within an accident policy, one which would be plain and apparent to a reasonably prudent and cautious person in the use of his faculties. Christensen v. National Travelers' Ben. Ass'n of Des Moines, Iowa, 196 Iowa 375, 194 N.W. 194, 196, 29 A.L.R. 709. It does not mean an unnecessary risk. Hickman v. Ohio State Life Ins. Co., 92 Ohio St. 87, 110 N.E. 542, 543.

**OCASION.** In Spanish law, accident. Las Partidas, pt. 3, tit. 32, l. 21; White, New Recop. b. 2, tit. 9, c. 2.

**OCCASIO.** In feudal law, a tribute which the lord imposed on his vassals or tenants for his necessity. Hindrance; trouble; vexation by suit. See, also, Occasiones.

**OCCASION, n.** That which provides an opportunity for the causal agency to act. Weinberg v. Richardson, 291 Ill. App. 618, 10 N.E.2d 893. Meaning not only particular time but carrying idea of opportunity, necessity, or need, or even cause in a limited sense, under G. L. c. 4, § 6, subd. 3. Commonwealth v. Tsouprakakis, 267 Mass. 496, 166 N.E. 855, 856. Condition of affairs; juncture entailing need; exigency; or juncture affording ground or reason for something. Ridout v. State, 161 Tenn. 248, 30 S.W.2d 255, 259, 71 A.L.R. 830.

**OCCASION, v.** To cause or bring about by furnishing the condition or opportunity for the action of some other cause. Smart v. Raymond, Mo. App., 142 S.W.2d 100, 104. To give occasion to, to produce; to cause incidentally or indirectly; bring about or be the means of bringing about or producing. Industrial Commission of Ohio v. Weigandt, 102 Ohio St. 1, 130 N.E. 38, 39.

**OCCASIONARI.** To be charged or loaded with payments or occasional penalties.

**OCCASIONES.** In old English law, assarts. Spelman.

**OCCUPANCY.** Occupancy is a mode of acquiring property by which a thing which belongs to nobody becomes the property of the person who took possession of it with the intention of acquiring a right of ownership in it. Civ. Code La. art. 3412; Goddard v. Winchell, 86 Iowa, 71, 52 N.W. 1124, 17 L.R.A. 788, 41 Am. St. Rep. 481. The taking possession of things which before belonged to nobody, with an intention of appropriating them to one's own use. To constitute occupancy, there must be a taking of a thing corporeal, belonging to nobody, with an intention of becoming the owner of it; Co. Litt. 416.

Occupancy is sometimes used in the sense of occupation or holding possession; indeed it has come to be very generally so used in this country in homestead laws, public-land laws, and the like, Walters v. People, 21 Ill. 178; Redfield v. R. Co., 25 Barb., N.Y., 54; Act of Cong. May 29, 1830, 4 Stat. 420; but this does not appear to be a common legal use of the term, as recognized by English authorities.

There is a use of the word in public-land laws, homestead laws, "occupying-claimant" laws, cases of landlord and tenant, and like connections, which seems to require the broader sense of possession, although there is, in most of these uses, a shade of meaning discarding any prior title as a foundation of right. Perhaps both uses or views may be harmonized, by saying that in jurisprudence occupancy or occupation is possession, presented independent of the idea of a chain of title, of any earlier owner. Or "occupancy" and "occupant" might be used for assuming property which has no owner, and "occupation" and "occupier" for the more general idea of possession. Judge Bouvier's definitions seem partly founded on such a distinction, and there are indications of it in English usage. It does not appear generally drawn in American books. Abbott.

"Possession" and "occupancy," when applied to land, are nearly synonymous terms, and may exist through a tenancy. Thus, occupancy of a homestead, such as will satisfy the statute, may be by means other than that of actual residence on the premises by the widow or child. Walters v. People, 21 Ill. 178. Occupancy is always actual, as distinguished from possession, which may be actual or constructive. Occupancy is never constructive, save in the sense that land may be occupied through the actual possession of another. Davis v. State, 20 Ga. App. 68, 92 S.E. 550, 551. "Occupancy" is act of taking or holding possession and does not necessarily include residence. Kornhauser v. National Surety Co., 114 Ohio St. 24, 150 N.E. 921, 923.

Under fire policy, it must be such as ordinarily pertains to purpose to which property is adapted or devoted as described in policy. Continental Ins. Co. of New York v. Dunning, 249 Ky. 234, 60 S.W. 2d 577.

Under burglary policy it implies an actual use of the house as a dwelling place not absolutely continuous, but as a place of usual return. Young v.

## OCCUPANCY

Fidelity & Casualty Co. of New York, 202 Mo.App. 319, 215 S.W. 496, 498.

Under statute respecting adverse possession, the term was synonymous with "actual possession," as distinguished from "constructive possession." Hart v. All Persons, 26 Cal.App. 664, 148 P. 236, 240.

See Occupation; Occupy.

**In International law.** The taking possession of a newly discovered or conquered country with the intention of holding and ruling it.

**OCCUPANT.** Person having possessory rights, who can control what goes on on premises. United States v. Fox, C.C.A.N.Y., 60 F.2d 685, 688.

One who takes the first possession of a thing of which there is no owner.

One who occupies and takes possession, one who has the actual use, possession or control of a thing. Lechler v. Chapin, 12 Nev. 65; Wittkop v. Garner, 4 N.J.Misc. 234, 132 A. 339, 340.

In a special sense, one who takes possession of lands held *pur autre vie*, after the death of the tenant, and during the life of the *cestui que vie*.

**Common occupant.** See *general occupant*, below.

**General occupant.** At common law where a man was tenant *pur autre vie*, or had an estate granted to himself only (without mentioning his heirs) for the life of another man, and died without alienation during the life of *cestui que vie*, or him by whose life it was holden, he that could first enter on the land might lawfully retain the possession, so long as *cestui que vie* lived, by right of occupancy, and was hence termed a "general" or common "occupant." 1 Steph.Comm. 415.

**Special occupant.** A person having a special right to enter upon and occupy lands granted *pur autre vie*, on the death of the tenant, and during the life of *cestui que vie*.

Where the grant is to a man and his heirs during the life of *cestui que vie*, the heir, succeeds as special occupant, having a special exclusive right by the terms of the original grant. 2 Bl.Comm. 259; 1 Steph.Comm. 416.

In the United States the statute provisions of the different states vary considerably upon this subject. In New York and New Jersey, special occupancy is abolished. Virginia, and probably Maryland, follow the English statutes. In Massachusetts and other states, where the real and personal estates of intestates are distributed in the same way and manner, the question does not seem to be material. 4 Kent 27.

**OCCUPANTIS FIUNT DERELICTA.** Things abandoned become the property of the (first) occupant. Taylor v. The Cato, 1 Pet.Adm. 53, Fed. Cas.No.13,786.

**OCCUPARE.** Lat. In the civil law, to seize or take possession of; to enter upon a vacant possession; to take possession before another. Calvin.

**OCCUPATILE.** That which has been left by the right owner, and is now possessed by another.

**OCCUPATIO.** "The advisedly taking possession of that which is at the moment the property of no man, with a view of acquiring property in it for yourself." Maine, Anc.L. 245. The advised assumption of physical possession. *Id.* 256. See Occupancy.

**OCCUPATION.** Possession. Sweet; Kinneer v. Southwestern Mut. Fire Ass'n, 118 Pa.Super. 312, 179 A. 800. Where a person exercises physical control over land. Lancaster County Bank v. Marshel, 130 Neb. 141, 264 N.W. 470, 475. Control; tenure; use.

"Occupation" of a dwelling house means living in it. The use for which premises are intended should be considered in determining what is meant by the word "unoccupied" as contained in a policy. Hoover v. Mercantile Town Mut. Ins. Co., 93 Mo.App. 111, 69 S.W. 42. As used in a fire insurance policy the word *unoccupied*, is not synonymous with *vacant*, but is that condition where no one has the actual use or possession of the thing or property in question, Yost v. Ins. Co., 38 Pa.Super.Ct. 594; Hardiman v. Fire Ass'n, 212 Pa. 383, 61 A. 990.

A putting out of a man's freehold in time of war. Co.Litt. s. 412.

**Actual occupation.** An open, visible occupancy as distinguished from the constructive one which follows the legal title. Cutting v. Patterson, 82 Minn. 375, 85 N.W. 172; People v. Ambrecht, 11 Abb.Prac., N.Y., 97; Bennett v. Burton, 44 Iowa 550.

**Vocation.** That which principally takes up one's time, thought, and energies; especially, one's regular business or employment; also whatever one follows as the means of making a livelihood. Dorell v. Norida Land & Timber Co., 53 Idaho, 793, 27 P.2d 960; Texas Co. v. Amos, 77 Fla. 327, 81 So. 471, 472; Childers v. Brown, 81 Or. 1, 158 P. 166, 168, Ann.Cas.1918D, 170. Particular business, profession, trade, or calling which engages individual's time and efforts, employment in which one regularly engages or vocation of his life. Harris v. Southern Carbon Co., La.App., 162 So. 430, 434; Evans v. Woodman Acc. Ass'n, 171 P. 643, 644, 102 Kan. 556, L.R.A.1918D, 122; Industrial Commission of Ohio v. Roth, 120 N.E. 172, 173, 98 Ohio St. 34, 6 A.L.R. 1463.

**OCCUPATION TAX.** A tax imposed upon an occupation or the prosecution of a business, trade, or profession; not a tax on property, or even the capital employed in the business, but an excise tax on the business itself; to be distinguished from a "license tax," which is a fee or exaction for the privilege of engaging in the business, not for its prosecution. Adler v. Whitbeck, 44 Ohio St. 539, 9 N.E. 672; Appeal of Banger, 109 Pa. 95; Pullman Palace Car Co. v. State, 64 Tex. 274, 53 Am. Rep. 758.

**OCCUPATIONAL.** Of or pertaining to an occupation, trade or work. Morgan v. Equitable Life Assur. Soc. of U. S., La.App., 22 So.2d 595, 597.

**OCCUPATIONAL DISEASE.** Disease gradually contracted in usual and ordinary course of employment, because thereof, and incidental thereto. Travelers Ins. Co. v. Lancaster, Tex.Civ.App., 71 S.W.2d 318, 319.

**OCCUPATIONAL DUTIES.** Those of insured's ordinary and usual occupation, and not those of unusual, casual and temporary employment. Federal Life Ins. Co. v. Lorton, 97 Colo. 545, 51 P.2d 693, 694.

**OCCUPATIVE.** Pertaining to or involving occupation or the right of occupation. Webster.

**OCCUPAVIT.** Lat. In old English law, a writ that lay for one who was ejected out of his land or tenement in time of war. Cowell.

**OCCUPIER.** An occupant; one who is in the enjoyment of a thing.

A tenant, though absent, is, generally speaking, the occupier of premises; 1 B. & C. 178; but not a servant or other person who may be there *virtute officii*; 26 L.J.C.P. 12; 47 L.J.Ex. 112; L.R. 1 Q.B. 72.

**OCCUPY.** To take or enter upon possession of; to hold possession of; to hold or keep for use; to possess; to tenant; to do business in. People v. Roseberry, 23 Cal.App.2d 13, 71 P.2d 944. Actual use, possession, and cultivation. Jackson v. Sill, 11 Johns., N.Y., 202, 6 Am.Dec. 363.

The term, under fire policy, implies use by some person according to purpose for which it is designed, and does not imply that some one shall remain in building all of the time without interruption, but merely that there shall not be a cessation of occupancy for any considerable length of time. Washington Fire Ins. Co. v. Cobb, Tex.Civ.App., 163 S.W. 608, 612; Southern Nat. Ins. Co. v. Cobb, Tex.Civ.App., 180 S.W. 155, 156. As used in connection with a homestead, it does not always require an actual occupancy, but may sometimes permit a constructive occupancy. Kerns v. Warden, 88 Okl. 297, 213 P. 70, 72.

See Occupation; Occupancy.

**OCCUPYING CLAIMANT.** An occupant claiming right under statute to recover for improvements he has placed on the land subsequently found not to be his. Kelly v. Watkins, 135 Okl. 276, 276 P. 191, 192.

**OCCUPYING CLAIMANT ACTS.** Statutes providing for the reimbursement of a *bona fide* occupant and claimant of land, on its recovery by the true owner, to the extent to which lasting improvements made by him have increased the value of the land, and generally giving him a lien therefor. Jones v. Great Southern Hotel Co., 86 F. 370, 30 C.C.A. 108.

**OCCUR.** To meet one's eye; to be found or met with; to present itself; to appear; hence, to befall in due course; to happen. Grenada Bank v. Petty, 174 Miss. 415, 164 So. 316, 318. To arise; begin. Murphy v. People, 78 Colo. 276, 242 P. 57, 59.

**OCCURRENCE.** A coming or happening; any incident or event, especially one that happens without being designed or expected. Farmers & Merchants Nat. Bank v. Arrington, Tex.Civ.App., 98 S.W.2d 378, 382.

**OCEAN.** The main or open sea; the high sea; that portion of the sea which does not lie within the body of any country and is not subject to the

territorial jurisdiction or control of any country, but is open, free, and common to the use of all nations. U. S. v. Rodgers, 14 S.Ct. 109, 150 U.S. 249, 37 L.Ed. 1071; U. S. v. New Bedford Bridge, 27 Fed.Cas. 120.

**OCHIERN.** In old Scotch law, a name of dignity; a freeholder. Skene's de Verb. Sign.

**OCHLOCRACY.** Government by the multitude. A form of government wherein the populace has the whole power and administration in its own hands. The abuse of a democracy. Mob rule.

**OCTAVE.** In old English law, the eighth day inclusive after a feast; one of the return days of writs. 3 Bl.Comm. 278.

**OCTO TALES.** Lat. Eight such; eight such men; eight such jurors. The name of a writ, at common law, which issues when upon a trial at bar, *eight* more jurors are necessary to fill the panel, commanding the sheriff to summon the requisite number. 3 Bl.Comm. 364; Decem Tales.

**OCTROI.** Fr. In French law, originally, a toll or duty, which, by the permission of the *seigneur*, any city was accustomed to collect on liquors and some other goods, brought within its precincts, for the consumption of the inhabitants. Afterwards appropriated to the use of the king. Steph. Lect. p. 361.

**OCULIST.** A duly licensed physician specializing in the diseases of the eye. Stern v. Flynn, 154 Misc. 609, 278 N.Y.S. 598.

**ODD LOT BUSINESS.** The dealing in a smaller number of shares than the unit of trading on the floor of the stock exchange. People ex rel. Berdan v. Goldfogle, 213 App.Div. 702, 211 N.Y.S. 107.

**ODD LOT DOCTRINE.** Under this doctrine, if the effects of an accident have not been removed, it is not sufficient, to entitle an employer to have a reduction in the weekly compensation ordered by the court under the Workmen's Compensation Act, that it appears the workman has the physical capacity to do some kind of work different from the general kind of work which he was engaged in at the time of the accident, but it must also be shown that the workman, either by his own efforts or that of his employer, can actually get such work. Olneyville Wool Combing Co. v. Di Donato, 65 R.I. 154, 13 A.2d 817. Zelinckas v. Ford Motor Co., 294 Mich. 494, 293 N.W. 732.

**ODERUNT PECCARE BONI, VIRTUTIS AMORE; ODERUNT PECCARE MALI, FORMIDINE POENÆ.** Good men hate to sin through love of virtue; bad men, through fear of punishment.

**ODHAL.** Complete property, as opposed to feudal tenure. The transposition of the syllables of "odhal" makes it "alldh," and hence, according to Blackstone, arises the word "alldod" or "alldodial," (q. v.). "Alldodh" is thus put in contradistinction to "feododh." Mozley & Whiteley.

**ODHAL RIGHT.** An allodial right.

## ODIO

**ODIO ET ATIA.** See De Odio et Atia.

**ODIOSA ET INHONESTA NON SUNT IN LEGE PRÆSUMANDA.** Odious and dishonest acts are not presumed in law. Co. Litt. 78; Jackson v. Miller, 6 Wend. (N. Y.) 228, 231, 21 Am.Dec. 316.

**ODIOSA NON PRÆSUMUNTUR.** Odious things are not presumed. Burrows, Sett. Cas. 190.

**ODIUM.** Means hatred and dislike. In venue statute, it implies such a general ill feeling toward a party to an action as will render it uncertain whether the cause can be tried by impartial triers, free from an atmosphere impregnated with malice or corrupting prejudices. Brow v. Levy, 3 Ind.App. 464, 29 N.E. 417.

**ODIOUS.** Synonymous with infamous. Polson v. Polson, 140 Ind. 310, 39 N.E. 498.

**OECONOMICUS.** L. Lat. In old English law. The executor of a last will and testament. Cowell.

**OECONOMUS.** Lat. In the civil law. A manager or administrator. Calvin.

**OEDEMA.** A bogging down of the kidneys, heart and lungs because of heavy load of gas poison entering through the lungs and infecting the tissues and organs of the whole system. Ogletree v. Jones, 44 N.M. 567, 106 P.2d 302.

**OF.** A term denoting that from which anything proceeds; indicating origin, source, descent, and the like; as, he is of a race of kings; he is of noble blood. Stone v. Riggs, 43 Okl. 209, 142 P. 298, 299. Associated with or connected with, usually in some causal relation, efficient, material, formal, or final. Harlan v. Industrial Accident Commission, 194 Cal. 352, 228 P. 654, 657.

The word has been held equivalent to after, 10 L.J.Q.B. 10; at, or belonging to, Davis v. State, 38 Ohio St. 506; in possession of, Bell County v. Hines, Tex.Civ.App., 219 S.W. 556, 557; Stokes v. Great Southern Lumber Co., D.C.Miss., 21 F.2d 185, 186; manufactured by, 2 Bing. N.C. 668; by, Hannum v. Kingsley, 107 Mass. 355; residing at, Porter v. Miller, 3 Wend. (N.Y.) 329; 8 A. & E. 232; from, State v. Wong Fong, 75 Mont. 81, 241 P. 1072, 1074; in, Kellogg v. Ford, 70 Or. 213, 139 P. 751, 752.

**OF COUNSEL.** A phrase commonly applied in practice to the counsel employed by a party in a cause, and particularly to one employed to assist in the preparation or management of a cause, or its presentation on appeal, but who is not the principal attorney of record for the party.

**OF COURSE.** As a matter of right. Stoddard v. Treadwell, 29 Cal. 281; Jones v. McGonigle, 327 Mo. 457, 37 S.W.2d 892, 74 A.L.R. 550. Any action or step taken in the course of judicial proceedings which will be allowed by the court upon mere application, without any inquiry or contest, or which may be effectually taken without even applying to the court for leave. Merchants' Bank of St. Joseph v. Chrysler, C.C.A.Mo., 67 F. 390, 14 C.C.A. 444; Petit v. Petit, 45 Misc. 155, 91 N.Y.S. 979.

**OF FORCE.** In force; extant; not obsolete; existing as a binding or obligatory power.

**OF GRACE.** This phrase had its origin in an age when kings dispensed their royal favors at the hands of chancellors, but has no rightful place in American jurisprudence. Sullivan v. Jones & Laughlin Steel Co., 208 Pa. 540, 57 A. 1065, 66 L.R. A. 712. A term applied to any permission or license granted to a party in the course of a judicial proceeding which is not claimable as a matter of course or of right, but is allowed by the favor or indulgence of the court. See Walters v. McElroy, 151 Pa. 549, 25 A. 125.

**OF NEW.** A Scotch expression, closely translated from the Latin "*de novo*," (*q. v.*).

**OF RECORD.** Recorded; entered on the records; existing and remaining in or upon the appropriate records.

A mortgage to be "of record" must be recorded in the county in which it is properly and legally recordable for purpose of constructive notice. Riley v. Commonwealth, 275 Ky. 370, 121 S.W.2d 921.

Under statute providing that recognizances shall be "of record", the term means of record in the sense that it is taken by inferior tribunals—that they have been taken and certified to the clerk of the court of record and by him recorded. King v. State, 18 Neb. 375, 25 N.W. 519.

**OF RIGHT.** As a matter of course. Atkins v. Garrett, D.C.La., 252 F. 280, 282. See "Of Course."

**OF THE BLOOD.** A technical legal phrase meaning to be descended from the person referred to or from the same common stock and from a common ancestor. In re Easter's Estate, 24 Cal.2d 191, 148 P.2d 601.

**OFFA EXECRATA.** In old English law. The morsel of execration; the corsned, (*q. v.*) 1 Reeve, Eng. Law, 21.

**OFFENDER.** Commonly used in statutes to indicate person implicated in the commission of a crime and includes person guilty of a misdemeanor. State ex rel. Smith v. Jameson, 70 S.D. 503, 19 N.W.2d 505, 508.

**OFFENSE.** A crime or misdemeanor; a breach of the criminal laws. People v. Brenta, 64 Cal. App. 91, 220 P. 447; State v. Hirsch, 91 Vt. 330, 100 A. 877, 879; Ex parte Brady, 116 Ohio St. 512, 157 N.E. 69, 70. State v. Johnson, 212 N.C. 566, 194 S.E. 319, 322.

It is used as a *genus*, comprehending every crime and misdemeanor, or as a *species*, signifying a crime not indictable, but punishable summarily or by the forfeiture of a penalty. In re Terry, C.C.Cal., 37 F. 649.

The word "offense," while sometimes used in various senses, generally implies a crime or a misdemeanor infringing public as distinguished from mere private rights, and punishable under the criminal laws, though it may also include the violation of a criminal statute for which the remedy is merely a civil suit to recover the penalty. Commonwealth v. Brown, 264 Pa. 85, 107 A. 676, 678.

Under a statute, declaring that one guilty of an offense or fault causing another damage is obliged to repair it, "offense or fault" has the same meaning as "tort"; Panama R. Co. v. Rock, C.C.A.Canal Zone, 272 F. 649, 651; and

a criminal contempt has been held to be an "offense." *Creekmore v. U. S.*, C.C.A.Okl., 237 F. 743, 754, L.R.A. 1917C, 845; *Ex parte Grossman*, 267 U.S. 87, 45 S.Ct. 332, 335, 69 L.Ed. 527, 38 A.L.R. 131.

**Continuing offense.** A transaction or a series of acts set on foot by a single impulse, and operated by an unintermittent force, no matter how long a time it may occupy. *State v. Brown*, 10 Okl.Cr. 52, 133 P. 1143, 1144; *Ex parte Dunn*, 33 Okl.Cr. 190, 242 P. 574.

**Criminal offense.** Includes misdemeanors as well as felonies. *People v. Scalisi*, 324 Ill. 131, 154 N.E. 715, 721. It is an offense which subjects the offender to indictment. *Latimer v. Wilson*, 103 N. J.L. 159, 134 A. 750, 751.

**Quasi offense.** One which is imputed to the person who is responsible for its injurious consequences, not because he himself committed it, but because the perpetrator of it is presumed to have acted under his commands.

**Same offense.** As used in a provision against double jeopardy, the term means the same crime, not the same transaction, acts, circumstances, or situation. *State v. Billotto*, 104 Ohio St. 13, 135 N.E. 285, 287; *U. S. v. Bostow*, D.C.Ala., 273 F. 535, 538.

**Second offense.** One committed after conviction for a first offense. *Holst v. Owen*, C.C.A.Fla., 24 F. 2d 100. See *State v. Snyder*, 30 N.M. 40, 227 P. 613, 618; *Meyers v. State*, 193 Wis. 126, 213 N.W. 645, 646; *Staniforth v. State*, 24 Ohio App. 208, 156 N.E. 924.

It is the previous conviction, and not the indictment, which is the basis of the charge of a second offense. *People v. Boardman*, 172 App.Div. 733, 159 N.Y.S. 577.

**OFFENSIVE.** In the law relating to nuisances and similar matters, this term means noxious, causing annoyance, discomfort, or painful or disagreeable sensations. In ordinary use, the term is synonymous with "obnoxious" and means objectionable, disagreeable, displeasing and distasteful. *Moller v. Presbyterian Hospital*, 65 App.Div. 134, 72 N.Y.S. 483; *City of Muskogee v. Morton*, 128 Okl. 17, 261 P. 183, 184.

**OFFENSIVE AND DEFENSIVE LEAGUE.** In international law. A league binding the contracting powers not only to aid each other in case of aggression upon either of them by a third power, but also to support and aid each other in active and aggressive measures against a power with which either of them may engage in war.

**OFFENSIVE LANGUAGE.** Language adapted to give offense; displeasing or annoying language. *People v. Whitman* (Co. Ct.) 157 N.Y.S. 1107, 1109.

**OFFENSIVE WEAPON.** As occasionally used in criminal law and statutes, a weapon primarily meant and adapted for attack and the infliction of injury, but practically the term includes anything that would come within the description of a "deadly" or "dangerous" weapon. *State v. Dineen*, 10

*Minn.* 411 (Gil. 325); *Rex v. Grice*, 7 Car. & P. 803; *Rex v. Noakes*, 5 Car. & P. 326. Pistol has been held to be "offensive weapon" within statute punishing assault with intent to rob. *Reed v. Commonwealth*, 281 Ky. 189, 135 S.W.2d 867, 870, 872.

**OFFER, v.** To bring to or before; to present for acceptance or rejection; to hold out or proffer; to make a proposal to; to exhibit something that may be taken or received or not. *Morrison v. Springer*, 15 Iowa 346; *People v. Ah Fook*, 62 Cal. 494.

To attempt or endeavor; to make an effort to effect some object, as, to offer to bribe; in this sense used principally in criminal law. *State v. Armijo*, 19 N.M. 345, 142 P. 1126, 1127.

In trial practice, to "offer" evidence is to state its nature and purport, or to recite what is expected to be proved by a given witness or document, and demand its admission. Unless under exceptional circumstances, the term is not to be taken as equivalent to "introduce." *Harris v. Tomlinson*, 130 Ind. 426, 30 N.E. 214.

The word "offer," as used in a statute providing that the buyer, to rescind a sale, must offer within a reasonable time to return the goods, is synonymous with the word "tender." *Collins v. Skillings*, 224 Mass. 275, 112 N.E. 938, 939, Ann.Cas.1918D, 424.

**OFFER, n.** A proposal; a proposal to do a thing.

An attempt; endeavor. Webster.

An offer of evidence. See the verb "offer," supra.

An act on the part of one person whereby he gives to another the legal power of creating the obligation called contract. In re *Larney's Estate*, 148 Misc. 871, 266 N.Y.S. 564.

An offer, as an element of a contract, is a proposal to make a contract. It must be made by the person who is to make the promise, and it must be made to the person to whom the promise is made. It may be made either by words or by signs, either orally or in writing, and either personally or by a messenger; but in whatever way it is made, it is not in law an offer until it comes to the knowledge of the person to whom it is made; Langd.Contr. § 151; 6 H.L.Cas. 112. See *Sunburst Oil & Gas Co. v. Neville*, 79 Mont. 550, 257 P. 1016, 1019.

An "offer" must be so definite in its terms, or require such definite terms in acceptance, that the promises and performances to be rendered by each party are reasonably certain. *Wadge v. Crestwood Acres*, 128 N.J.L. 551, 27 A.2d 148, 150.

An "offer to sell" merely contemplates the proffer, proposal, presentation, or exhibition of something to another for acceptance or rejection. *Frissell v. Nichols*, 94 Fla. 403, 114 So. 431, 433.

**OFFER OF COMPROMISE.** An offer to settle a dispute or difference amicably for the purpose of avoiding a lawsuit and without admitting liability. *Freeman v. Vandruff*, 126 Okl. 238, 259 P. 257, 259.

**OFFERINGS.** In English ecclesiastical law. Personal tithes, payable by custom to the parson or vicar of a parish, either occasionally, as at sacraments, marriages, churching of women, burials, etc., or at constant times, as at Easter, Christmas, etc. See *Obventio*.

**OFFERTORIUM.** In English ecclesiastical law. The offerings of the faithful, or the place where they are made or kept; the service at the time of the Communion.

## OFFICE

**OFFICE.** Right to exercise public or private employment, and to take the fees and emoluments thereunto belonging, whether public, as those of magistrates, or private, as of bailiffs, receivers, or the like. 2 Bl.Comm. 36. Blair v. Marye, 80 Va. 495; Worthy v. Barrett, 63 N.C. 202; Shelf. Mortm. 797; Cruise, Dig. Index; Com. v. Sutherland, 3 S. & R., Pa., 149. A right, and correspondent duty, to exercise a public trust. Whitehead v. Clark, 146 Tenn. 660, 244 S.W. 479, 482. A public charge or employment; U. S. v. Maurice, 2 Brock. 102, Fed. Cas. No. 15,747, per Marshall, C. J.; Lamar v. Splain, 42 App.D.C. 300, 305. An employment on behalf of the government in any station or public trust, not merely transient, occasional, or incidental. See Eason v. Majors, 111 Neb. 288, 196 N.W. 133, 134, 30 A.L.R. 1419.

An "assigned duty" or "function." Synonyms are "post", "appointment", "situation", "place", "position", and "office" commonly suggests a position of (especially public) trust or authority. Also right to exercise a public function or employment, and to take the fees and emoluments belonging to it. Frazier v. Elmore, 180 Tenn. 232, 173 S.W.2d 563, 565. A public charge or employment, and he who performs the duties of the office is an officer. Although an office is an employment, it does not follow that every employment is an office. A man may be employed under a contract, express or implied, to do an act, or to perform a service, without becoming an officer. But, if the duty be a continuing one, which is defined by rule prescribed by the government, which an individual is appointed by the government to perform, who enters upon the duties appertaining to his status, without any contract defining them, it seems very difficult to distinguish such a charge or employment from an office, or the person who performs the duty from an officer. Lacy v. State, 13 Ala. App. 212, 68 So. 706, 710. In the constitutional sense, the term implies an authority to exercise some portion of the sovereign power, either in making, executing, or administering the laws. State v. Christmas, 126 Miss. 358, 88 So. 881, 882.

The most frequent occasions to use the word arise with reference to a duty and power conferred on an individual by the government; and, when this is the connection, "public office" is a usual and more discriminating expression. But a power and duty may exist without immediate grant from government, and may be properly called an "office;" as the office of executor, the office of steward. Here the individual acts towards legatees or towards tenants in performance of a duty, and in exercise of a power not derived from their consent, but devolved on him by an authority which *quoad hoc* is superior. Abbott.

A place for the regular transaction of business. Bradley v. Certigue Mining & Dredging Co., 157 N.Y.S. 275, 276, 93 Misc. 519. For the word "office" as used of a place for transacting public business, see Com. v. White, 6 Cush., Mass., 181.

"Office" is frequently used in the old books as an abbreviation for "inquest of office," (*q. v.*).

As to various particular offices, see Land Office, Petty Bag Office, Post Office, etc.

**Civil office.** Distinguished from military. Waldo v. Wallace, 12 Ind. 569.

**County office.** As used in a primary election law, an office filled by the electorate of the entire county. Hamilton v. Monroe, Tex.Civ.App., 287 S.W. 304, 306.

**District office.** As used in a primary election law, an office filled by the electorate of a district. Hamilton v. Monroe, Tex.Civ.App., 287 S.W. 304, 306.

**Judicial office.** See Judicial.

**Lucrative office.** See Lucrative.

**Military office.** Such as are held by soldiers and sailors for military purposes.

**Ministerial office.** One which gives the officer no discretion as to the matter to be done, and requires him to obey mandates of a superior. Vose v. Deane, 7 Mass. 280; Savacool v. Boughton, 5 Wend., N.Y., 170, 21 Am.Dec. 181; Waldo v. Wallace, 12 Ind. 569. It is a general rule that a judicial office cannot be exercised by deputy, while a ministerial office may.

**Office book.** Any book for the record of official or other transactions, kept under authority of the state, in public offices not connected with the courts.

**Office copy.** A copy or transcript of a deed or record or any filed document, made by the officer having it in custody or under his sanction, and by him sealed or certified.

A copy made by an officer of the court, bound by law to make it, is equivalent to an exemplification, though it is sometimes called an "office copy"; Steph.Dig.Ev. art. 77. Copies of public records, whether judicial or otherwise, made by a public officer authorized by law to make them, are often termed "office copies," *e. g.* copies of recorded deeds; Elwell v. Cunningham, 74 Me. 127. A copy made by an officer of the court, who is authorized to make it by a rule of court, but not required by law to make it, is equivalent to an exemplification in the same cause and court, but in other causes or courts is not admissible unless it can be proved as an examined copy; Steph.Dig.Ev. art. 78. These are called "office copies"; Kellogg v. Kellogg, 6 Barb. (N.Y.) 130.

**Office found.** In English law. Inquest of office found; the finding of certain facts by a jury on an inquest or inquisition of office. 3 Bl.Comm. 258, 259. This phrase has been adopted in American law. 2 Kent, Comm. 61. See Phillips v. Moore, 100 U.S. 212, 25 L.Ed. 603; Finch v. Goldstein, 245 N.Y. 300, 157 N.E. 146, 147.

**Office grant.** A designation of a conveyance made by some officer of the law to effect certain purposes, where the owner is either unwilling or unable to execute the requisite deeds to pass the title; such, for example, as a tax-deed. 3 Washb. Real Prop. \*537.

**Office hours.** That portion of the day during which public offices are usually open for the transaction of business.

**Officer of honor.** See Honor.

**Office of judge.** A criminal suit in an ecclesiastical court, not being directed to the reparation of a private injury, is regarded as a proceeding emanating from the *office of the judge*, and may be instituted by the mere motion of the judge. But, in practice, these suits are instituted by private individuals, with the permission of the judge

or his surrogate; and the private prosecutor in any such case is, accordingly, said to "promote the office of the judge." *Mozley & Whiteley*.

**Political office.** Civil offices are usually divided into three classes,—political, judicial, and ministerial. Political offices are such as are not immediately connected with the administration of justice, or with the execution of the mandates of a superior, such as the president or the head of a department. *Fitzpatrick v. U. S.*, 7 Ct.Cl. 293.

**Principal office.** The principal office of a corporation is its headquarters, or the place where the chief or principal affairs and business of the corporation are transacted. Usually it is the office where the company's books are kept, where its meetings of stockholders are held, and where the directors, trustees, or managers assemble to discuss and transact the important general business of the company; but no one of these circumstances is a controlling test. See *Jossey v. Georgia & A. Ry.*, 102 Ga. 706, 23 S.E. 273; *Middletown Ferry Co. v. Middletown*, 40 Conn. 69; *In re Lone Star Shipbuilding Co.*, C.C.A.N.Y., 6 F.2d 192, 196. Synonymous with "principal place of business," being the place where the principal affairs of a corporation are transacted. *Foreman & Clark Mfg. Co. v. Bartle*, 125 Misc.Rep. 759, 211 N.Y.S. 602, 604.

**Public office.** The right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of government for the benefit of the public. *Walker v. Rich*, 79 Cal.App. 139, 249 P. 56, 58. An agency for the state, the duties of which involve in their performance the exercise of some portion of the sovereign power, either great or small. *Yaselli v. Goff*, C.C.A., 12 F.2d 396, 403, 56 A.L.R. 1239; *Lacey v. State*, 13 Ala.App. 212, 68 So. 706, 710; *Curtin v. State*, 61 Cal.App. 377, 214 P. 1030, 1035; *Shelmadine v. City of Elkhart*, 75 Ind.App. 493, 129 N.E. 878. *State ex rel. Colorado River Commission v. Frohmiller*, 46 Ariz. 413, 52 P.2d 483, 486.

Where, by virtue of law, a person is clothed, not as an incidental or transient authority, but for such time as denotes duration and continuance, with independent power to control the property of the public, or with public functions to be exercised in the supposed interest of the people, the service to be compensated by a stated yearly salary, and the occupant having a designation or title, the position so created is a public office. *State v. Brennan*, 49 Ohio St. 33, 29 N.E. 593.

**State office.** This term as used in a primary election law, means offices to be filled by the electorate of the entire state. *Hamilton v. Monroe*, Tex.Civ.App., 287 S.W. 304, 306.

**OFFICER.** The incumbent of an office; one who is lawfully invested with an office. *Evans v. Beatie*, 137 S.C. 496, 135 S.E. 538, 554; *State v. Bratton*, 148 Tenn. 174, 253 S.W. 705, 706. One who is charged by a superior power (and particularly by government) with the power and duty of exercising certain functions.

One who is invested with some portion of the functions of the government to be exercised for the public benefit. *Fox v. Lantrip*, 162 Ky. 178, 172 S.W. 133, 136; In a popular sense, an officer is one holding a position of trust and authority in any kind of an organization—civil, military, political, ecclesiastical, or social. Illinois Commerce Commission v. Cleveland, C. & St. L. Ry. Co., 320 Ill. 214, 150 N.E. 678, 682. The word "officer," as used in state statutes or constitutions, is sometimes held to refer only to elective officers; *Cunningham v. Rockwood*, 222 Mass. 574, 111 N. E. 409, 411, Ann.Cas.1917C, 1100; and sometimes to both appointive and elective officers; *State v. Campbell*, 94 Ohio St. 403, 115 N.E. 29, 31.

An "officer" is distinguished from an "employee" in the greater importance, dignity, and independence of his position, in requirement of oath, bond, more enduring tenure, and fact of duties being prescribed by law. *Bowden v. Cumberland County*, 123 Me. 359, 123 A. 166, 169; *McClendon v. Board of Health of City of Hot Springs*, 141 Ark. 114, 216 S.W. 289, 290; *Jefferson County v. Case*, 244 Ala. 56, 12 So.2d 343, 346.

In determining whether one is an "officer" or "employee," important tests are the tenure by which a position is held, whether its duration is defined by the statute or ordinance creating it, or whether it is temporary or transient or for a time fixed only by agreement; whether it is created by an appointment or election, or merely by a contract of employment by which the rights of the parties are regulated; whether the compensation is by a salary or fees fixed by law, or by a sum agreed upon by the contract of hiring. *Hyde v. Board of Com'rs of Wells County*, 209 Ind. 245, 198 N.E. 333, 337.

For *obstructing an officer*, see that title.

For definitions of the various classes and kinds of officers, see the titles "Commissioned Officers," "Executive," "Fiscal," "Judicial," "Legislative," "Ministerial," "Municipal," "Naval," "Non-Commissioned," "Peace," "State," and "Subordinate".

**Civil officer.** The word "civil," as regards civil officers, is commonly used to distinguish those officers who are in public service but not of the military. *U. S. v. American Brewing Co.*, D.C.Pa., 296 F. 772, 776; *State v. Clarke*, 21 Nev. 333, 31 P. 545, 18 L.R.A. 313, 37 Am.St.Rep. 517. Hence, any officer of the United States who holds his appointment under the national government, whether his duties are executive or judicial, in the highest or the lowest departments of the government, with the exception of officers of the army and navy, is a "civil officer." 1 Story, Const. § 792. See, also, *Com'rs v. Goldsborough*, 90 Md. 193, 44 A. 1055.

**Military officer.** Officer who has command in the army. Non-commissioned officer is not officer in the sense in which that word is generally used; *Babbitt v. U. S.*, 16 Ct.Cl. 214.

**Officer de facto.** As distinguished from an officer *de jure*; this is the designation of one who is in the actual possession and administration of the office, under some colorable or apparent authority, although his title to the same, whether by election or appointment, is in reality invalid or at least formally questioned. *Norton v. Shelby County*, 6 S.Ct. 1121, 118 U.S. 425, 30 L.Ed. 78; *State v. Carroll*, 38 Conn. 449, 9 Am.Rep. 409. One who has the reputation of being the officer he assumes to be, and yet is not a good officer in point of law. *6 East 368*; *City of Terre Haute v. Burns*, 69 Ind. App. 7, 116 N.E. 604, 608; *Johnson v. State*, 27 Ga. App. 679, 109 S.E. 526, 527.



## OFFICER

Official acts of officer de facto are binding on others. *McNatt v. State*, 130 Tex.Cr.R. 42, 91 S.W.2d 1068, 1069.

A *de facto* officer is also distinguished from a "usurper" who has neither lawful title nor color of right. *Smith v. City of Jefferson*, 75 Or. 179, 146 P. 809, 812.

To constitute an officer de facto it is not a necessary prerequisite that there shall have been an attempted exercise of competent *prima facie* power of appointment or election; a *de facto* officer being one whose title is not good in law, but who is in fact in the unobstructed possession of an office and is discharging its duties in full view of the public, in such manner and under such circumstances as not to present the appearance of being an intruder or usurper. *U. S. v. Royer*, 45 S.Ct. 519, 520, 268 U.S. 394, 69 L.Ed. 1011. A person is a "de facto officer" where the duties of the officer are exercised—First, without a known appointment or election, but under such circumstances of reputation or acquiescence as were calculated to induce people, without inquiry, to submit to or invoke his action, supposing him to be the officer he assumed to be. Second, under color of a known and valid appointment or election, but where the officer has failed to conform to some precedent requirement or condition, as to take an oath, give a bond, or the like. Third, under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power, or defect being unknown to the public. Fourth, under color of an election or appointment by or pursuant to a public unconstitutional law, before the same is adjudged to be such. *Wendt v. Berry*, 154 Ky. 586, 157 S.W. 1115, 1118, 45 L.R.A., N.S., 1101, Ann.Cas.1915C, 493.

**Officer de jure.** One who is in all respects legally appointed and qualified to exercise the office. *People v. Brautigam*, 310 Ill. 472, 142 N.E. 208, 211.

**Officer of justice.** A general name applicable to all persons connected with the administration of the judicial department of government, but commonly used only of the class of officers whose duty is to serve the process of the courts, such as sheriffs, constables, bailiffs, marshals, sequestrators, etc.

**Officer of United States.** An officer nominated by the president and confirmed by the senate or one who is appointed under an act of congress, by the president alone, a court of law, or a head of a department. *U. S. v. Germaine*, 99 U.S. 508, 25 L. Ed. 482; see *U. S. v. Mouat*, 8 S.Ct. 505, 124 U.S. 303, 31 L.Ed. 463.

**Public officer.** An officer of a public corporation; that is, one holding office under the government of a municipality, state, or nation. One occupying a public office created by law. *Shanks v. Howes*, 214 Ky. 613, 283 S.W. 966, 967; *Schmitt v. Dooling*, 145 Ky. 240, 140 S.W. 197, 36 L.R.A., N.S., 881, Ann.Cas.1913B, 1078. One of necessary characteristics of "public officer" is that he perform public function for public benefit and in so doing he be vested with exercise of some sovereign power of state. *Leymel v. Johnson*, 105 Cal.App. 694, 288 P. 858, 860.

In English law. An officer appointed by a joint-stock banking company, under the statutes regulating such companies, to prosecute and defend suits in its behalf.

**Warrant officer.** One who holds as evidence of right a warrant signed by the Secretary of War or of the Navy. *Stephens v. Civil Service Commission of New Jersey*, 101 N.J.L. 192, 127 A. 808, 811.

**OFFICIA JUDICIALIA NON CONCEDANTUR ANTEQUAM VACENT.** Judicial offices should not be granted before they are vacant. 11 Coke, 4.

**OFFICIA MAGISTRATUS NON DEBENT ESSE VENALIA.** The offices of magistrates ought not to be sold. Co. Litt. 234.

**OFFICIAL, n.** An officer; a person invested with the authority of an office.

In Canon law. A person to whom a bishop commits the charge of his spiritual jurisdiction.

In Civil law. The minister or apparitor of a magistrate or judge.

In Common and Statute law. The person whom the archdeacon substitutes in the execution of his jurisdiction. Cowell.

**OFFICIAL, adj.** Pertaining to an office; invested with the character of an officer; proceeding from, sanctioned by, or done by, an officer. *Cohn v. U. S.*, 169 C.C.A. 371, 258 F. 355, 358.

As to official "Bonds," "Liquidator," "Log-Book," "Newspaper," "Oath," and "Use," see those titles.

**Demi-official.** Partly official or authorized. Having color of official right.

**Official act.** One done by an officer in his official capacity under color and by virtue of his office. *Lammon v. Feusire*, 4 S.Ct. 286, 111 U.S. 17, 28 L.Ed. 337; *Meek v. Tilghman*, 55 Okl. 208, 154 P. 1190, 1191; *Miles v. Wright*, 22 Ariz. 73, 194 P. 88, 91, 12 A.L.R. 970. *Weidler v. Arizona Power Co.*, 39 Ariz. 390, 7 P.2d 241, 243.

**Official assignee.** In English practice. An assignee in bankruptcy appointed by the lord chancellor to co-operate with the other assignees in administering a bankrupt's estate.

**Official managers.** Persons formerly appointed, under English statutes now repealed, to superintend the winding up of insolvent companies under the control of the court of chancery. Wharton.

**Official misconduct.** Any unlawful behavior by a public officer in relation to the duties of his office, willful in its character, including any willful or corrupt failure, refusal, or neglect of an officer to perform any duty enjoined on him by law. *Kesling v. Moore*, 102 W.Va. 251, 135 S.E. 246, 248; *State on Inf. of Barker v. Crandall*, 269 Mo. 44, 190 S.W. 889, 892; *Bolton v. State*, 69 Tex.Cr.R. 582, 154 S.W. 1197.

**Official principal.** An ecclesiastical officer whose duty it is to hear causes between party and party as the delegate of the bishop or archbishop by whom he is appointed. He generally also holds the office of vicar general and (if appointed by a bishop) that of chancellor. The official principal of the province of Canterbury is called the "dean of arches." *Phillim. Ecc. Law*, 1203, *et seq.*; Sweet.

**Official solicitor to the court of chancery.** An officer in England whose functions are to protect the suitors' fund, and to administer, under the di-

rection of the court, so much of it as now comes under the spending power of the court. He acts for persons suing or defending *in forma pauperis*, when so directed by the judge, and for those who, through ignorance or forgetfulness, have been guilty of contempt of court by not obeying process. He also acts generally as solicitor in all cases in which the chancery division requires such services. The office is transferred to the high court by the judicature acts, but no alteration in its name appears to have been made. Sweet.

**Official trustee of charity lands.** The secretary of the English charity commissioners. He is a corporation sole for the purpose of taking and holding real property and leaseholds upon trust for an endowed charity in cases where it appears to the court desirable to vest them in him. He is a bare trustee, the possession and management of the land remaining in the persons acting in the administration of the charity. Sweet.

**OFFICIALTY.** The court or jurisdiction of which an official is head.

**OFFICIARIIS NON FACIENDIS VEL AMOVENDIS.** A writ addressed to the magistrates of a corporation, requiring them not to make such a man an officer, or to put one out of the office he has, until inquiry is made of his manners, etc. Reg. Orig. 126.

**OFFICINA JUSTITIÆ.** The workshop or office of justice. The chancery was formerly so called. 3 Bl.Comm. 273; Yates v. People, 6 Johns. (N. Y.) 363.

**OFFICIO, EX, OATH.** An oath whereby a person may be obliged to make any presentment of any crime or offense, or to confess or accuse himself of any criminal matter or thing whereby he may be liable to any censure, penalty, or punishment. 3 Bl.Comm. 447.

**OFFICIOUS WILL.** A testament by which a testator leaves his property to his family. Sandars, Just. Inst. 207; Inofficious Testament.

**OFFICIT CONATUS SI EFFECTUS SEQUATUR.** The attempt becomes of consequence, if the effect follows. Jenk. Cent. 55.

**OFFICIUM NEMINI DEBET ESSE DAMNOSUM.** Office ought not to be an occasion of loss to any one. A maxim in Scotch law. Bell.

**OFFSET.** A deduction; a counterclaim; a contrary claim or demand by which a given claim may be lessened or canceled. Leonard v. Charter Oak L. Ins. Co., 65 Conn. 529, 33 A. 511; Cable Flax Mills v. Early, 72 App.Div. 213, 76 N.Y.S. 191. The more usual form of the word is "set-off," (q. v.).

**OFFSPRING.** This term is synonymous with "issue." Barber v. Railroad Co., 17 S.Ct. 488, 166 U.S. 83, 41 L.Ed. 925; Powell v. Brandon, 2 Cushm. (Miss.) 343.

**OIKEI MANIA.** See Insanity.

**OIB.** In Spanish law. To hear; to take cognizance. White, New Recop. b. 3, tit. 1, c. 7.

**OKAY.** The colloquial expression means correct, all right, to approve, and is of such common usage that it immediately conveys to the mind of person to whom it is addressed that a proposition submitted is agreed to. Muegler v. Crosthwait, 239 Mo.App. 801, 179 S.W.2d 761, 763. See, also, O. K.

**OKER.** In Scotch law. Usury; the taking of interest for money, contrary to law. Bell.

**OLD NATURA BREVIVM.** The title of a treatise written in the reign of Edward III., containing the writs which were then most in use, annexing to each a short comment concerning their nature and the application of them, with their various properties and effects. 3 Reeve, Eng. Law, 152.

**OLD STYLE.** The ancient calendar or method of reckoning time, whereby the year commenced on March 25th. It was superseded by the new style (that now in use) in most countries' of Europe in 1582 and in England in 1752.

**OLD TENURES.** A treatise, so called to distinguish it from Littleton's book on the same subject, which gives an account of the various tenures by which land was holden, the nature of estates, and some other incidents to landed property in the reign of Edward III. It is a very scanty tract, but has the merit of having led the way to Littleton's famous work. 3 Reeve, Eng. Law, 151.

**OLEOMARGARINE.** An artificial imitation of butter, made chiefly from animal fats. Its sale is prohibited or restricted by statute in several of the states. Powell v. Pennsylvania, 8 S.Ct. 992, 127 U.S. 678, 32 L.Ed. 253.

**OLERON, LAWS OF.** A code of maritime laws published at the island of Oleron in the twelfth century by Eleanor of Guienne. They were adopted in England successively under Richard I., Henry III., and Edward III. and are often cited before the admiralty courts.

**OLIGARCHY.** A form of government wherein the administration of affairs is lodged in the hands of a few persons.

**OLIGOPOLY.** Economic climate existing where a few sellers sell only a standardized product. U. S. v. E. I. DuPont de Nemours & Co., D.C.Del., 118 F.Supp. 41, 49.

**OLOGRAPH.** An instrument (e. g., a will) wholly written by the person from whom it emanates. Lovskog v. American Nat. Red Cross, C.C.A.Alaska, 111 F.2d 88, 91.

**OLOGRAPHIC TESTAMENT.** The olographic testament is that which is written by the testator himself. In order to be valid it must be entirely written, dated, and signed by the hand of the testator. It is subject to no other form, and may be made anywhere, even out of the state. Civil Code La. art. 1588. Succession of Butterworth, 195 La. 115, 196 So. 39, 41.

## OLYMPIAD

**OLYMPIAD.** A Grecian epoch; the space of four years.

**OMBUDSMAN CONCEPT.** A citizen aggrieved by an official's action or inaction should be able to state his grievance to an influential functionary empowered to investigate and to express conclusions.

**OME BUENO.** In Spanish law. A good man; a substantial person. *Las Partidas*, pt. 5, tit. 13, l. 38.

**OMISSIO EORUM QUÆ TACITE INSUNT NIHIL OPERATUR.** The omission of those things which are tacitly implied is of no consequence. 2 *Bulst.* 131.

**OMISSION.** The neglect to perform what the law requires. *People v. Hughey*, 382 Ill. 136, 47 N.E. 2d 77, 80.

**OMISSIS OMNIBUS ALIIS NEGOTIIS.** Lat. Laying aside all other businesses. 9 *East*, 347.

**OMITTANCE.** Forbearance; omission.

**OMNE ACTUM AB INTENTIONE AGENTIS EST JUDICANDUM.** Every act is to be judged by the intention of the doer. *Branch, Princ.*

**OMNE CRIMEN EBRIETAS ET INCENDIT ET DETEGIT.** Drunkenness both inflames (or aggravates) and reveals every crime. *Co. Litt.* 247*a*; 4 *Bl.Comm.* 26; *Broom, Max.* 17.

**OMNE JUS AUT CONSENSUS FECIT, AUT NECESSITAS CONSTITUIT AUT FIRMAVIT CONSUETUDO.** Every right is either made by consent, or is constituted by necessity, or is established by custom. *Dig.* 1, 3, 40.

**OMNE MAGIS DIGNUM TRAHIT AD SE MINUS DIGNUM, QUAMVIS MINUS DIGNUM SIT ANTIQVIUS.** Every worthier thing draws to it the less worthy, though the less worthy be the more ancient. *Co. Litt.* 355*b*.

**OMNE MAGNUM EXEMPLUM HABET ALIQUID EX INIQUO, QUOD PUBLICA UTILITATE COMPENSATUR.** *Hob.* 279. Every great example has some portion of evil, which is compensated by the public utility.

**OMNE MAJUS CONTINET IN SE MINUS.** Every greater contains in itself the less. 5 *Coke*, 115*a*. The greater always contains the less. *Broom, Max.* 174.

**OMNE MAJUS DIGNUM CONTINET IN SE MINUS DIGNUM.** *Co. Litt.* 43. The more worthy contains in itself the less worthy.

**OMNE MAJUS MINUS IN SE COMPLECTITUR.** Every greater embraces in itself the less. *Jenk. Cent.* 208.

**OMNE PRINCIPALE TRAHIT AD SE ACCESSORIUM.** Every principal thing draws to itself the accessory. *Parsons v. Welles*, 17 *Mass.* 425; *Green v. Hart*, 1 *Johns.* (N.Y.) 580.

**OMNE QUOD SOLO INÆDIFICATUR SOLO CEDIT.** Everything which is built upon the soil belongs to the soil. *Dig.* 47, 3, 1; *Broom, Max.* 401.

**OMNE SACRAMENTUM DEBET ESSE DE CERTA SCIENTIA.** Every oath ought to be of certain knowledge. 4 *Inst.* 279.

**OMNE TESTAMENTUM MORTE CONSUMMATUM EST.** 3 *Coke*, 29. Every will is completed by death.

**OMNES ACTIONES IN MUNDO INFRA CERTA TEMPORA HABENT LIMITATIONEM.** All actions in the world are limited within certain periods. *Bract. fol.* 52.

**OMNES HOMINES AUT LIBERI SUNT AUT SERVI.** All men are freemen or slaves. *Inst.* 1, 3, pr.; *Fleta*, l. 1, c. 1, § 2.

**OMNES LICENTIAM HABERE HIS QUÆ PRO SE INDULTA SUNT, RENUNCIARE.** [It is a rule of the ancient law that] all persons shall have liberty to renounce those privileges which have been conferred for their benefit. *Cod.* 1, 3, 51; *Cod.* 2, 3, 29; *Broom, Max.* 699.

**OMNES PRUDENTES ILLA ADMITTERE SOLENT QUÆ PROBANTUR IIS QUI ARTE SUA BENE VERSATI SUNT.** All prudent men are accustomed to admit those things which are approved by those who are well versed in the art. 7 *Coke*, 19.

**OMNES SORORES SUNT QUASI UNUS HÆRES DE UNA HÆREDITATE.** *Co.Litt.* 67. All sisters are, as it were, one heir to one inheritance.

**OMNI EXCEPTIONE MAJUS.** 4 *Inst.* 262. Above all exception.

**OMNIA DELICTA IN APERTO LEVIORA SUNT.** All crimes that are committed openly are lighter, [or have a less odious appearance than those committed secretly.] 8 *Coke*, 127*a*.

**OMNIA PERFORMAVIT.** He has done all. In pleading. A good plea in bar where all the covenants are in the affirmative. *Bailey v. Rogers*, 1 *Me.* 189.

**OMNIA PRÆSUMUNTUR CONTRA SPOLIATOREM.** All things are presumed against a despoiler or wrong-doer. A leading maxim in the law of evidence. *Best, Ev.* p. 340, § 303; *Broom, Max.* 938.

**OMNIA PRÆSUMUNTUR LEGITIME FACTA DONEC PROBETUR IN CONTRARIUM.** All things are presumed to be lawfully done, until proof be made to the contrary. *Co.Litt.* 232*b*; *Best, Ev.* p. 337, § 300.

**OMNIA PRÆSUMUNTUR RITE ET SOLEMNITER ESSE ACTA DONEC PROBETUR IN CONTRARIUM.** All things are presumed to have been rightly and duly performed until it is proved to the contrary. *Co.Litt.* 232; *Broom, Max.* 944.

**OMNIA PRÆSUMUNTUR SOLEMNITER ESSE ACTA.** *Co.Litt.* 6. All things are presumed to have been done rightly.

**OMNIA PRESUMUNTUR RITA ESSE ACTA.** A prima facie presumption of the regularity of the acts of public officers exists until the contrary appears. *Beacom v. Robison*, 157 Pa.Super. 515, 43 A.2d 640, 643.

**OMNIA QUÆ JURE CONTRAHUNTUR CONTRARIO JURE PEREUNT.** Dig. 50, 17, 100. All things which are contracted by law perish by a contrary law.

**OMNIA QUÆ SUNT UXORIS SUNT IPSIUS VIRI.** All things which are the wife's are the husband's. *Bract. fol. 32*; *Co.Litt. 112a*; 2 *Kent, Comm. 130-143*.

**OMNIA RITE ACTA PRÆSUMUNTUR.** All things are presumed to have been rightly done. *Broom, Max. 944*.

**OMNIBUS.** For all; containing two or more independent matters. Applied to a count in a declaration, and to a bill of legislation, and perhaps to a clause in a will, which comprises more than one general subject. *Yeager v. Weaver*, 64 Pa. 428; *Parkinson v. State*, 14 Md. 193, 74 Am.Dec. 522. See *In Omnibus*.

**OMNIBUS AD QUOS PRÆSENTES LITERÆ PERVENERINT, SALUTEM.** To all to whom the present letters shall come, greeting. A form of address with which charters and deeds were anciently commenced.

**OMNIBUS BILL.** In legislative practice, a bill including in one act various separate and distinct matters, and particularly one joining a number of different subjects in one measure in such a way as to compel the executive authority to accept provisions which he does not approve or else defeat the whole enactment. *Com. v. Barnett*, 199 Pa. 161, 48 A. 977, 55 L.R.A. 882; *Yeager v. Weaver*, 64 Pa. 425.

In equity pleading, a bill embracing the whole of a complex subject-matter by uniting all parties in interest having adverse or conflicting claims, thereby avoiding circuitry or multiplicity of action.

**OMNIS ACTIO EST LOQUELA.** Every action is a plaint or complaint. *Co.Litt. 292a*.

**OMNIS CONCLUSIO BONI ET VERI JUDICII SEQUITUR EX BONIS ET VERIS PRÆMISSIS ET DICTIS JURATORUM.** Every conclusion of a good and true judgment follows from good and true premises, and the verdicts of jurors. *Co.Litt. 226b*.

**OMNIS CONSENSUS TOLLIT ERROREM.** Every consent removes error. Consent always removes the effect of error. 2 *Inst. 123*.

**OMNIS DEFINITIO IN JURE CIVILI PERICULOSA EST, PARUM EST ENIM UT NON SUBVERTI POSSIT.** Every definition in the civil law is dangerous, for there is very little that cannot be overthrown. (There is no rule in the civil law which is not liable to some exception; and the least difference in the facts of the case renders its application useless.) Dig. 50. 17. 202; 2 *Woodd. Lect. 196*.

**OMNIS DEFINITIO IN LEGE PERICULOSA.** All definition in law is hazardous. 2 *Wood.Lect. 196*.

**OMNIS EXCEPTIO EST IPSA QUOQUE REGULA.** Every exception is itself also a rule.

**OMNIS INDEMNATUS PRO INNOXIS LEGIBUS HABETUR.** Every uncondemned person is held by the law as innocent. *Lofft, 121*.

**OMNIS INNOVATIO PLUS NOVITATE PERTURBAT QUAM ULTILITATE PRODEST.** Every innovation occasions more harm by its novelty than benefit by its utility. 2 *Bulst, 338*; *Broom, Max. 147*.

**OMNIS INTERPRETATIO SI FIERI POTEST ITA FIENDA EST IN INSTRUMENTIS, UT OMNES CONTRARIETATES AMOVEANTUR.** *Jenk. Cent. 96*. Every interpretation, if it can be done, is to be so made in instruments that all contradictions may be removed.

**OMNIS INTERPRETATIO VEL DECLARAT, VEL EXTENDIT, VEL RESTRINGIT.** Every interpretation either declares, extends, or restrains.

**OMNIS NOVA CONSTITUTIO FUTURIS FORMAM IMPONERE DEBET, NON PRÆTERITIS.** Every new statute ought to prescribe a form to future, not to past, acts. *Bract. fol. 228*; 2 *Inst. 95*.

**OMNIS PERSONA EST HOMO, SED NON VICISSIM.** Every person is a man, but not every man a person. *Calvin*.

**OMNIS PRIVATIO PRÆSUPPONIT HABITUM.** Every privation presupposes a former enjoyment. *Co.Litt. 339a*. A "rule of philosophie" quoted by *Lord Coke*, and applied to the discontinuance of an estate.

**OMNIS QUEREIA ET OMNIS ACTIO INJURIARUM LIMITA EST INFRA CERTA TEMPORA.** *Co.Litt. 114b*. Every plaint and every action for injuries is limited within certain times.

**OMNIS RATIO HABITIO RETROTRAHITUR ET MANDATO PRIORI ÆQUIPARATUR.** Every ratification relates back and is equivalent to a prior authority. *Broom, Max. 757, 871*; *Chit. Cont. 196*.

**OMNIS REGULA SUAS PATITUR EXCEPTIONES.** Every rule is liable to its own exceptions.

**OMNIUM.** In mercantile law. A term used to express the aggregate value of the different stock in which a loan is usually funded. *Tomlins*.

**OMNIUM CONTRIBUTIONE SARCITUR QUOD PRO OMNIBUS DATUM EST.** 4 *Bing. 121*. That which is given for, all is recompensed by the contribution of all. A principle of the law of general average.

## OMNIUM

### OMNIUM RERUM QUARUM USUS EST, POTEST ESSE ABUSUS, VIRTUTE SOLO EXCEPTA.

There may be an abuse of everything of which there is a use, virtue only excepted. Dav.Ir.K.B. 79.

**ON.** Upon; as soon as; near to; along; along side of; adjacent to; contiguous to; at the time of; following upon; in; during; at or in contact with upper surface of a thing. *Slaughter v. Robinson*, 52 Utah, 273, 173 P. 456, 458; *Hinton v. Vinson*, 180 N.C. 393, 104 S.E. 897, 900; *Stuckey v. Jones*, Tex.Civ.App., 240 S.W. 565, 566.

**ON ACCOUNT.** In part payment; in partial satisfaction of an account. The phrase is usually contrasted with "in full."

See, also, *On or About* and *On the Person*.

### ON ACCOUNT OF WHOM IT MAY CONCERN.

When a policy of insurance expresses that the insurance is made "on account of whom it may concern," it will cover all persons having an insurable interest in the subject-matter at the date of the policy and, who were then contemplated by the party procuring the insurance. 2 Pars.Mar.Law, 30.

**ON ALL FOURS.** A phrase used to express the idea that a case at bar is in all points similar to another. The one is said to be on all fours with the other when the facts are similar and the same questions of law are involved.

**ON CALL.** There is no legal difference between an obligation payable "when demanded" or "on demand" and one payable "on call" or "at any time called for." In each case the debt is payable immediately. *Bowman v. McChesney*, 22 Grat. (Va.) 609; *Citizens' Bank of Waynesboro v. Mobley*, 166 Ga. 543, 144 S.E. 119, 121, 58 A.L.R. 1383.

The term "on call," according to the evidence, is a term known to persons engaged in the cotton business, and means that cotton placed "on call" is sold, but the price remains unfixed, and that the owner has until a certain set date in the future to name the market price of the cotton on any day between the day the cotton is placed "on call" and the set day as the price at which the owner is entitled to a settlement for the cotton. *Bennett v. Weil Bros.*, 28 Ga.App. 266, 110 S.E. 744.

**ON DEFAULT.** In case of default; upon failure of stipulated action or performance; upon the occurrence of a failure, omission, or neglect of duty.

**ON DEMAND.** A promissory note payable "on demand" is a present debt, and is payable without any demand. *Dominion Trust Co. v. Hildner*, 243 Pa. 253, 90 A. 69.

**ON FILE.** Filed; entered or placed upon the files; existing and remaining upon or among the proper files. *Slosson v. Hall*, 17 Minn. 95 (Gil. 71); *Snider v. Methvin*, 60 Tex. 487.

**ON OR ABOUT.** A phrase used in reciting the date of an occurrence or conveyance, or the location of it to escape the necessity of being bound by the statement of an exact date, or place; approximately; about; without substantial variance from;

near. *Parker v. State*, 63 Ind.App. 671, 113 N.E. 763, 764; *Render v. Commonwealth*, 206 Ky. 1, 266 S.W. 914, 916; *Thompson v. U. S.*, C.C.A.N.J., 283 F. 895, 897; *Pillsbury Flour Mills Co. v. Erie R. Co.*, 216 N.Y.S. 486, 489, 127 Misc.Rep. 466; *Petty v. Giles*, 29 C.C.P.A. (Patents) 804, 125 F.2d 177, 181.

As used in statutes making it an offense to carry a weapon "on or about" the person, it is generally held that the word "on" means connected with or attached to, and that "about" is a comprehensive term having a broader meaning than "on," and conveying the idea of being near by, in close proximity, within immediate reach, or conveniently accessible. As applied to motor vehicles, therefore, it is commonly held that an occupant of the front seat of an automobile is carrying a weapon "about" his person where the weapon is on or under the seat, or between the cushion and the back of the seat, or on a shelf behind the seat, or in a pocket on the door or on the back of the seat, or in the glove compartment, or on the floor. There are, however, a few decisions to the contrary. The cases are collected and analyzed in *Blashfield, Cyc. of Automobile Law and Prac.*, Perm. Ed. § 5528.90.

**ON OR BEFORE.** These words, inserted in a stipulation to do an act or pay money, entitle the party stipulating to perform at any time before the day; and upon performance, or tender and refusal, he is immediately vested with all the rights which would have attached if performance were made on the day. *Davis v. Burns*, Tex.Civ.App., 173 S.W. 476, 480; *McGrory Stores Corporation v. Goldberg*, 95 N.J.Eq. 152, 122 A. 113.

**ON STAND.** A term used in the law of landlord and tenant. A tenant of a farm who cannot carry away manure but has the right to sell it to his successor, is said to have the right of *on stand* on the farm for it till he can sell it; he may maintain trespass for the taking of it by the incoming tenant before it is sold. 16 East 116.

**ON THE PERSON.** In common parlance, when it is said that someone has an article on his person, it means that it is either in contact with his person or is carried in his clothing. *Com. v. Lanzetti*, 97 Pa.Super. 126.

Accordingly, where a statute punishes the carrying of a weapon "on the person," an occupant of an automobile does not violate the statute by carrying therein a weapon detached from his person, as, *e. g.*, where the weapon is under the cushion of the seat. *Blashfield, Cyc. of Automobile Law and Prac.*, Perm. Ed., § 5528.88.

**ONCE A FRAUD, ALWAYS A FRAUD.** 13 Vin. Abr. 539.

**ONCE A MORTGAGE, ALWAYS A MORTGAGE.** This rule signifies that an instrument originally intended as a mortgage, and not a deed, cannot be converted into anything else than a mortgage by any subsequent clause or agreement.

**ONCE A RECOMPENSE, ALWAYS A RECOMPENSE.** 19 Vin.Abr. 277.

**ONCE IN JEOPARDY.** A phrase used to express the condition of a person charged with crime, who has once already, by legal proceedings, been put in danger of conviction and punishment for the same offense. *Com. v. Fitzpatrick*, 121 Pa. 109, 15 A. 466, 1 L.R.A. 451, 6 Am.St.Rep. 757.

**ONCE QUIT AND CLEARED, EVER QUIT AND CLEARED.** (Scotch, anis quit and clogged, ay quit and clogged.) Skene, de Verb. Sign. voc. "Iter.," ad fin.

**ONCUNNE.** L. Fr. Accused. Du Cange.

**ONE HUNDRED THOUSAND POUNDS CLAUSE.** A precautionary stipulation inserted in a deed making a good tenant to the *proceipe* in a common recovery. 1 Prest.Conv. 110.

**ONE PERSON, ONE VOTE.** State legislative districting which gives equal legislative representation to all citizens of all places. The rule was established in Reynolds v. Sims, 377 U.S. 533, 568, 84 S.Ct. 1362, 1385, which required that the seats in both houses of a bicameral state legislature be apportioned on a population basis.

**ONE THIRD NEW FOR OLD.** See New for Old.

**ONE YEAR.** A calendar year, regardless of whether it be a leap year or otherwise. Rev.St. 1925, art. 23. Douglas v. Acacia Mut. Life Ins. Co., Tex.Civ.App., 118 S.W.2d 643.

**ONERANDO PRO RATA PORTIONIS.** A writ that lay for a joint tenant or tenant in common who was distrained for more rent than his proportion of the land comes to. Reg.Orig. 182.

**ONERARI NON.** In pleading. The name of a plea, in an action of debt, by which the defendant says that he ought not to be charged.

**ONERATIO.** Lat. A lading; a cargo.

**ONERATUR NISI.** See O. NI.

**ONERIS FERENDI.** Lat. In the civil law. The servitude of support; a servitude by which the wall of a house is required to sustain the wall or beams of the adjoining house.

**ONEROUS.** A contract, lease, share, or other right is said to be "onerous" when the obligations attaching to it counter-balance or exceed the advantage to be derived from it, either absolutely or with reference to the particular possessor. Sweet.

As used in the civil law and in the systems derived from it, (French, Scotch, Spanish, Mexican,) the term also means based upon, supported by, or relating to a good and valuable consideration, *i. e.*, one which imposes a burden or charge in return for the benefit conferred.

**ONEROUS CAUSE.** In Scotch law. A good and legal consideration.

**ONEROUS CONTRACT.** See Contract.

**ONEROUS DEED.** In Scotch law. A deed given for a valuable consideration. Bell.

**ONEROUS GIFT.** A gift made subject to certain charges imposed by the donor on the donee.

**ONEROUS TITLE.** A title acquired by the giving of a valuable consideration, as the payment of money or rendition of services or the performance of conditions or assumption or discharge of liens or charges. Scott v. Ward, 13 Cal. 458; Kircher

v. Murray, C.C.Tex., 54 F. 617; Noe v. Card, 14 Cal. 576; Civ.Code La. 1900, art. 3556.

**ONLY.** Solely; merely; for no other purpose; at no other time; in no otherwise; alone; of or by itself; without anything more; exclusive; nothing else or more.

**ONOMASTIC.** A term applied to the signature of an instrument, the body of which is in a different handwriting from that of the signature. Best, Ev. 315.

**ONROERENDE AND VAST STAAT.** Dutch. Immovable and fast estate, that is, land or real estate. The phrase is used in Dutch wills, deeds, and antenuptial contracts of the early colonial period in New York. Spraker v. Van Alstyne, 18 Wend., N.Y., 208.

**ONUS.** Lat. A burden or load; a weight. The lading, burden, or cargo of a vessel. A charge; an incumbrance. *Cum onere*, (*q. v.*) with the incumbrance.

**ONUS EPISCOPALE.** Ancient customary payments from the clergy to their diocesan bishop, of synodals, pentecostals, etc.

**ONUS IMPORTANDI.** The charge of importing merchandise, mentioned in St. 12 Car. II. c. 28.

**ONUS PROBANDI.** Burden of proving; the burden of proof. The strict meaning of the term "*onus probandi*" is that, if no evidence is adduced by the party on whom the burden is cast, the issue must be found against him. Davis v. Rogers, 1 Houst. (Del.) 44.

**OPE CONSILIO.** Lat. By aid and counsel. A civil law term applied to accessories, similar in import to the "aiding and abetting" of the common law. Often written "*ope et consilio*." Burrill.

**OPEN, v.** To render accessible, visible, or available; to submit or subject to examination, inquiry, or review, by the removal of restrictions or impediments.

**Open a case.** In practice. To open a case is to begin it; to make an initiatory explanation of its features to the court, jury, referee, etc., by outlining the nature of the transaction on which it is founded, the questions involved, and the character and general course of the evidence to be adduced.

**Open a commission.** To enter upon the duties under a commission, or commence to act under a commission, is so termed in English law. Thus, the judges of assize and *nisi prius* derive their authority to act under or by virtue of commissions directed to them for that purpose; and, when they commence acting under the powers so committed to them, they are said to open the commissions; and the day on which they so commence their proceedings is thence termed the "commission day of the assizes." Brown.

**Open a court.** To open a court is to make a formal announcement, usually by the crier or bail-

## OPEN

iff, that its session has now begun and that the business before the court will be proceeded with.

**Open a credit.** To accept or pay the draft of a correspondent who has not furnished funds. Pardessus, no. 296.

**Open a deposition.** To break the seals by which it was secured, and lay it open to view, or to bring it into court ready for use.

**Open a judgment.** To lift or relax the bar of finality and conclusiveness which it imposes so as to permit a re-examination of the merits of the action in which it was rendered. This is done at the instance of a party showing good cause why the execution of the judgment would be inequitable. It so far annuls the judgment as to prevent its enforcement until the final determination upon it, but does not in the meantime release its lien upon real estate. Insurance Co. v. Beale, 110 Pa. 321, 1 A. 926.

**Open a rule.** To restore or recall a rule which has been made absolute to its conditional state, as a rule *nisi*, so as to readmit of cause being shown against the rule. Thus, when a rule to show cause has been made absolute under a mistaken impression that no counsel had been instructed to show cause against it, it is usual for the party at whose instance the rule was obtained to consent to have the rule opened, by which all the proceedings subsequent to the day when cause ought to have been shown against it are in effect nullified, and the rule is then argued in the ordinary way. Brown.

**Open a street or highway.** To establish it by law and make it passable and available for public travel. Wilcoxon v. San Luis Obispo, 101 Cal. 508, 35 P. 988; Patterson v. City of Baltimore, 130 Md. 645, 101 A. 589, 591; Royal v. City of Des Moines, 195 Iowa, 23, 191 N.W. 377, 383.

**Open bids.** To open bids received on a foreclosure or other judicial sale is to reject or cancel them for fraud, mistake, or other cause, and order a resale of the property. Andrews v. Scotton, 2 Bland (Md.) 644.

**Open the door.** If one party to litigation puts in evidence part of document or correspondence or conversation which is detrimental to the opposing party, the latter may introduce balance of document, correspondence or conversation in order to explain or rebut adverse inferences which might arise from the fragmentary or incomplete character of evidence introduced by his adversary. U. S. v. Corrigan, C.C.A.N.Y., 168 F.2d 641, 645.

**Open the pleadings.** To state briefly at a trial before a jury the substance of the pleadings. This is done by the junior counsel for the plaintiff at the commencement of the trial.

**OPEN, adj.** Patent; visible; apparent; notorious; not clandestine; not closed, settled, fixed, or terminated. Pratt v. Boggs, 171 Ky. 106, 186 S.W. 901, 902; Dale v. Hartson, D.C.Wash., 289 F. 493, 495.

As to open "Account," "Corporation," "Entry," "Insolvency," "Lewdness," "Policy," "Possession," and "Verdict," see those titles.

**Open bulk.** In the mass; exposed to view; not tied or sealed up. In re Sanders, C.C.N.C., 52 F. 802, 18 L.R.A. 549.

**Open court.** This term may mean either a court which has been formally convened and declared open for the transaction of its proper judicial business, or a court which is freely open to the approach of all decent and orderly persons in the character of spectators. Conover v. Bird, 56 N.J.Law, 228, 28 A. 428. Gomes v. Ulibarri, 23 N.M. 501, 169 P. 301, 302; U. S. v. Ginsberg, 243 U.S. 472, 37 S.Ct. 422, 425, 61 L.Ed. 853; Gillham v. St. Louis Southwestern Ry. Co. of Texas, Tex. Civ.App., 241 S.W. 512, 514.

**Open doors.** In Scotch law. "Letters of open doors" are process which empowers the messenger, or officer of the law, to break open doors of houses or rooms in which the debtor has placed his goods. Bell.

**Open-end agreement.** An agreement between employer and injured employee for compensation for indefinite period, approved by the labor commissioner, having effect of judgment so long as facts on which the award was predicated continue. Healey's Case, 124 Me. 54, 126 A. 21, 22.

**Open fields, or meadows.** In English law. Fields which are undivided, but belong to separate owners; the part of each owner is marked off by boundaries until the crop has been carried off, when the pasture is shared promiscuously by the joint herd of all the owners. Elton, Commons, 31; Sweet.

**Open law.** The making or waging of law. Magna Charta, c. 21.

**Open lot.** One bounded upon all sides by streets. Illinois Surety Co. v. O'Brien, C.C.A.Ohio, 223 F. 933, 938.

**Open mortgage clause.** See Union Mortgage Clause.

**Open sea.** The expanse and mass of any great body of water, as distinguished from its margin or coast, its harbors, bays, creeks, inlets. The Cuzco, D.C.Wash., 225 F. 169, 176.

**Open season.** That portion of the year where-in the laws for the preservation of game and fish permit the killing of a particular species of game or the taking of a particular variety of fish.

**Open shop.** In trade union cant, one where non-union men are employed. George J. Grant Const. Co. v. St. Paul Bldg. Trades Council, 136 Minn. 167, 161 N.W. 520, 521. A shop in which union and non-union workmen are employed indiscriminately. Shine v. Fox Bros. Mfg. Co., 156 F. 357, 86 C.C.A. 311. The term is frequently used in a depreciatory sense, as implying that the operator of such a shop, by employing nonunion men, is in effect

discriminating against trade unions, and hampering their advancement.

**Open theft.** In Saxon law. The same with the Latin "*furtum manifestum*," (q. v.).

**OPENING.** In American practice. The beginning; the commencement; the first address of the counsel.

**OPENING STATEMENT OF COUNSEL.** Outline of anticipated proof. *Speer v. Shipley*, 149 Kan. 15, 85 P.2d 999, 1001. Its purpose is to advise the jury of facts relied upon and of issues involved, and to give jury a general picture of the facts and the situations so that jury will be able to understand the evidence. *State v. Erwin*, 101 Utah 365, 120 P.2d 285, 313.

**OPENTIDE.** The time after corn is carried out of the fields.

**OPERA.** A composition of a dramatic kind, set to music and sung, accompanied with musical instruments, and enriched with appropriate costumes, scenery, etc. The house in which operas are represented is termed an "opera-house." *Rowland v. Kleber*, 1 Pittsb.R. (Pa.) 71.

**OPERARI.** Such tenants, under feudal tenures, as held some little portions of land by the duty of performing bodily labor and servile works for their lord.

**OPERATE.** This word, when used with relation to automobiles, signifies a personal act in working the mechanism of the automobile; that is, the driver operates the automobile for the owner, but the owner does not operate the automobile unless he drives it himself. *Beard v. Clark*, Tex.Civ. App., 83 S.W.2d 1023, 1025.

Similarly, as used in some statutes authorizing substituted service on the nonresident owner of an automobile, the word "operate" is limited to the personal act of the owner; but under other statutes, substituted service is authorized when the automobile was being operated by another with the owner's consent, whether express or implied. *Blashfield*, Cyc. of Automobile Law and Prac., Perm.Ed., § 5914. In the context of some automobile liability policies, the word "operate" may be construed as describing the personal act of the insured owner in working the mechanism of the automobile. *Id.*, § 3941. As used in accident policies insuring against injuries while operating a motor vehicle "operate" does not contemplate a constant and unceasing motion but includes those stops which an automobile driver ordinarily makes, such as a stop to change or repair a tire. *Id.*, § 4127.

**OPERATIO.** One day's work performed by a tenant for his lord.

**OPERATION.** Exertion of power; the process of operating or mode of action; an effect brought about in accordance with a definite plan; action; activity. *Little Rock v. Parish*, 36 Ark. 166; *Fleming Oil Co. v. South Penn Oil Co.*, 37 W.Va. 653, 17 S.E. 203, *National Exchange Bank and Trust Co. of Steubenville v. New York Life Ins. Co.*, D.C.Pa., 19 F.Supp. 790, 791. In surgical practice, the term is of indefinite import, but may be approximately defined as an act or succession of acts performed upon the body of a patient, for his relief or restoration to normal conditions, either by manipulation

or the use of surgical instruments or both, as distinguished from therapeutic treatment by the administration of drugs or other remedial agencies. See *Akridge v. Noble*, 114 Ga. 949, 41 S.E. 78.

**Criminal operation.** In medical jurisprudence. An operation to procure an abortion. *Miller v. Bayer*, 94 Wis. 123, 68 N.W. 869.

**Operation of law.** This term expresses the manner in which rights, and sometimes liabilities, devolve upon a person by the mere application to the particular transaction of the established rules of law, without the act or co-operation of the party himself.

**OPERATIVE.** A workman; a laboring man; an artisan; particularly one employed in factories. *Cocking v. Ward*, Tenn.Ch.App., 48 S.W. 287; *In re City Trust Co.*, 121 F. 706, 58 C.C.A. 126.

**OPERATIVE PART.** That part of a conveyance, or of any instrument intended for the creation or transference of rights, by which the main object of the instrument is carried into effect. It is distinguished from introductory matter, recitals, formal conclusion, etc.

**OPERATIVE WORDS,** in a deed or lease, are the words which effect the transaction intended to be consummated by the instrument.

**OPERIS NOVI NUNTIATIO.** Lat. In the civil law. A protest or warning against [of] a new work. Dig. 39, 1.

**OPETIDE.** The ancient time of marriage, from Epiphany to Ash-Wednesday.

**OPHTHALMOLOGIST.** One who is skilled in, or practices, ophthalmology. Practice of "oculists" and "ophthalmologists" has relation to practice of medicine and surgery in treatment of diseases of eye, while practice of "optometry" relates to measurement of powers of vision and adaptation of lenses for aid thereof. *New Jersey State Board of Optometrists v. S. S. Kresge Co.*, 113 N.J.L. 287, 174 A. 353, 357. See *Oculist*.

**OPINIO EST DUPLEX, SCILICET, OPINIO VULGARIS, ORTA INTER GRAVES ET DISCRETOS, ET QUÆ VULTUM VERITATIS HABET; ET OPINIO TANTUM ORTA INTER LEVES ET VULGARES HOMINES, ABSQUE SPECIE VERITATIS.** 4 Coke, 107. Opinion is of two kinds, namely, common opinion, which springs up among grave and discreet men, and which has the appearance of truth, and opinion which springs up only among light and foolish men, without the semblance of truth.

**OPINIO QUÆ FAVET TESTAMENTO EST TENENDA.** The opinion which favors a will is to be followed. 1 W.Bl. 13, arg.

**OPINION.** A document prepared by an attorney for his client, embodying his understanding of the law as applicable to a state of facts submitted to him for that purpose.

The statement by a judge or court of the decision reached in regard to a cause tried or argued



## OPINION

before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based. *Craig v. Bennett*, 158 Ind. 9, 62 N.E. 273; *Coffey v. Gamble*, 117 Iowa, 545, 91 N.W. 813.

The words "decision" and "opinion" do not have same meaning, a "decision" of a court being its judgment, and its "opinion" being reasons given for judgment. *Robertson v. Vandergrift*, 119 W.Va. 219, 193 S.E. 62, 63; *In re Brown's Guardianship*, 6 Wash.2d 215, 107 P.2d 1104, 1106, 1107, 1108; *Mosley v. Magnolia Petroleum Co.*, 45 N.M. 230, 114 P.2d 740, 747.

**Concurring opinion.** An opinion, separate from that which embodies the views and decision of the majority of the court, prepared and filed by a judge who agrees in the general result of the decision, and which either reinforces the majority opinion by the expression of the particular judge's own views or reasoning, or (more commonly) voices his disapproval of the grounds of the decision or the arguments on which it was based, though approving the final result.

**Dissenting opinion.** A separate opinion in which a particular judge announces his dissent from the conclusion held by a majority of the court, and expounds his own views.

**Per curiam opinion.** One concurred in by the entire court, but expressed as being "*per curiam*" or "by the court," without disclosing the name of any particular judge as being its author.

**OPINION EVIDENCE.** Evidence of what the witness thinks, believes, or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts themselves; not admissible except (under certain limitations) in the case of experts. *Britt v. Carolina Northern R. Co.*, 148 N.C. 37, 61 S.E. 601, 603. That which is given by a person of ordinary capacity who has by opportunity for practice acquired special knowledge outside limits of common observation, of value in elucidating a matter under consideration. *Crosby v. Wells*, 73 N.J.L. 790, 67 A. 295, 298.

In the law of evidence, opinion is an inference or conclusion drawn by a witness from facts some of which are known to him and others assumed, or drawn from facts which, though lending probability to the inference, do not evolve it by a process of absolutely necessary reasoning. *Lipscomb v. State*, 75 Miss. 559, 23 So. 210.

An inference necessarily involving certain facts may be stated without the facts, the inference being an equivalent to a specification of the facts; but, when the facts are not necessarily involved in the inference (*e. g.*, when the inference may be sustained upon either of several distinct phases of fact, neither of which it necessarily involves,) then the facts must be stated. *Whart. Ev.* § 510.

**OPIUM.** Drug consisting of inspissated juice of opium poppy. *State v. Brennan*, 89 Mont. 479, 300 P. 273, 275.

**OPIUM JOINT.** A "joint" is usually regarded as a place of meeting or resort for persons engaged in evil and secret practices of any kind, as a tramps' joint, such a place as is usually kept by Chinese for the accommodation of persons addicted to the habit of opium smoking, and where they are furnished with pipes, opium, etc., for that purpose, and called an "opium joint," or, generally speak-

ing, a rendezvous for persons of evil habits and practices. *State v. Shoaf*, 179 N.C. 744, 102 S.E. 705, 706, 9 A.L.R. 426.

**OPORTET QUOD CERTA RES DEDUCATUR IN DONATIONEM.** It is necessary that a certain thing be brought into the gift, or made the subject of the conveyance. *Bract. fol. 15b.*

**OPORTET QUOD CERTA RES DEDUCATUR IN JUDICIUM.** *Jenk. Cent.* 84. A thing certain must be brought to judgment.

**OPORTET QUOD CERTA SIT RES QUÆ VENDITUR.** It is necessary that there should be a certain thing which is sold. To make a valid sale, there must be certainty as to the thing which is sold. *Bract. fol. 61b.*

**OPORTET QUOD CERTÆ PERSONÆ, TERRÆ, ET CERTI STATUS COMPREHENDANTUR IN DECLARATIONE USUUM.** 9 *Coke*, 9. It is necessary that given persons, lands, and estates should be comprehended in a declaration of uses.

**OPPIGNERARE.** Lat. In the civil law. To pledge. *Calvin.*

**OPPOSER.** An officer formerly belonging to the green-wax in the exchequer.

**OPPOSITE.** An old word for "opponent."

**OPPOSITE PARTY.** Within statutes providing that opposite party shall be incompetent to testify as to matters equally within knowledge of deceased is one whose personal and financial interests, either immediate or remote, are antagonistic to like interests of protected party. *Salsbury v. Sackrider*, 284 Mich. 493, 280 N.W. 926.

**OPPOSITION.** Act of opposing or resisting; antagonism; state of being opposite or opposed; antithesis; also, a position confronting another or placing in contrast; that which is or furnishes an obstacle to some result; political party opposed to ministry or administration; or might be construed to include peaceful and orderly opposition to government. *People v. Mintz*, 106 Cal.App. 725, 290 P. 93, 97.

**In Bankruptcy Practice.** Opposition is the refusal of a creditor to assent to the debtor's discharge under the bankrupt law.

**In French law.** A motion to open a judgment by default and let the defendant in to a defense.

**OPPRESSION.** The misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment, or other injury. 1 *Russ. Crimes*, 297; *Steph. Dig. Crim. Law*, 71. See *U. S. v. Deaver*, D.C.N.C., 14 F. 597. An act of cruelty, severity, unlawful exaction, or excessive use of authority. *Ramsbacker v. Hohman*, 80 Mont. 480, 261 P. 273, 276, an act of subjecting to cruel and unjust hardship; an act of domination. *Baker v. Peck*, 1 Cal.App.2d 231, 36 P.2d 404, 406.

**OPPRESSOR.** A public officer who unlawfully uses his authority by way of oppression, (*q. v.*)

**OPPROBRIUM.** In the civil law. Ignominy; infamy; shame.

**OPTICIAN.** Persons engaged in optometry, who confine themselves entirely to the work of making lenses in accordance with prescriptions given by physicians or oculists, are known as "opticians"; others, who manufacture the lenses, either according to their own judgment or the prescription of physicians, and also examine the eyes to ascertain whether there are any such defects visible as can be corrected by the application of lenses, are known as "optometrists." *Martin v. Baldy*, 249 Pa. 253, 94 A. 1091, 1092.

**OPTIMA EST LEGIS INTERPRES CONSUETUDO.** Custom is the best interpreter of the law. Dig. 1, 3, 37; *Broom*, Max. 931; *Lofft*, 237.

**OPTIMA EST LEX QUÆ MINIMUM RELINQUIT ARBITRIO JUDICIS; OPTIMUS JUDEX QUI MINIMUM SIBI.** That law is the best which leaves least to the discretion of the judge; that judge is the best who leaves least to his own. *Bac. Aphorisms*, 46; 2 *Dwar.St.* 782. That system of law is best which confides as little as possible to the discretion of the judge; that judge the best who relies as little as possible on his own opinion. *Broom*, Max. 84; 1 *Kent*, Comm. 478.

**OPTIMA STATUTI INTERPRETATRIX EST (OMNIBUS PARTICULIS EJUSDEM INSPECTIS) IPSUM STATUTUM.** The best interpreter of a statute is (all its parts being considered) the statute itself. *Wing*, Max. p. 239, max. 68; 8 *Coke*, 117b.

**OPTIMACY.** Nobility; men of the highest rank.

**OPTIMAM ESSE LEGEM, QUÆ MINIMUM RELINQUIT ARBITRIO JUDICIS; ID QUOD CERTITUDO EJUS PRÆSTAT.** That law is the best which leaves the least discretion to the judge; and this is an advantage which results from its certainty. *Bac. Aphorisms*, 8.

**OPTIMUS INTERPRES RERUM USUS.** Use or usage is the best interpreter of things. 2 *Inst.* 282; *Broom*, Max. 917, 930, 931.

**OPTIMUS INTERPRETANDI MODUS EST SIC LEGES INTERPRETARI UT LEGES LEGIBUS CONCORDANT.** 8 *Coke*, 169. The best mode of interpretation is so to interpret laws that they may accord with each other.

**OPTIMUS JUDEX, QUI MINIMUM SIBI.** He is the best judge who relies as little as possible on his own discretion. *Bacon*, Aph. 46; *Broom*, Max. 84.

**OPTIMUS LEGUM INTERPRES CONSUETUDO.** 4 *Inst.* 75. Custom is the best interpreter of the laws.

**OPTION.** In English ecclesiastical law. A customary prerogative of an archbishop, when a bishop is consecrated by him, to name a clerk or chaplain of his own to be provided for by such suffragan bishop; in lieu of which it is now usual for the

bishop to make over by deed to the archbishop, his executors and assigns, the next presentation of such dignity or benefice in the bishop's disposal within that see, as the archbishop himself shall choose, which is therefore called his "option." 1 *Bl.Comm.* 381; 3 *Steph.Comm.* 63, 64; *Cowell*.

In contracts. A privilege existing in one person, for which he has paid money, which gives him the right to buy certain merchandise or certain specified securities from another person, if he chooses, at any time within an agreed period, at a fixed price, or to sell such property to such other person at an agreed price and time. If the option gives the choice of buying or not buying, it is denominated a "call." If it gives the choice of selling or not, it is called a "put." If it is a combination of both these, and gives the privilege of either buying or selling or not, it is called a "straddle" or a "spread eagle." These terms are used on the stock-exchange. *Plank v. Jackson*, 128 *Ind.* 424, 26 *N.E.* 568; *Osgood v. Bauder*, 75 *Iowa*, 550, 39 *N.W.* 887, 1 *L.R.A.* 655.

A continuing offer or contract by which owner stipulates with another that latter shall have right to buy property at fixed price within certain time, and an agreement is only an "option" when no obligation rests on party to make any payment except such as may be agreed on between parties as consideration to support option until he has made up his mind within time specified to complete purchase. *Gibbs v. Piper*, *Del.*, 153 A. 674, 676.

It is but continuing offer, which is merged in contract resulting from acceptance thereof. *Helvering v. Bartlett*, *C.C.A.* 4, 71 *F.2d* 598, 599.

**OPTIONAL WRIT.** In old England practice. That species of original writ, otherwise called a "*præcipe*," which was framed in the alternative, commanding the defendant to do the thing required, or show the reason wherefore he had not done it. 3 *Bl.Comm.* 274.

**OPTOMETRIST.** One who is skilled in, or practices, optometry. *Webster*, *Dict.* See *Oculist*.

**OPTOMETRY.** The employment of any means other than the use of drugs for the measurement of the powers of vision and the adaptation of lenses for the correction and aid thereof. *Martin v. Baldy*, 249 Pa. 253, 94 A. 1091, 1092; *People v. Griffith*, 280 *Ill.* 18, 117 *N.E.* 195, 196; *New Jersey State Board of Optometrists v. S. S. Kresge Co.*, 113 *N.J.Law*, 287, 174 A. 353, 356.

**OPUS.** Lat. Work; labor; the product of work or labor.

**OPUS LOCATUM.** The product of work let for use to another; or the hiring out of work or labor to be done upon a thing.

**OPUS MANIFICUM.** In old English law. Labor done by the hands; manual labor; such as making a hedge, digging a ditch. *Fleta*, lib. 2, c. 48, § 3.

**OPUS NOVUM.** In the civil law. A new work. By this term was meant something newly built upon land, or taken from a work already erected. He was said *opus novum facere* (to make a new work) who, either by building or by taking anything away, changed the former appearance of a work. Dig. 39, 1, 1, 11.

## OR

**OR, n.** A term used in heraldry, and signifying gold; called "sol" by some heralds when it occurs in the arms of princes, and "topaz" or "carbuncle" when borne by peers. Engravers represent it by an indefinite number of small points. Wharton.

**OR, conj.** A disjunctive particle used to express an alternative or to give a choice of one among two or more things. It is also used to clarify what has already been said, and in such cases, means "in other words," "to-wit," or "that is to say." Peck v. Board of Directors of Public Schools for Parish of Catahoula, 137 La. 334, 68 So. 629, 630; Travelers' Protective Ass'n v. Jones, 75 Ind. App. 29, 127 N.E. 783, 785.

Or is frequently misused; and courts will construe it to mean "and" where it was so used. State v. Circuit Court of Dodge County, 176 Wis. 198, 186 N.W. 732, 734; Northern Commercial Co. v. U. S., C.C.A. Alaska, 217 F. 33, 36; Spillman v. Succession of Spillman, 147 La. 47, 84 So. 489, 490; Smiley v. Lenane, 363 Ill. 66, 1 N.E.2d 213, 216. However, where the word "or" is preceded by the word "either," it is never given a conjunctive meaning. Smith v. Farley, 155 App.Div. 813, 140 N.Y.S. 990, 992.

**ORA.** A Saxon coin, valued at sixteen pence, and sometimes at twenty pence.

**ORACULUM.** In the civil law. The name of a kind of response or sentence given by the Roman emperors.

**ORAL.** Uttered by the mouth or in words; spoken, not written.

**ORAL CONTRACT.** One which is partly in writing and partly depends on spoken words, or none of which is in writing; one which, so far as it has been reduced to writing, is incomplete or expresses only a part of what is intended, but is completed by spoken words; or one which, originally written, has afterwards been changed orally. Railway Passenger, etc., Ass'n v. Loomis, 142 Ill. 560, 32 N.E. 424; Moore v. Ohl, 65 Ind.App. 691, 116 N.E. 9, 10.

**ORAL EVIDENCE.** Evidence given by word of mouth; the oral testimony of a witness. Bates' Ann.St.Ohio 1904, § 5262 (Gen.Code, § 11522); Rev.St.Wyo.1899, § 3704 (Rev.St.1931, § 89-1725). See, also, Parol Evidence.

**ORAL PLEADING.** Pleading by word of mouth, in the actual presence of the court. This was the ancient mode of pleading in England, and continued to the reign of Edward III. Steph.Pl. 23-26.

**ORANDO PRO REGE ET REGNO.** An ancient writ which issued, while there was no standing collect for a sitting parliament, to pray for the peace and good government of the realm.

**ORANGEMEN.** A party in Ireland who keep alive the views of William of Orange. Wharton.

**ORATOR.** The plaintiff in a cause or matter in chancery, when addressing or petitioning the court, used to style himself "orator," and, when a woman, "oratrix." But these terms have long gone into

disuse, and the customary phrases now are "plaintiff" or "petitioner."

In Roman law, the term denoted an advocate.

**ORATRIX.** A female petitioner; a female plaintiff in a bill in chancery was formerly so called.

**ORBATION.** Deprivation of one's parents or children, or privation in general. Little used.

**ORCINUS LIBERTUS.** Lat. In Roman law. A freedman who obtained his liberty by the direct operation of the will or testament of his deceased master was so called, being the freedman of the deceased, (*orcinus*.) not of the *hæres*. Brown.

**ORDAIN.** To institute or establish; to make an ordinance; to enact a constitution or law. State v. Dallas City, 72 Or. 337, 143 P. 1127, 1131, Ann. Cas.1916B, 855. To confer on a person the holy orders of priest or deacon. Kibbe v. Antram, 4 Conn. 134.

**ORDAINERS.** An elected body of 21 members appointed by Parliament in 1310 to make ordinances for the good of the realm. The whole administration passed into their hands. Stubbs, Early Plantagenets.

**ORDEAL.** The most ancient species of trial, in Saxon and old English law, being peculiarly distinguished by the appellation of "*judicium Dei*," or "judgment of God," it being supposed that supernatural intervention would rescue an innocent person from the danger of physical harm to which he was exposed in this species of trial. The ordeal was of two sorts,—either fire ordeal or water ordeal; the former being confined to persons of higher rank, the latter to the common people. 4 Bl.Comm. 342.

**Fire ordeal.** The ordeal by fire or red-hot iron, which was performed either by taking up in the hand a piece of red-hot iron, of one, two, or three pounds weight, or by walking barefoot and blindfolded over nine red-hot plowshares, laid lengthwise at unequal distances. 4 Bl.Comm. 343; Cowell.

### Water Ordeal

In Saxon and old English law. The ordeal or trial by water. The *hot-water* ordeal was performed by plunging the bare arm up to the elbow in boiling water, and escaping unhurt thereby. The *cold-water* ordeal was performed by casting the person suspected into a river or pond of cold water, when, if he floated therein, without any action of swimming it was deemed an evidence of his guilt; but, if he sunk, he was acquitted. 4 Bl.Comm. 343.

**ORDEFFE, or ORDELFE.** A liberty whereby a man claims the ore found in his own land; also, the ore lying under land. Cowell.

**ORDELS.** In old English law. The right of administering oaths and adjudging trials by ordeal within a precinct or liberty. Cowell.

**ORDENAMIENTO.** In Spanish law. An order emanating from the sovereign, and differing from

a *cedula* only in form and in the mode of its promulgation. Schm.Civil Law, Introd. 93, note.

**ORDENAMIENTO DE ALCALA.** A collection of Spanish law promulgated by the Cortes in the year 1348. Schm.Civil Law, Introd. 75.

**ORDER.** A mandate, precept; a command or direction authoritatively given; a rule or regulation. *Brady v. Interstate Commerce Commission*, D.C. W.Va., 43 F.2d 847, 850.

The distinction between "order" and "requisition" is that the first is a mandatory act, the latter a request. *Mills v. Martin*, 19 Johns. (N.Y.) 7.

An informal bill of exchange or letter of request whereby the party to whom it is addressed is directed to pay or deliver to a person therein named the whole or part of a fund or other property of the person making the order, and which is in the possession of the drawee. *People v. Smith*, 112 Mich. 192, 70 N.W. 466, 67 Am.St.Rep. 392; *State v. Nevins*, 23 Vt. 521. A designation of the person to whom a bill of exchange or negotiable promissory note is to be paid.

It is also used to designate a rank, class, or division of men; as the order of nobles, order of knights, order of priests, etc.

Orders are also issued by subordinate legislative authorities. Such are the English orders in council, or orders issued by the privy council in the name of the king, either in exercise of the royal prerogative or in pursuance of an act of parliament. The rules of court under the judicature act are grouped together in the form of orders, each order dealing with a particular subject-matter. Sweet.

In French law. The name order (*ordre*) is given to the operation which has for its object to fix the rank of the preferences claimed by the creditors in the distribution of the price [arising from the sale] of an immovable affected by their liens. Dalloz, *mot* "Ordre."

#### Practice

Every direction of a court or judge made or entered in writing, and not included in a judgment. An application for an order is a motion. Code Civ. Proc.Cal. § 1003; Code N.Y. § 400 (Civil Practice Act, § 113). *Tyvand v. McDonne*, 37 N.D. 251, 164 N.W. 1, 3; *First Nat. Bank v. Poling*, 42 Idaho 636, 248 P. 19, 20.

#### General

**Agreed order.** See *Agreed*.

**Charging order.** The name bestowed, in English practice, upon an order allowed by St. 1 & 2 Vict. c. 110, § 14, and 3 & 4 Vict. c. 82, to be granted to a judgment creditor, that the property of a judgment debtor in government stock, or in the stock of any public company in England, corporate or otherwise, shall (whether standing in his own name or in the name of any person in trust for him) stand charged with the payment of the amount for which judgment shall have been recovered, with interest. 3 Steph.Comm. 587, 588.

**Decretal order.** In chancery practice. An order made by the court of chancery, in the nature of a decree, upon a motion or petition. *Thompson v. McKim*, 6 Har. & J. Md. 319; *Bissell Carpet Sweeper Co. v. Goshen Sweeper Co.*, 19 C.C.A. 25, 72 F.

545. An order in a chancery suit made on motion or otherwise not at the regular hearing of a cause, and yet not of an interlocutory nature, but finally disposing of the cause, so far as a decree could then have disposed of it. *Mozley & Whiteley*.

**Final order.** One which either terminates the action itself, or decides some matter litigated by the parties, or operates to divest some right; or one which completely disposes of the subject-matter and the rights of the parties. *Salem King's Products Co. v. La Follette*, 100 Or. 11, 196 P. 416, 417; *Stockham v. Knollenberg*, 133 Md. 337, 105 A. 305, 307; *Marchant & Taylor v. Mathews County*, 139 Va. 723, 124 S.E. 420, 423.

**General orders.** Orders or rules of court, promulgated for the guidance of practitioners and the regulation of procedure in general, or in some general branch of its jurisdiction; as opposed to a rule or an order made in an individual case; the rules of court.

**Interlocutory order.** An order which decides not the cause, but only settles some intervening matter relating to it; as when an order is made, on a motion in chancery, for the plaintiff, to have an injunction to quiet his possession till the hearing of the cause. *Termes de la Ley*; *Gas & Electric Securities Co. v. Manhattan & Queens Traction Corporation*, C.C.A.N.Y., 266 F. 625, 632; *Johnson v. Roberson*, 171 N.C. 194, 88 S.E. 231; *Theo. Hirsch Co. v. Scott*, 87 Fla. 336, 100 So. 157, 158; *Salmans v. Rugyeri*, 103 N.J.Law, 596, 137 A. 568, 569; *Simons v. Morris*, 325 Ill. 199, 156 N.E. 280; *Joyce v. Nona Mills Co.*, 142 La. 934, 77 So. 854.

**Money order.** See *Money*.

**Restraining order.** In equity practice. An order which may issue upon the filing of an application for an injunction forbidding the defendant to do the threatened act until a hearing on the application can be had. Though the term is sometimes used as a synonym of "injunction," a restraining order is properly distinguishable from an injunction, in that the former is intended only as a restraint upon the defendant until the propriety of granting an injunction, temporary or perpetual, can be determined, and it does no more than restrain the proceedings until such determination. *Wetzstein v. Boston*, etc., Min. Co., 25 Mont. 135, 63 P. 1043. *Mason v. Milligan*, 185 Ind. 319, 114 N.E. 3; *Labbitt v. Bunston*, 80 Mont. 293, 260 P. 727, 730. In English law, the term is specially applied to an order restraining the Bank of England, or any public company, from allowing any dealing with some stock or shares specified in the order. It is granted on motion or petition. *Hunt*, Eq. p. 216.

**Speaking order.** An order which contains matter which is explanatory or illustrative of the mere direction which is given by it is sometimes thus called. *Duff v. Duff*, 101 Cal. 1, 35 P. 437.

**Stop order.** The meaning of a stop order given to a broker is to wait until the market price of the particular security reaches a specified figure, and

## ORDER

then to "stop" the transaction by either selling or buying, as the case may be, as well as possible. *Porter v. Wormser*, 94 N.Y. 431.

**Order and disposition of goods and chattels.** When goods are in the "order and disposition" of a bankrupt, they go to his trustee, and have gone so since the time of James I. Wharton.

**Order nisi.** A provisional or conditional order, allowing a certain time within which to do some required act, on failure of which the order will be made absolute.

**Order of discharge.** In England. An order made under the bankruptcy act of 1869, by a court of bankruptcy, the effect of which is to discharge a bankrupt from all debts, claims, or demands provable under the bankruptcy.

**Order of filiation.** An order made by a court or judge having jurisdiction, fixing the paternity of a bastard child upon a given man, and requiring him to provide for its support.

**Order of revivor.** In English practice. An order as of course for the continuance of an abated suit. It superseded the bill of revivor.

**ORDERLY.** A hospital attendant who does general work. *Phillips v. Buffalo General Hospital*, 239 N.Y. 188, 146 N.E. 199, 200.

**ORDERS.** The directions as to the course and purpose of a voyage given by the owner of the vessel to the captain or master. For other meanings, see Order.

**ORDERS OF THE DAY.** Any member of the English house of commons who wishes to propose any question, or to "move the house," as it is termed, must, in order to give the house due notice of his intention, state the form or nature of his motion on a previous day, and have it entered in a book termed the "order-book;" and the motions so entered, the house arrangements, shall be considered on particular days, and such motions or matters, when the day arrives for their being considered, are then termed the "orders of the day." *Brown*. A similar practice obtains in the legislative bodies of this country.

**ORDINANCE.** A rule established by authority; a permanent rule of action; a law or statute. In a more limited sense, the term is used to designate the enactments of the legislative body of a municipal corporation. *State v. Swindell*, 146 Ind. 527, 45 N.E. 700, 58 Am.St.Rep. 375; *Bills v. Goshen*, 117 Ind. 221, 20 N.E. 115, 3 L.R.A. 261.

The name has also been given to certain enactments, more general in their character than ordinary statutes, and serving as organic laws, yet not exactly to be called "constitutions." Such was the "Ordinance for the government of the Northwest Territory," enacted by congress in 1787.

Strictly, a bill or law which might stand with the old law, and did not alter any statute in force at the time, and which became complete by the royal assent on the *parliament roll*, without any entry on the *statute roll*. A bill or law which might at any time be amended by the parlia-

ment, without any statute. *Hale*, Com. Law. An ordinance was otherwise distinguished from a statute by the circumstance that the latter required the threefold assent of king, lords, and commons, while an ordinance might be ordained by one or two of these constituent bodies. See 4 Inst. 25.

**ORDINANCE OF 1647.** A law passed by the Colony of Massachusetts, still in force, in a modified form, whereby the state owns the great ponds within its confines, which are held in trust for public uses. *Watuppa Reservoir Co. v. Fall River*, 147 Mass. 548, 18 N.E. 465, 1 L.R.A. 466.

**ORDINANCE OF 1648.** A law of England relating to admiralty jurisdiction. See *Bened. Adm.* § 99. It expired in 1660.

**ORDINANCE OF 1681.** An ordinance of France relating to maritime affairs. See *Bened. Adm.* § 173.

**ORDINANCE OF 1787.** A statute for the government of the Northwest Territory. Religious and legal freedom, encouragement of education, just treatment of the Indians, the future division into States, and the exclusion of slavery were ordained. *Webster*, Dict.

**ORDINANCE OF THE FOREST.** In English law. A statute made touching matters and causes of the forest. 33 & 34 Edw. 1.

**ORDINANCES OF EDWARD I.** Two laws and ordinances published by Edward I. in the second year of his reign, at Hastings, relating to admiralty jurisdiction. These are said to have been the foundation of a consistent usage for a long time. See *Bened. Adm.* § 55.

**ORDINANDI LEX.** Lat. The law of procedure, as distinguished from the substantial part of the law.

**ORDINARIUS ITA DICITUR QUIA HABET ORDINARIAM JURISDICTIONEM, IN JURE PROPRIO, ET NON PROPTER DEPUTATIONEM.** *Co.Litt.* 96. The ordinary is so called because he has an ordinary jurisdiction in his own right, and not a deputed one.

**ORDINARY, n.** At common law. One who has exempt and immediate jurisdiction in causes ecclesiastical. Also a bishop; and an archbishop is the ordinary of the whole province, to visit and receive appeals from inferior jurisdictions. Also a commissary or official of a bishop or other ecclesiastical judge having judicial power; an archdeacon; officer of the royal household. *Wharton*.

In American law. A judicial officer, in several of the states, clothed by statute with powers in regard to wills, probate, administration, guardianship, etc. *Darrow v. Darrow*, 201 Ala. 477, 78 So. 383, 384. A public house where food and lodging are furnished to the traveler and his beast, at fixed rates, open to whoever may apply for accommodation, and where intoxicating liquor is sold at retail. *Talbott v. Southern Seminary*, 131 Va. 576, 109 S.E. 440, 441, 19 A.L.R. 534; *City of Chicago v. R. & X. Restaurant*, 369 Ill. 65, 15 N.E.2d 725, 727, 117 A.L.R. 1313.

In Scotch law. A single judge of the court of session, who decides with or without a jury, as the case may be. Brande.

In the civil law. A judge who has authority to take cognizance of causes in his own right, and not by deputation. *Murden v. Beath*, 1 Mill. Const., S.C., 269.

**Ordinary of assize and sessions.** In old English law. A deputy of the bishop of the diocese, anciently appointed to give malefactors their neck-verses, and judge whether they read or not; also to perform divine services for them, and assist in preparing them for death. Wharton.

**Ordinary of Newgate.** The clergyman who is attendant upon condemned malefactors in that prison to prepare them for death; he records the behavior of such persons. Formerly it was the custom of the ordinary to publish a small pamphlet upon the execution of any remarkable criminal. Wharton.

**ORDINARY**, *adj.* Regular; usual; normal; common; often recurring; according to established order; settled; customary; reasonable; not characterized by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual. *Albrecht v. Schultz Belting Co.*, 299 Mo. 12; 252 S.W. 400, 402; *State v. Coulter*, Mo.Sup., 204 S.W. 5; *Albrecht v. Schultz Belting Co.*, 299 Mo. 12, 252 S.W. 400, 402; *Wiener v. Mutual Life Ins. Co. of New York*, Mo. App., 170 S.W.2d 174, 178.

As to ordinary "Care," "Diligence," "Negligence," see those titles.

**Ordinary calling.** Those things which are repeated daily or weekly in the course of business. *Ellis v. State*, 5 Ga.App. 615, 63 S.E. 588.

**Ordinary conveyances.** Those deeds of transfer which are entered into between two or more persons, without an assurance in a superior court of justice. Wharton.

**Ordinary course of business.** The transaction of business according to the usages and customs of the commercial world generally or of the particular community or (in some cases) of the particular individual whose acts are under consideration. *Rison v. Knapp*, 20 Fed.Cas. 835; *Christianson v. Farmers' Warehouse Ass'n*, 5 N.D. 438, 67 N.W. 300, 32 L.R.A. 730.

**Ordinary dangers incident to employment.** Those commonly and usually pertaining to and incident to it, which a reasonably prudent person might anticipate, and do not include danger by acts of negligence, unless habitual and known to the servant. *Chicago, R. I. & G. Ry. Co. v. Smith*, Tex. Civ.App., 197 S.W. 614, 618.

**Ordinary expense.** An expense is "ordinary" if it is in an ordinary class, if in the ordinary course of the transaction of municipal business or the maintenance of municipal property it may and is likely to become necessary; and it will be assumed that if by law a specific duty is imposed, and the

mode of performance is prescribed, so that no discretion is left with the officer, the expense necessarily incurred in discharging the duty is a "necessary expense." *Dexter Horton Trust & Savings Bank v. Clearwater County*, D.C.Idaho, 235 F. 743, 750; *Arthur v. Horwege*, 28 Cal.App. 738, 153 P. 980, 981; *State v. Carter*, 31 Wyo. 401, 226 P. 690, 693.

**Ordinary handling.** As in a railroad's baggage tariff, providing that cases marked "Fragile" and likely to be damaged by ordinary handling will not be accepted, except at owner's risk, means merely ordinary wear and tear necessarily incidental to transportation of such articles, where reasonable care is used. *Perkins v. New York, N. H. & H. R. Co.*, 232 Mass. 336, 122 N.E. 306, 307.

**Ordinary hazards of occupation.** Those arising without negligence on part of master. *Chesapeake & O. Ry. Co. v. Coleman*, 220 Ky. 64, 294 S.W. 809, 810.

**Ordinary inspection.** As applied to railroad equipment. That degree of care and of inspection which ordinarily prudent railroad companies, their officers and employees, commonly use under similar circumstances. *Canadian Northern Ry. Co. v. Senske*, C.C.A.Minn., 201 F. 637, 642.

**Ordinary kerosene.** The kerosene sold in the open market, kerosene of a lawful grade and quality ordinarily sold for the general use of the public for illuminating purposes. *Standard Oil Co. v. Reagan*, 15 Ga.App. 571, 84 S.E. 69, 76.

**Ordinary persons.** Men of ordinary care and diligence in relation to any particular thing. *Ford v. Engleman*, 118 Va. 89, 86 S.E. 852, 855.

**Ordinary proceeding.** Such a proceeding as was known to the common law and was formerly conducted in accordance with the proceedings of the common-law courts, and as is generally known under the modern Codes to be such a proceeding as is started by the issuance of a summons, and results in a judgment enforceable by execution. *Dow v. Lillie*, 26 N.D. 512, 144 N.W. 1082, 1084, L.R.A.1915D, 754.

**Ordinary repairs.** Such as are necessary to make good the usual wear and tear or natural and unavoidable decay and keep the property in good condition. *Abell v. Brady*, 79 Md. 94, 28 A. 817; *Clark Civil Tp. v. Brookshire*, 114 Ind. 437, 16 N.E. 132; *Syracuse Malleable Iron Works v. Travelers' Ins. Co.*, 94 Misc. 411, 157 N.Y.S. 572, 574; *Farmers' Handy Wagon Co. v. Casualty Co. of America*, 184 Iowa, 773, 169 N.W. 178; *Springfield Light, Heat & Power Co. v. Philadelphia Casualty Co.*, 184 Ill.App. 175, 178.

**Ordinary risks.** Those incident to the business, and do not imply the result of the master's negligence. The expression "extraordinary risks" is generally used to describe risks arising from the negligence of the master, and they are generally held not to be assumed unless known or obvious. *Emanuel v. Georgia & F. Ry. Co.*, 142 Ga. 543, 83 S.E. 230, 231; *Arundell v. American Oilfields Co.*,

## ORDINARY

31 Cal.App. 218, 160 P. 159, 165; Emerick v. Slavonian Roman Greek Catholic Union, 93 N.J.Law, 282, 108 A. 223; Neary v. Georgia Public Service Co., 27 Ga.App. 238, 107 S.E. 893, 896.

**Ordinary seaman.** A sailor who is capable of performing the ordinary or routine duties of a seaman, but who is not yet so proficient in the knowledge and practice of all the various duties of a sailor at sea as to be rated as an "able" seaman.

**Ordinary services** of administrators include all the services incident to the closing and distribution of an estate, and not merely the receiving and disbursing of the funds and to justify an allowance of further compensation the administrator must have rendered services of an extraordinary character necessary to the protection of the estate, and, if he employs another to perform services which he is required to perform under the law, he cannot charge such services as an expense of administration. In re Carmody's Estate, 163 Iowa, 463, 145 N.W. 16, 17.

**Ordinary skill in an art.** That degree of skill which men engaged in that particular art usually employ; not that which belongs to a few men only, of extraordinary endowments and capacities. Baltimore Baseball Club Co. v. Pickett, 78 Md. 375, 28 A. 279, 22 L.R.A. 690, 44 Am.St.Rep. 304. Burrichter v. Bell, 196 Iowa 529, 194 N.W. 947, 948.

**Ordinary travel.** Moving a house along a village street is not using the street for the purpose of ordinary travel; and the statutory requirement that a telephone company shall locate its lines so as not to interfere with the safety and convenience of "ordinary travel" does not make it the duty of the company to remove its wires from the street to permit the passage of a house along the same. Collar v. Bingham Lake Rural Telephone Co., 132 Minn. 110, 155 N.W. 1075, 1076, L.R.A.1916C, 1249.

**Ordinary written law.** Law made, within constitutional restrictions, by the Legislature. State v. Marcus, 160 Wis. 354, 152 N.W. 419, 422.

**ORDINATION.** Ceremony by which a bishop confers on a person the privileges and powers necessary for the execution of sacerdotal functions in the church. Phillim.Ecc.Law, 110.

**ORDINATIONE CONTRA SERVIENTES.** A writ that lay against a servant for leaving his master contrary to the ordinance of St. 23 & 24 Edw. III. Reg.Orig. 189.

**ORDINATUM EST.** In old practice. It is ordered. The initial words of rules of court when entered in Latin.

**ORDINE PLACITANDI SERVATO, SERVATUR ET JUS.** When the order of pleading is observed, the law also is observed. Co.Litt. 303a; Broom, Max. 188.

**ORDINES.** A general chapter or other solemn convention of the religious of a particular order.

**ORDINES MAJORES ET MINORES.** In ecclesiastical law. The holy orders of priest, deacon, and subdeacon, any of which qualified for presentation and admission to an ecclesiastical dignity or cure were called "*ordines majores*;" and the inferior orders of chanters, psalmists, ostiary, reader, exorcist, and acolyte were called "*ordines minores*." Persons ordained to the *ordines minores* had their *prima tonsura*, different from the *tonsura clericalis*. Cowell.

**ORDINIS BENEFICIUM.** Lat. In the civil law. The benefit or privilege of order; the privilege which a surety for a debtor had of requiring that his principal should be discussed, or thoroughly prosecuted, before the creditor could resort to him. Nov. 4, c. 1; Heinecc.Elem. lib. 3, tit. 21, § 883.

**ORDINUM FUGITIVI.** In old English law. Those of the religious who deserted their houses, and, throwing off the habits, renounced their particular order in contempt of their oath and other obligations. Paroch.Antiq. 388.

**ORDO.** Lat. That rule which monks were obliged to observe. Order; regular succession. An order of a court.

**ORDO ALBUS.** The white friars or Augustines. Du Cange.

**ORDO ATTACHIAMENTORUM.** In old practice. The order of attachments. Fleta, lib. 2, c. 51, § 12.

**ORDO GRISEUS.** The gray friars, or order of Cistercians. Du Cange.

**ORDO JUDICIORUM.** In the canon law. The order of judgments; the rule by which the due course of hearing each cause was prescribed. 4 Reeve, Eng.Law, 17.

**ORDO NIGER.** The black friars, or Benedictines. The Cluniacs likewise wore black. Du Cange.

**ORDONNANCE.** Fr. In French law, an ordinance; an order of a court; a compilation or systematized body of law relating to a particular subject-matter, as, commercial law or maritime law. Particularly, a compilation of the law relating to prizes and captures at sea. Coolidge v. Inglee, 13 Mass. 43.

**ORE-LEAVE.** A license or right to dig and take ore from land. Ege v. Kille, 84 Pa. 340.

**ORE TENUS.** Lat. By word of mouth; orally. Pleading was anciently carried on *ore tenus*, at the bar of the court. 3 Bl.Comm. 293.

**ORFGILD.** In Saxon law. The price or value of a beast. A payment for a beast. The payment or forfeiture of a beast. A penalty for taking away cattle. Spelman.

**ORGANIC ACT.** An act of congress conferring powers of government upon a territory. In re Lane, 10 S.Ct. 760, 135 U.S. 443, 34 L.Ed. 219.

A statute by which a municipal corporation is organized and created is its "organic act" and the

limit of its power, so that all acts beyond the scope of the powers there granted are void. *Tharp v. Blake*, Tex.Civ.App., 171 S.W. 549, 550.

**ORGANIC LAW.** The fundamental law, or constitution, of a state or nation, written or unwritten; that law or system of laws or principles which defines and establishes the organization of its government. *St. Louis v. Dorr*, 145 Mo. 466, 46 S.W. 976, 42 L.R.A. 686, 68 Am.St.Rep. 575.

**ORGANIZE.** To establish or furnish with organs; to systematize; to put into working order; to arrange in order for the normal exercise of its appropriate functions. *City of Beaumont v. City of Beaumont Independent School Dist.*, Tex.Civ.App., 164 S.W.2d 753, 756.

The word "organize," as used in railroad and other charters, ordinarily signifies the choice and qualification of all necessary officers for the transaction of the business of the corporation. This is usually done after all the capital stock has been subscribed for. *New Haven & D. R. Co. v. Chapman*, 38 Conn. 66.

**ORGANIZED COUNTY.** A county which has its lawful officers, legal machinery, and means for carrying out the powers and performing the duties pertaining to it as a quasi municipal corporation. In re Section No. 6, 66 Minn. 32, 68 N.W. 323; *City of Beaumont v. City of Beaumont Independent School Dist.*, Tex.Civ.App., 164 S.W.2d 753, 757.

**ORGILD.** In Saxon law. Without recompense; as where no satisfaction was to be made for the death of a man killed, so that he was judged lawfully slain. *Spelman*.

**ORIGINAL.** Primitive; first in order; bearing its own authority, and not deriving authority from an outside source; as *original jurisdiction*, *original writ*, etc. As applied to documents, the original is the first copy or archetype; that from which another instrument is transcribed, copied, or imitated. *Arenson v. Jackson*, 97 Misc.Rep. 606, 162 N.Y.S. 142, 143; *State v. Lee*, 173 La. 770, 138 So. 662.

A carbon impression of a letter written on a typewriter, made by the same stroke of the keys as the companion impression, is an "original." Either impression is primary evidence of the contents of the letter, and notice to produce the original mailed letter in order to introduce one of the retained copies in evidence is not necessary. *U. S. Fire Ins. Co. of City of New York v. L. C. Adam Mercantile Co.*, 117 Okl. 73, 245 P. 885, 887.

**Original appointment.** Within statute providing for suspension of civil servants in inverse order of original appointment, means appointment for probationary term ripening into permanent appointment, and not mere provisional or temporary appointment. *Civil Service Law*, § 31; *Const. art. 5, § 6*, amended in 1929. *Koso v. Greene*, 260 N.Y. 491, 184 N.E. 65, 66.

**Original bill.** In equity pleading. A bill which relates to some matter not before litigated in the court by the same persons standing in the same interests. *Mitt.Eq.Pl.* 33; *Christmas v. Russell*, 14 Wall. 69, 20 L.Ed. 762. In old practice. The ancient mode of commencing actions in the English court of king's bench. See *Bill*.

**Original charter.** In Scotch law. One by which the first grant of land is made. On the other hand, a charter by progress is one renewing the grant in favor of the heir or singular successor of the first or succeeding vassals. *Bell*.

**Original contractor.** One who for a fixed price agrees with owner to perform certain work or furnish certain material. *East Arkansas Lumber Co. v. Bryant*, Mo.App., 247 S.W. 496, 497; *Hihn-Hammond Lumber Co. v. Elsom*, 171 Cal. 570, 154 P. 12, 13, *Ann.Cas.*1917C, 798.

**Original conveyances.** Those conveyances at common law, otherwise termed "primary," by which a benefit or estate is created or first arises; comprising feoffments, gifts, grants, leases, exchanges, and partitions. 2 Bl.Comm. 309.

**Original entry.** The first entry of an item of an account made by a trader or other person in his account-books, as distinguished from entries posted into the ledger or copied from other books. *Keller Electric Co. v. Burg*, 140 Minn. 360, 168 N.W. 98; *Shea v. Biddle Improvement Co.*, 188 Iowa, 952, 176 N.W. 948, 949; *Lewis Mears Co. v. Norfolk County Creamery*, 48 R.I. 221, 137 A. 149, 150.

When multiplicate instruments are made at one writing, each is "original entry," as regards best evidence rule. *Gus Dattilo Fruit Co. v. Louisville & N. R. Co.*, 238 Ky. 322, 37 S.W.2d 856, 858.

**Original estates.** See *Estate*.

**Original evidence.** An original document, writing, or other material object introduced in evidence as distinguished from a copy of it or from extraneous evidence of its content or purport. *Or.Laws*, 1920, § 691 (*Code* 1930, § 9—106).

**Original inventor.** In patent law. A pioneer in the art; one who evolves the original idea and brings it to some successful, useful and tangible result; as distinguished from an improver. *Norton v. Jensen*, 33 C.C.A. 141, 90 F. 415.

**Original jurisdiction.** Jurisdiction in the first instance; jurisdiction to take cognizance of a cause at its inception, try it, and pass judgment upon the law and facts. Distinguished from *appellate jurisdiction*.

**Original package.** A package prepared for interstate or foreign transportation, and remaining in the same condition as when it left the shipper, that is, unbroken and undivided; a package of such form and size as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce. *Austin v. Tennessee*, 21 S.Ct. 132, 179 U.S. 343, 45 L.Ed. 224; *Halley v. State*, 42 Neb. 556, 60 N.W. 962, 47 Am.St.Rep. 718. *Mexican Petroleum Corporation v. City of South Portland*, 121 Me. 128, 115 A. 900, 901, 26 A. L.R. 965.

**Original plat.** The first plat of a town from the subsequent additions, and "original town" is



## ORIGINAL

employed in the same way. *State v. City of Victoria*, 97 Kan. 638, 156 P. 705, 708.

**Original promise.** An original promise, without the statute of frauds, is one in which the direct and leading object of the promisor is to further or promote some purpose or interest of his own, although the incidental effect may be the payment of the debt of another. *Umpqua Valley Bank of Roseburg v. Wilson*, 120 Or. 396, 252 P. 563, 565; *Olson v. McQueen*, 24 N.D. 212, 139 N.W. 522, 524.

**Original process.** See *Process*.

**Original vein.** Is used to describe the different veins found within the same surface boundaries and may refer to the relative importance or value of the different veins, or the relations to each other, or to the time of discovery, but most frequently is used to distinguish between the discovery vein and other veins within the same surface boundaries. *Northport Smelting & Refining Co. v. Lone Pine-Surprise Consol. Mines Co.*, D.C. Wash., 271 F. 105, 111.

**Original Writ.** See *Writ*.

**Single original.** An original instrument which is executed singly, and not in duplicate.

**ORIGINALIA.** In English law. Transcripts sent to the remembrancer's office in the exchequer out of the chancery, distinguished from *recorda*, which contain the judgments and pleadings in actions tried before the barons. The treasurer-remembrancer's office was abolished in 1833.

**ORIGINE PROPRIA NEMINEM POSSE VOLUNTATE SUA EXIMI MANIFESTUM EST.** It is evident that no one is able of his own pleasure, to do away with his proper origin. Code 10, 38, 4; *Broom*, Max. 77.

**ORIGO REI INSPICI DEBET.** The origin of a thing ought to be regarded. *Co.Litt.* 248b.

**ORNEST.** In old English law. The trial by battle, which does not seem to have been usual in England before the time of the Conqueror, though originating in the kingdoms of the north, where it was practiced under the name of "*holmgang*," from the custom of fighting duels on a small island or *holm*. *Wharton*.

**ORPHAN.** Any person (but particularly a minor or infant) who has lost both (or one) of his or her parents. More particularly, a fatherless child. *Chicago Guaranty Fund Life Soc. v. Wheeler*, 79 Ill.App. 241; *Stewart v. Morrison*, 38 Miss. 419; *Downing v. Shoenberger*, 9 Watts, Pa., 299.

**ORPHANAGE PART.** That portion of an intestate's effects which his children were entitled to by the custom of London. This custom appears to have been a remnant of what was once a general law all over England, namely, that a father should not by his will bequeath the entirety of his personal estate away from his family, but should leave them a third part at least, called the "chil-

dren's part," corresponding to the "bairns' part" or *legitim* of Scotch law, and also (although not in amount) to the *legitima quarta* of Roman law. (Inst. 2, 18.) This custom of London was abolished by St. 19 & 20 Vict. c. 94. *Brown*.

**ORPHANOTROPHI.** In the civil law. Managers of houses for orphans.

**ORPHANS' COURT.** In American law. Courts of probate jurisdiction, in Delaware, Maryland, New Jersey, and Pennsylvania.

**ORTELLI.** The claws of a dog's foot. *Kitch*.

**ORTHOPEDIST.** A surgeon engaged in branch of medicine dealing with correction of deformities and chronic diseases of the joints and spine. *Sansom v. Ross-Loos Medical Group*, 57 Cal.App.2d 549, 134 P.2d 927, 931.

**ORTOLAGIUM.** A garden plot or hortilage.

**ORWIGE, SINE WITĀ.** In old English law. Without war or feud, such security being provided by the laws, for homicides under certain circumstances, against the *foethth*, or deadly feud, on the part of the family of the slain. *Anc.Inst.Eng.*

**OSCULI, JUS.** The right to kiss. According to the old phraseology there could be no marriage within the circle of the *jus osculi*—the seventh degree. Second cousins (sixth degree) could not marry. *Muirhead*, *Rom.L.* 26.

**OSTENDIT VOBIS.** Lat. In old pleading. Shows to you. Formal words with which a demandant began his count. *Fleta*, lib. 5, c. 38, § 2.

**OSTENSIBLE AGENCY.** An implied or presumptive agency, which exists where one, either intentionally or from want of ordinary care, induces another to believe that a third person is his agent, though he never in fact employed him. *First Nat. Bank v. Elevator Co.*, 11 N.D. 280, 91 N.W. 437. It is, strictly speaking, no agency at all, but is in reality based entirely upon estoppel. *Hartford Accident & Indemnity Co. v. Bear Butte Valley Bank*, 63 S.D. 262, 257 N.W. 642.

**OSTENSIBLE AUTHORITY.** Such authority as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe that the agent possesses. *National Cash Register Co. v. Wichita Frozen Food Lockers*, *Tex.Civ.App.*, 172 S.W.2d 781, 787.

**OSTENSIBLE PARTNER.** One whose name appears to the world as such, though he have no interest in the firm. *Civ.Code* 1910, § 3157. *Roberts v. Curry Grocery Co.*, 18 Ga.App. 53, 88 S.E. 796.

**OSTENSIO.** A tax anciently paid by merchants, etc., for leave to show or expose their goods for sale in markets. *Du Cange*.

**OSTENTUM.** Lat. In the civil law. A monstrous or prodigious birth. *Dig.* 50, 16, 38.

**OSTEOPATH.** One who practices osteopathy. *State v. Chase*, 76 N.H. 553, 86 A. 144.

**OSTEOPATHY.** A method or system of treating various diseases of the human body without the use of drugs, by manipulation applied to various nerve centers, rubbing, pulling, and kneading parts of the body, flexing and manipulating the limbs, and the mechanical readjustment of any bones, muscles, or ligaments not in the normal position, with a view to removing the cause of the disorder and aiding the restorative force of nature in cases where the trouble originated in misplacement of parts, irregular nerve action, or defective circulation. *State v. Liffing*, 61 Ohio St. 39, 55 N.E. 168, 76 Am.St.Rep. 358; *Parks v. State*, 159 Ind. 211, 64 N.E. 862, 59 L.R.A. 190.

A system of treatment based on the theory that diseases are chiefly due to deranged mechanism of the bones, nerves, blood vessels, and other tissues, and can be remedied by manipulations of these parts. Special attention is given to the readjustment of any bones, muscles, or ligaments not in the normal position. *Waldo v. Poe*, D.C. Wash., 14 F.2d 749, 751; *Arnold v. Schmidt*, 155 Wis. 55, 143 N.W. 1055, 1058; *State ex rel. Wheat v. Moore*, 154 Kan. 193, 117 P.2d 598, 602. The term does not include the practice of optometry. *Ex parte Rust*, 181 Cal. 73, 183 P. 548, 550, nor, at least under some statutes, the practice of medicine or surgery. *State v. Sawyer*, 36 Idaho, 814, 214 P. 222.

**OSTIA REGNI.** Lat. Gates of the kingdom. The ports of the kingdom of England are so called by Sir Matthew Hale. *De Jure Mar.* pt. 2, c. 3.

**OSTIUM ECCLESIAE.** Lat. In old English law. The door or porch of the church, where dower was anciently conferred.

**OSWALD'S LAW.** The law by which was effected the ejection of married priests, and the introduction of monks into churches, by Oswald, bishop of Worcester, about A.D. 964. *Wharton*.

**OSWALD'S LAW HUNDRED.** An ancient hundred in Worcestershire, so called from Bishop Oswald, who obtained it from King Edgar, to be given to St. Mary's Church in Worcester. It was exempt from the sheriff's jurisdiction, and comprehends 300 hides of land. *Camd. Brit.*

**OTER LA TOUAILLE.** In the laws of Oleron. To deny a seaman his mess. Literally, to deny the table-cloth or victuals for three meals.

**OTHER.** Different or distinct from that already mentioned; additional, or further. *City of Ft. Smith v. Gunter*, 106 Ark. 371, 154 S.W. 181, 183; *State v. Blumenthal*, 136 Ark. 532, 203 S.W. 36, 37, L.R.A.1918E, 482.

Following an enumeration of particular classes "other" must be read as "other such like," and includes only others of like kind and character. *Van Pelt v. Hilliard*, 75 Fla. 792, 78 So. 693, 697, L.R.A.1918E, 639; *Baker v. Baker*, 82 N.J.Eq. 150, 91 A. 729, 730; *George H. Dingley Lumber Co. v. Erie R. Co.*, 102 Ohio St. 236, 131 N.E. 723, 726.

**OTHERWISE.** In a different manner; in another way, or in other ways. *Safe Deposit & Trust*

*Co. of Baltimore v. New York Life Ins. Co., D.C. Md.*, 14 F.Supp. 721, 726.

**OTHESWORTHE.** In Saxon law. Oathsworthy; oathworthy; worthy or entitled to make oath. *Bract. fols.* 185, 292b.

**OUGHT.** This word, though generally directory only, will be taken as mandatory if the context requires it. *Pract. fol.* 185, 292b; *Life Ass'n v. St. Louis County Assessors*, 49 Mo. 518.

**OUNCE.** The twelfth part; the twelfth part of a pound troy or the sixteenth part of a pound avoirdupois.

**OUNCE LANDS.** Certain districts or tracts of lands in the Orkney Islands were formerly so called, because each paid an annual tax of one ounce of silver.

**OURLOP.** The hierwite or fine paid to the lord by the inferior tenant when his daughter was debauched. *Cowell*.

**OUST.** To put out; to eject; to remove or deprive; to deprive of the possession or enjoyment of an estate or franchise.

**OUSTER.** In practice. A putting out; dispossession; amotion of possession. A species of injuries to things real, by which the wrong-doer gains actual occupation of the land, and compels the rightful owner to seek his legal remedy in order to gain possession. 2 *Crabb, Real Prop.* p. 1063, § 2454a; *Pursel v. Reading Iron Co., C.C.A. Pa.*, 232 F. 801, 807; *Lucas v. Ferris*, 95 Conn. 619, 112 A. 165, 167; *Hardman v. Brown*, 77 W. Va. 478, 88 S.E. 1016, 1019.

**Actual Ouster.** Does not mean a physical eviction, but a possession attended with such circumstances as to evince a claim of exclusive right and title, and a denial of the right of the other tenants to participate in the profits. *Burns v. Byrne*, 45 Iowa 287; *Miller v. State*, 121 Conn. 43, 183 A. 17, 20.

**OUSTER LE MAIN.** L. Fr. Literally, out of the hand.

1. A delivery of lands out of the king's hands by judgment given in favor of the petitioner in a *monstrans de droit*.

2. A delivery of the ward's lands out of the hands of the guardian, on the former arriving at the proper age, which was twenty-one in males, and sixteen in females. Abolished by 12 Car. II. c. 24. *Mozley & Whiteley*.

**OUSTER LE MER.** L. Fr. Beyond the sea; a cause of excuse if a person, being summoned, did not appear in court. *Cowell*.

**OUT-BOUNDARIES.** A term used in early Mexican land laws to designate certain boundaries within which grants of a smaller tract, which designated such out-boundaries, might be located by the grantee. *U. S. v. Maxwell Land Grant Co.*, 7 S.Ct. 1015, 121 U.S. 325, 30 L.Ed. 949.

## OUT OF BENEFIT

**OUT OF BENEFIT.** A term descriptive of insurance policy holders who have been suspended for nonpayment of premiums. *American Nat. Ins. Co. v. Otis*, 122 Ark. 219, 183 S.W. 183, 184, L.R.A. 1916E, 875.

**OUT OF COURT.** He who has no legal status in court is said to be "out of court," *i. e.*, he is not before the court. Thus, when the plaintiff in an action, by some act of omission or commission, shows that he is unable to maintain his action, he is frequently said to put himself "out of court." *Brown*. The expression is colloquially applied to a litigant party when his case breaks down, equivalent to saying, "he has not a leg to stand on," *Moz. & W.*

The phrase is also used with reference to agreements and transactions in regard to a pending suit which are arranged or take place between the parties or their counsel privately and without being referred to the judge or court for authorization or approval. Thus, a case which is compromised, settled, and withdrawn by private agreement of the parties, after its institution, is said to be settled "out of court." So attorneys may make agreements with reference to the conduct of a suit or the course of proceedings therein; but if these are made "out of court," that is, not made in open court or with the approval of the judge, it is a general rule that they will not be noticed by the court unless reduced to writing. *Welsh v. Blackwell*, 14 N.J.Law, 345.

**OUT OF POCKET RULE.** Determination for damages for fraudulent misrepresentations which permits recovery of difference between price paid and actual value of property acquired. *Zeliff v. Sabatino*, 104 A.2d 54, 55, 15 N.J. 70; *Zeliff v. Sabatino*, 98 A.2d 679, 681, 27 N.J.Super. 13; *Jacobs v. Levin*, 137 P.2d 500, 501, 58 Cal.App.2d Supp. 913.

Also called out-of-pocket loss rule.

**OUT OF REPAIR.** In a West Virginia statute relating to streets, sidewalks, and the like, this term means unsafe for reasonable use in the ordinary modes of travel by day or night, whether the danger exists overhead or on the surface.

**OUT OF TERM.** At a time when no term of the court is being held; in the vacation or interval which elapses between terms of the court. See *McNeill v. Hodges*, 99 N.C. 248, 6 S.E. 127.

**OUT OF THE STATE.** In reference to rights, liabilities, or jurisdictions arising out of the common law, this phrase is equivalent to "beyond sea," which see.

In other connections, it means physically beyond the territorial limits of the particular state in question, or constructively so, as in the case of a foreign corporation. *Foster v. Givens*, 67 F. 684, 14 C.C.A. 625; *Larson v. Aultman & Taylor Co.*, 80 Wis. 281, 56 N.W. 915, 39 Am.St.Rep. 893. But a foreign corporation maintaining an agent within the state is not deemed to be "out of the state," within various statutes. *Hamilton v. North. Pac. S. S. Co.*, 84 Or. 71, 164 P. 579, 581; *American Surety Co. of New York v. Blake*, 45 Idaho 159, 261 P. 239, 240.

**OUT OF TIME.** A mercantile phrase applied to a ship or vessel that has been so long at sea as to justify the belief of her total loss. In another sense, a vessel is said to be *out of time* when, com-

puted from her known day of sailing, the time that has elapsed exceeds the average duration of similar voyages at the same season of the year. The phrase is identical with "missing ship." 2 *Duer*, Ins. 469.

**OUTAGE.** A tax or charge formerly imposed by the state of Maryland for the inspection and marking of hogsheads of tobacco intended for export. *Turner v. Maryland*, 2 S.Ct. 44, 107 U.S. 38, 27 L. Ed. 370.

**OUTBUILDING.** Something used in connection with a main building. *Com. v. Intoxicating Liquors*, 140 Mass. 287, 3 N.E. 4. A small building appurtenant to a main building, and generally separated from it; an outhouse. *Bruce v. McClees*, 110 N.J.Eq. 92, 158 A. 849, 850.

**OUTCAST.** This term, applied to a person, has been held to be libelous *per se*, because it represents him as being a degraded and disgraced character. *Herald Pub. Co. v. Feltner*, 158 Ky. 35, 164 S.W. 370, 372.

**OUTCROP.** In mining law. The edge of a stratum which appears at the surface of the ground; that portion of a vein or lode which appears at the surface or immediately under the soil and surface debris. *Duggan v. Davey*, 4 Dak. 110, 26 N.W. 887; *Stevens v. Williams*, 23 Fed.Cas. 40. The term is not, in itself, definitive of quantity or area in respect of the mineral involved. *Sloss-Sheffield Iron & Steel Co. v. Payne*, 186 Ala. 341, 64 So. 617, 618.

**OUTER BAR.** In the English courts, barristers at law have been divided into two classes, *viz.*, king's counsel, who are admitted within the bar of the courts, in seats specially reserved for themselves, and junior counsel, who sit without the bar; and the latter are thence frequently termed barristers of the "outer bar," or "utter bar," in contradistinction to the former class. *Brown*.

**OUTER DOOR.** In connection with the rule, statutory or otherwise, forbidding an officer to break open the outer door to serve civil process, this term designates the door of each separate apartment, where there are different apartments having a common outer door. *Fourette v. Griffin*, 92 Conn. 388, 103 A. 123, 124, L.R.A.1918D, 876; *Schorck v. Calloway*, 205 Ky. 346, 265 S.W. 807, 808.

**OUTER HOUSE.** The name given to the great hall of the parliament house in Edinburgh, in which the lords ordinary of the court of session sit as single judges to hear causes. The term is used colloquially as expressive of the business done there in contradistinction to the "Inner House," the name given to the chambers in which the first and second divisions of the court of session hold their sittings. *Bell*.

**OUTFANGTHEF.** A liberty or privilege in the ancient common law, whereby a lord was enabled to call any man dwelling in his manor, and taken for felony in another place out of his fee, to judgment in his own court. *Du Cange*. See *Infangenthef*.

**OUTFIT.** Originally, as applying to ships, those objects connected with a ship which were necessary for the sailing of her, and without which she would not in fact be navigable. But in ships engaged in whaling voyages the word has acquired a much more extended signification. *Macy v. Whaling Ins. Co.*, 9 Metc. (Mass.) 364.

An allowance made by the United States government to one of its diplomatic representatives, as an ambassador, a minister plenipotentiary, or *chargé d'affaires*, but not a consul, for the expense of his equipment on going from the United States to any foreign country.

Equipment. *U. S. v. Richard & Co.*, 8 Ct.Cust. App. 231, 233.

**OUTGO.** In taxation, a flow of disservice (negative service) or negative income;—distinguished from "income," or the flow of capital service. *U. S. v. Guggenheim Exploration Co.*, D.C.N.Y., 238 F. 231, 234.

**OUTHEST, or OUTHOM.** A calling men out to the army by sound of horn. *Jacob.*

**OUTHOUSE.** Any house necessary for the purposes of life, in which the owner does not make his constant or principal residence. *State v. O'Brien*, 2 Root (Conn.) 516. A building subservient to, yet distinct from, the principal mansion-house, located either within or without the curtilage. *State v. Brooks*, 4 Conn. 446; *Jones v. Hungerford*, 4 Gill. & J. (Md.) 402, 2 Cr. & D. 479. *Parks v. State*, 22 Ga.App. 621, 96 S.E. 1050, 1051.

A smaller or subordinate building connected with a dwelling, usually detached from it and standing at a little distance from it, not intended for persons to live in, but to serve some purpose of convenience or necessity; as a barn, a dairy, a toolhouse, and the like.

Under statutes, such a building may be subservient to and adjoin a business building as well as a dwelling house. *State v. Marks*, 45 Idaho, 92, 260 P. 697, 698.

**OUTLAND.** The Saxon thanes divided their hereditary lands into inland, such as lay nearest their dwelling, which they kept to their own use, and outland, which lay beyond the demesnes, and was granted out to tenants, at the will of the lord, like copyhold estates. This outland they subdivided into two parts. One part they disposed among those who attended their persons, called "theodans," or lesser thanes; the other part they allotted to their husbandmen, or churls. *Jacob.*

**OUTLAW.** In English law. One who is put out of the protection or aid of the law. 22 Viner, Abr. 316; *Bacon Abr. Outlawry*; 2 Sell.Pr. 277; Doctr. Plac. 331; 3 Bla.Comm. 283, 284.

Popularly, a person violating the law. *Oliveros v. Henderson*, 116 S.C. 77, 106 S.E. 855, 859.

**OUTLAWED.** With reference to a debt means barred by the statute of limitations. *Brady v. Tarr*, 145 Pa.Super. 316, 21 A.2d 131, 133.

**OUTLAWRY.** In English law. A process by which a defendant or person in contempt on a civil or criminal process was declared an outlaw. If for treason or felony, it amounted to conviction

and attainder. *Stim.Law Gloss.* See *Respublica v. Doan*, 1 Dall. (Pa.) 86, 1 L.Ed. 47; *Dale County v. Gunter*, 46 Ala. 138; *Drew v. Drew*, 37 Me. 391; 3 Bla.Comm. 283; Co.Litt. 128. Outlawry for a misdemeanor does not amount to a conviction for the offense itself. 4 Steph.Com. 317. The "minor outlawry" for "trespasses" did not involve sentence of death; otherwise of the higher crimes. 2 Poll. & Maitl. 581.

In the United States, the process of outlawry seems to be unknown, at least in civil cases. *Dane*, Abr. ch. 193 a, 34; *Hall v. Lanning*, 91 U.S. 160, 23 L.Ed. 271; 37 *Harvard Law Review*, 799.

**OUTLINE.** The line which marks the outer limits of an object or figure; an exterior line or edge; contour. *Taggart v. Great Northern Ry. Co.*, D.C. Wash., 208 F. 455, 456.

**OUTLOT.** In early American land law, (particularly in Missouri,) a lot or parcel of land lying outside the corporate limits of a town or village but subject to its municipal jurisdiction or control. *Kissell v. St. Louis Public Schools*, 16 Mo. 592; *St. Louis v. Toney*, 21 Mo. 243; *Eberle v. St. Louis Public Schools*, 11 Mo. 265; *Vasquez v. Ewing*, 42 Mo. 256.

**OUTPARTERS.** Stealers of cattle. *Cowell.*

**OUTPUTERS.** Such as set watches for the robbing of any manor-house. *Cowell.*

**OUTRAGE.** A grave injury; injurious violence; in general, any species of serious wrong offered to the person, feelings, or rights of another. *McKinley v. Railroad Co.*, 44 Iowa, 314, 24 Am.Rep. 748; *Aldrich v. Howard*, 8 R.I. 246; *Mosnat v. Snyder*, 105 Iowa, 500, 75 N.W. 356. Synonyms are affront, insult, and abuse. *State ex rel. and to Use of Donelon v. Deuser*, 345 Mo. 628, 134 S.W.2d 132, 133.

**OUTRIDERS.** In English law. Bailiffs-errant employed by sheriffs or their deputies to ride to the extremities of their counties or hundreds to summon men to the county or hundred court. *Wharton.*

**OUTRIGHT.** Free from reserve or restraint; direct; positive; down-right; altogether; entirely; openly. *Hughes v. First State Bank of Wagoner*, 106 Okl. 146, 235 P. 1097, 1099.

**OUTROPER.** A person to whom the business of selling by auction was confined by statute. 2 H. Bl. 557.

**OUTS.** In banking parlance, are conditions or warranties, failure to comply with which by the prospect give the banker a right to escape from a contract and to terminate negotiations. *Cray, McFawn & Co. v. Hegarty, Conroy & Co.*, D.C.N.Y., 27 F.Supp. 93, 100.

**OUTSETTER.** In Scotch law. Publisher. 3 How. State Tr. 603.

**OUTSIDE.** To the exterior of; without; outward from. *Union Fishermen's Co-operative Packing*

## OUTSTANDING

Co. v. Shoemaker, 98 Or. 659, 193 P. 476, 480. See, also, Frankel v. Massachusetts Bonding & Ins. Co., Mo.App., 177 S.W. 775.

**OUTSTANDING.** Remaining undischarged; unpaid; uncollected; as an outstanding debt. New York Trust Co. v. Portland Ry. Co., 197 App.Div. 422, 189 N.Y.S. 346, 350. Constituting an effective obligation; as, outstanding stock. Borg v. International Silver Co., C.C.A.N.Y., 11 F.2d 147, 150; Scheirich v. Otis-Hidden Co., 204 Ky. 289, 264 S.W. 755, 756.

Existing as an adverse claim or pretension; not united with, or merged in, the title or claim of the party; as an outstanding title.

**OUTSTANDING AND OPEN ACCOUNT.** In legal and commercial transactions it is an unsettled debt arising from items of work and labor, goods sold and delivered, and other open transactions, not reduced to writing, and subject to future settlement and adjustment and usually disclosed by account books of the owner of the demand and does not include express contracts or obligations which have been reduced to writing such as bonds, bills of exchange, or notes. Lee v. De Forest, 22 Cal.App.2d 351, 71 P.2d 285, 291. Checotah Hardware Co. v. Housel, 169 Okl. 112, 35 P.2d 966, 967.

**OUTSTANDING CROP.** One not harvested or gathered. It is outstanding from the day it commences to grow until gathered and taken away. Sullins v. State, 53 Ala. 474.

**OUTSTANDING TERM.** A term in gross at law, which, in equity, may be made attendant upon the inheritance, either by express declaration or by implication.

**OUTSTROKE.** To mine by outstroke is to take out mineral from adjoining property through the tunnels and shafts of the demised premises. Percy La Salle Mining & Power Co. v. Newman Mining, Milling & Leasing Co., D.C.Colo., 300 F. 141, 142.

**OUTSUCKEN MOLTURES.** In Scotch law. Out-town multures; multures, duties, or tolls paid by persons voluntarily grinding corn at any mill to which they are not *thirled*, or bound by tenure. 1 Forb.Inst. pt. 2, p. 140.

**OUVERTURE DES SUCCESSIONS.** In French law. The right of succession which arises to one upon the death, whether natural or civil, of another.

**OVE.** L. Fr. With. Modern French *avec*.

**OVELL.** L. Fr. Equal.

**OVELTY.** In old English law. Equality.

**OVER.** Above; overhead. Detamore v. Hindley, 83 Wash. 322, 145 P. 462, 464. Through. Kynerd v. Hulen, C.C.A.Tex., 5 F.2d 160, 161. More than; in excess of. People v. Shupe, 306 Ill. 31, 137 N.E. 515, 516.

Continued;—sometimes written on one page or sheet to indicate a continuation of matter on a

separate sheet. In re Johnston's Estate, 64 Cal. App. 197, 221 P. 382, 384.

In conveyancing. The word is used to denote a contingent limitation intended to take effect on the failure of a prior estate. Thus, in what is commonly called the "name and arms clause" in a will or settlement there is generally a proviso that if the devisee fails to comply with the condition the estate is to go to some one else. This is a limitation or gift over. Wats.Comp.Eq. 1110; Sweet.

**OVER SEA.** Beyond the sea; outside the limits of the state or country. Gustin v. Brattle, Kirby, Conn. 300. See Beyond Sea.

**OVERAWE.** To subjugate or restrain by awe, or profound reverence. Collum v. State, 21 Ala.App. 220, 107 So. 35.

**OVERBRAIDED.** Of ropes, made by having a certain number of strands laid over a center already braided. Macomber & Whyte Rope Co. v. Hazard Mfg. Co., C.C.A.N.Y., 211 F. 976, 979.

**OVERBREAK.** In blasting, that portion of material removed which is outside and beyond slopes indicated by slope stakes. Porter v. State, 141 Wash. 51, 250 P. 449.

**OVERCHARGE.** Of public utilities, a charge collected above a lawful tariff rate, a charge of more than is permitted by law. Taylor-Williams Coal Co. v. Public Utilities Commission of Ohio, 97 Ohio St. 224, 119 N.E. 459, 460; Crook v. Baltimore & O. R. Co., 32 Ohio App. 263, 167 N.E. 899, 900. An unreasonable or discriminatory charge. Postal Telegraph-Cable Co. v. Associated Press, 228 N.Y. 370, 127 N.E. 256, 259; Cleveland, C., C. & St. L. Ry. Co. v. Mills Bros., 101 Ohio St. 173, 128 N.E. 81, 82.

**OVERCOME.** As used in a statute providing that a presumption may be overcome by other evidence, this term is not synonymous with overbalance or outweigh, but requires merely that such evidence counterbalance the presumption, where the party relying on it has the burden of proof. Hansen v. Oregon-Washington R. & Nav. Co., 97 Or. 190, 191 P. 655, 656.

**OVERCYTED, or OVERCYHSED.** Proved guilty or convicted. Blount.

**OVERDRAFT.** The act of checking out more money than one has on deposit in a bank. Bank of Jeanerette v. Druilhet, 149 La. 505, 89 So. 674, 678; State v. Larson, 119 Wash. 259, 205 P. 373, 374. It is in the nature of a loan made at the request of the depositor, and implies a promise to pay. Becker v. Fuller, 99 Misc.Rep. 672, 164 N.Y.S. 495.

**OVERDRAW.** To draw upon a person or a bank, by bills or checks, to an amount in excess of the funds remaining to the drawer's credit with the drawee, or to an amount greater than what is due. See State v. Jackson, 21 S.D. 494, 113 N.W. 880, 16 Ann.Cas. 87.

The term has a definite and well-understood meaning. Money is drawn from the bank by him who draws the check, not by him who receives the money; and it is drawn upon the account of the individual by whose check it is drawn, though it be paid to and for the benefit of another. No one can draw money from bank upon his own account, except by means of his own check or draft, nor can he overdraw his account with the bank in any other manner. *State v. Stimson*, 24 N.J.Law, 478, 484.

**OVERDUE.** Due and more than due; delayed or unpaid. *Bliss v. California Co-op. Producers*, Cal. App., 156 P.2d 259, 260.

A negotiable instrument or other evidence of debt is overdue when the day of its maturity is past and it remains unpaid. *La Due v. First Nat. Bank*, 31 Minn. 33, 16 N.W. 426.

A vessel is said to be overdue when she has not reached her destination at the time when she might ordinarily have been expected to arrive.

**OVERFLOWED LANDS.** Those that are covered by nonnavigable waters (not including lands between high and low water mark of navigable streams or bodies of water, nor lands covered and uncovered by ordinary daily ebb and flow of normal tides of navigable waters). *Miller v. Bay-To-Gulf*, 141 Fla. 452, 193 So. 425, 427.

**OVERHAUL.** To inquire into; to review; to disturb. "The merits of a judgment can never be overhauled by an original suit." 2 H.Bl. 414.

To examine thoroughly, as machinery, with a view to repairs. *Holloway v. Wheeler*, Tex.Civ. App., 261 S.W. 467, 468.

**OVERHEAD.** All administrative or executive costs incident to the management, supervision, or conduct of the capital outlay, or business;—distinguished from "operating charges," or those items that are inseparably connected with the productive end and may be seen as the work progresses, and are the subject of knowledge from observation. *Lytle, Campbell & Co. v. Somers, Fitler & Todd Co.*, 276 Pa. 409, 120 A. 409, 410, 27 A.L.R. 41. Continuous expenses of a business: the expenses and obligations incurred in connection with operation; expenses necessarily incurred in organization. office expenses, engineering, inspection, supervision, and management during construction; and general expenditures in financial or industrial enterprise which cannot be attributed to any one department or product, excluding cost of materials, labor, and selling. *Guillot v. State Highway Commission of Montana*, 102 Mont. 149, 56 P.2d 1072, 1075.

"Overhead charges" is a term which, as applied to a public service corporation, includes the expense that would necessarily be incurred in the reproduction of the property; the legal expenses of organization and expenses for office, engineering, inspection, supervision, and management during construction; fire and casualty insurance, taxes and interest during the period, contractors profits, and other minor expenses of like character. *Bonbright v. Geary*, D.C.Ariz., 210 F. 44, 54.

**OVERHERNISSA.** In Saxon law. Contumacy or contempt of court. Leg. Æthel, c. 25.

**OVER-INSURANCE.** See Double Insurance.

**OVERISSUE.** To issue in excessive quantity; to issue in excess of fixed legal limits. Thus, "over-issued stock" of a private corporation is capital stock issued in excess of the amount limited and prescribed by the charter or certificate of incorporation. *Hayden v. Charter Oak Driving Park*, 63 Conn. 142, 27 A. 232.

**OVLIVE.** To survive; to live longer than another. *Finch, Law*, b. 1, c. 3, no. 58; 1 Leon. 1.

**OVERLOAD.** To cause to bear too heavy a burden; to load too heavily. But to say of a business, such as an insurance business, that it is overloaded, implies nothing defamatory on its face in the sense of imputing dishonesty, lack of fair dealing, want of fidelity, integrity, or business ability. *Talbot v. Mack*, 41 Nev. 245, 169 P. 25, 29.

**OVERLYING RIGHT.** Right of owner of land to take water from ground underneath for use on his land within basin or watershed. Right is based on ownership of land and is appurtenant thereto. *City of Pasadena v. City of Alhambra*, 207 P.2d 17, 28, 33 Cal.2d 908.

**OVERPLUS.** What is left beyond a certain amount; the residue; the surplus; the remainder of a thing. *Lyon v. Tomkies*, 1 Mees. & W. 603.

**OVERRATE.** In its strictest signification, a rating by way of excess and not one which ought not to have been made at all. 2 Ex. 352.

**OVERREACHING CLAUSE.** In a resettlement, a clause which saves the powers of sale and leasing annexed to the estate for life created by the original settlement, when it is desired to give the tenant for life the same estate and powers under the resettlement. The clause is so called because it provides that the resettlement shall be overreached by the exercise of the old powers. If the resettlement were executed without a provision to this effect, the estate of the tenant for life and the annexed powers would be subject to any charges for portions, etc., created under the original settlement. 3 Dav.Conv. 489; Sweet.

**OVERRIDE.** An estate carved out of working interest under an oil or gas lease. *Youngblood v. Seewald*, D.C.Okl., 194 F.Supp. 417, 420.

**OVERRIDE ROYALTY.** As applied to an existing oil and gas lease is a given percentage of the gross production payable to some person other than the lessor or persons claiming under him. *Homestake Exploration Corporation v. Schoregge*, 81 Mont. 604, 264 P. 388, 392. An interest carved out of the lessee's share of the oil. *Wright v. Brush*, C.C.A.Kan., 115 F.2d 265, 267.

**OVERRULE.** To supersede; annul; make void; reject by subsequent action or decision. A judicial decision is said to be overruled when a later decision, rendered by the same court or by a superior court in the same system, expresses a judg-

## OVERRULE

ment upon the same question of law directly opposite to that which was before given, thereby depriving the earlier opinion of all authority as a precedent. The term is not properly applied to conflicting decisions on the same point by co-ordinate or independent tribunals. It also signifies that a majority of the judges of a court have decided against the opinion of the minority, in which case the minority judges are said to be overruled.

To refuse to sustain, or recognize as sufficient, an objection made in the course of a trial, as to the introduction of particular evidence, etc.

**OVERS.** In the meat packing business, the increase in the weight of meat resulting from salt put on it. *G. H. Hammond Co. v. Joseph Mercantile Co.*, 144 Ark. 108, 222 S.W. 27, 28.

**OVERSAMENESSA.** In old English law. A forfeiture for contempt or neglect in not pursuing a malefactor. 3 Inst. 116.

**OVERSEER.** A superintendent or supervisor; a public officer whose duties involve general superintendence of routine affairs.

**OVERSEERS OF HIGHWAYS.** The name given, in some of the states, to a board of officers of a city, township, or county, whose special function is the construction and repair of the public roads or highways.

**OVERSEERS OF THE POOR.** Persons appointed or elected to take care of the poor with moneys furnished to them by the public authority. Their duties are regulated by local statutes.

**OVERSMAN.** In Scotch law. An umpire appointed by a submission to decide where two arbiters have differed in opinion, or he is named by the arbiters themselves, under powers given them by the submission. Bell.

**OVERT.** Open; manifest; public; issuing in action, as distinguished from that which rests merely in intention or design. *Commonwealth v. Barnes*, 107 Pa.Super. 46, 162 A. 670, 675.

**Market Overt.** See Market.

**OVERT ACT.** In criminal law. An open, manifest act from which criminality may be implied. An outward act done in pursuance and manifestation of an intent or design. An open act, which must be manifestly proved. 3 Inst. 12. *United States v. Haupt*, D.C.Ill., 47 F.Supp. 836, 839.

An overt act essential to establish an attempt to commit a crime is an act done to carry out the intention, and it must be such as would naturally effect that result unless prevented by some extraneous cause. *People v. Mills*, 178 N.Y. 274, 70 N.E. 786, 67 L.R.A. 131; *State v. Enanno*, 96 Conn. 420, 114 A. 386, 389. It must be something done that directly moves toward the crime, and brings the accused nearer to its commission than mere acts of preparation or of planning, and will apparently result, in the usual and natural course of events, if not hindered by extraneous causes, in the commission of the crime itself. *Powell v. State*, 128 Miss. 107, 90 So. 625, 626; *State v. Roby*, 194 Iowa 1032, 188 N.W. 709, 714.

In reference to the crime of treason, and the provision of the federal constitution that a person shall not be convicted thereof unless on the testimony of two witnesses to the same "overt act," the term means a step, motion, or

action really taken in the execution of a treasonable purpose, as distinguished from mere words, and also from a treasonable sentiment, design, or purpose not issuing in action. It is an act in furtherance of the crime. *U. S. v. Fricke*, D.C.N.Y., 259 F. 673, 676. One which manifests the intention of the traitor to commit treason. Archb. Cr.Pl. 379; 4 Bla.Comm. 79; Co. 3d Inst. 12; *Re Bollman*, 4 Cranch, 75, 2 L.Ed. 554; *U. S. v. Pryor*, 3 Wash.C.C. 234, Fed.Cas.No.16,096.

An overt act which will justify the exercise of the right of self-defense is such as would manifest to the mind of a reasonable person a present intention to kill him or do him great bodily harm. *Cooke v. State*, 18 Ala.App. 416, 93 So. 86, 88.

An overt act which completes crime of conspiracy to violate federal law is something apart from conspiracy and is an act to effect the object of the conspiracy, and need be neither a criminal act, nor crime that is object of conspiracy, but must accompany or follow agreement and must be done in furtherance of object of agreement. *Marino v. United States*, C.C.A.Cal., 91 F.2d 691, 694, 695, 113 A.L.R. 975.

**OVERT WORD.** An open, plain word, not to be misunderstood. Cowell.

**OVERTAKE.** To come or catch up with in a course of motion. *Ringwald v. Beene*, 170 Tenn. 116, 92 S.W.2d 411, 413.

**OVERTIME.** After regular working hours; beyond the regular fixed hours. *Ferguson v. Port Huron & Sarnia Ferry Co.*, D.C.Mich., 13 F.2d 489, 492; *Goodman v. Moss*, 43 N.Y.S.2d 381, 385.

**OVERTIME WAGE.** Portion of wages paid employee for services rendered beyond regularly fixed working hours. *Goodman v. Moss*, 43 N.Y.S.2d 381, 385.

**OVERTURE.** An opening; a proposal.

**OWE.** To be bound to do or omit something, especially to pay a debt. *Robinson v. Ramsey*, 161 Ga. 1, 129 S.E. 837, 839; *Humphreys v. County Court*, 90 W.Va. 315, 110 S.E. 701, 703.

**OWELTY.** Equality; an equalization charge. *Bagg v. Osborn*, 169 Minn. 126, 210 N.W. 862, 863.

This word is used in law in several compound phrases, as follows:

**Owely of exchange.** A sum of money given, when two persons have exchanged lands, by the owner of the less valuable estate to the owner of the more valuable, to equalize the exchange.

**Owely of partition.** A sum of money paid by one of two coparceners or co-tenants to the other, when a partition has been effected between them, but, the land not being susceptible of division into exactly equal shares, such payment is required to make the portions respectively assigned to them of equal value. *Littleton*, § 251; *Co. Litt. 169a*; *Long v. Long*, 1 Watts (Pa.) 265; 16 Viner, Abr. 223, pl. 3. *Reed v. Deposit Co.*, 113 Pa. 578, 6 A. 163. The power to grant owely has been exercised by the courts of equity from time immemorial. *Town of Morganton v. Avery*, 179 N.C. 551, 103 S.E. 138.

**Owely of services.** In the feudal law, the condition obtaining when there is lord, mesne, and ten-

ant, and the tenant holds the mesne by the same service that the mesne holds over the lord above him. Tomlins.

**OWING.** Unpaid. A debt, for example, is owing while it is unpaid, and whether it be due or not. Coquard v. Bank of Kansas City, 12 Mo.App. 261; Musselman v. Wise, 84 Ind. 248; Jones v. Thompson, 1 El., Bl. & El. 64; Succession of Guidry, 40 La. Ann. 671, 4 So. 893.

**OWLERS.** In English law. Persons who carried wool, etc., to the sea-side by night, in order that it might be shipped off contrary to law. Jacob.

**OWLING.** In English law. The offense of transporting wool or sheep out of the kingdom; so called from its being usually carried on in the night. 4 Bl. Comm. 154.

**OWN.** To have a good legal title; to hold as property; to have a legal or rightful title to; to have; to possess. Shepherd v. Maine Cent. R. Co., 112 Me. 350, 92 A. 189; McKennon v. Warnick, 115 Or. 163, 236 P. 1051, 1052; Miller-Link Lumber Co. v. Stephenson, Tex.Civ.App., 265 S.W. 215, 220; Melvin v. Scowley, 213 Ala. 414, 104 So. 817, 820. The term does not necessarily signify absolute ownership in fee. Rydeen v. Clearwater County, 139 Minn. 329, 166 N.W. 334, 335; Makemson v. Dillon, 24 N.M. 302, 171 P. 673, 676; Bush v. State, 128 Ark. 448, 194 S.W. 857. It is not synonymous with "acquire." State v. District Court of Third Judicial Dist. in and for Granite County, 79 Mont. 1, 254 P. 863, 865.

**OWNED BY.** Although these words may be used synonymously with "belonging to" or "forming part of"; Gilpatric v. City of Hartford, 98 Conn. 471, 120 A. 317, 319; in a stricter sense they denote an absolute and unqualified title, whereas the words "belonging to" do not import that the whole title to property or thing is meant, for a thing may belong to one who has less than an unqualified and absolute title; Baltimore Dry Docks & Ship Building Co. v. New York & P. R. S. S. Co., C.C.A.Md., 262 F. 485, 488.

**OWNER.** The person in whom is vested the ownership, dominion, or title of property; proprietor. Garver v. Hawkeye Ins. Co., 69 Iowa 202, 28 N.W. 555; McGowan v. Morgan, 145 N.Y.S. 787, 160 App. Div. 588; Cayce Land Co. v. Southern Ry. Co., 111 S.C. 115, 96 S.E. 725, 727; Staples v. Adams, Payne & Gleaves, C.C.A.Va., 215 F. 322, 325. He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right. Miller-Link Lumber Co. v. Stephenson, Tex.Civ.App., 265 S.W. 215, 220; Newborn v. Peart, 121 Misc.Rep. 221, 200 N.Y.S. 890, 892; Hare v. Young, 26 Idaho, 682, 146 P. 104, 106; Johnson v. Crookshanks, 21 Or. 339, 28 P. 78.

The word is not infrequently used to describe one who has dominion or control over a thing, the title to which is in another. Robinson v. State, 7 Ala.App. 172, 62 So. 303, 306. Thus, it may denote the buyer under a conditional sale agreement; Lennon v. L. A. W. Acceptance

Corporation of Rhode Island, 48 R.I. 363, 138 A. 215, 217; a lessee; E. Corey & Co. v. H. P. Cummings Const. Co., 118 Me. 34, 105 A. 405, 407; Texas Bank & Trust Co. of Beaumont v. Smith, 108 Tex. 265, 192 S.W. 533, 534, 2 A.L.R. 771; Hacken v. Isenberg, 288 Ill. 589, 124 N.E. 306, 308; Grattan v. Trego, C.C.A.Kan., 225 F. 705, 708; a pledgee; American Nat. Bank of Tucumcari v. Tarpley, 31 N.M. 667, 250 P. 18, 20; Baxter v. Moore, 56 Ind.App. 472, 105 N.E. 588, 589; and a person for whose benefit a ship is operated on a particular voyage, and who directs and controls it, its officers and crew; Potter v. American Union Line, 185 N.Y.S. 842, 843, 114 Misc.Rep. 101 (see, also, Petition of E. I. Du Pont de Nemours & Co., D.C.N.Y., 18 F.2d 782, 784).

The term is, however, a nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied. Warren v. Lower Salt Creek Drainage Dist. of Logan County, 316 Ill. 345, 147 N.E. 248, 249. The primary meaning of the word as applied to land is one who owns the fee and who has the right to dispose of the property, but the term also includes one having a possessory right to land or the person occupying or cultivating it. Dunbar v. Texas Irr. Co., Tex.Civ.App., 195 S.W. 614, 616; McCarthy v. Hansel, 4 Ohio App. 425; Thompson v. Thompson, 79 Or. 513, 155 P. 1190, 1191; McLevis v. St. Paul Fire & Marine Ins. Co., 165 Minn. 468, 206 N.W. 940, 942; Great Northern Ry. Co. v. Oakley, 135 Wash. 279, 237 P. 990, 992; In re Opinion of the Justices, 234 Mass. 597, 127 N.E. 525, 529. Sometimes it includes a lessee; Tobin v. Gartiez, 44 Nev. 179, 191 P. 1063, 1064; but not always; Smith v. Improvement Dist. No. 14 of Texarkana, 108 Ark. 141, 156 S.W. 455, 456, 44 L.R.A., N.S., 696. A mortgagee may be deemed an "owner"; Lindholm v. Hamilton, 159 Minn. 81, 198 N.W. 289, 290; Blaine County Bank v. Noble, 55 Okl. 361, 155 P. 532, 534; Burrill Nat. Bank v. Edminister, 119 Me. 367, 111 A. 423, 424; Merriman v. City of New York, 227 N.Y. 279, 125 N.E. 500, 502; but under different statutes or circumstances, an opposite result may be reached; Huebner v. Lashley, 239 Mich. 50, 214 N.W. 107, 108. The term may likewise, on occasion, include mortgagors; Hendricks v. Town of Julesburg, 55 Colo. 59, 132 P. 61, 63; Smith v. Craver, 89 Wash. 243, 154 P. 156, 158; Borough of Princeton v. State Board of Taxes and Assessments, 96 N.J. L. 334, 115 A. 342, 344.

In theft and burglary cases, the "owner" is the person in possession, having care, control, and management at the time. Cantrell v. State, 105 Tex.Cr.R. 560, 289 S.W. 406, 407; Allen v. State, 94 Tex.Cr.R. 646, 252 S.W. 505; Carson v. State, 30 Okl.Cr. 438, 236 P. 627, 628.

In embezzlement, the principal to whom an agent looks for authority, under whose control he acts, and from whom he receives compensation and takes direction, is the owner within the meaning of statute. Coney v. State, 100 Tex.Cr.R. 380, 272 S.W. 197, 199.

**Equitable owner.** One who is recognized in equity as the owner of property, because the real and beneficial use and title belong to him, although the bare legal title is vested in another, *e. g.*, a trustee for his benefit. One who has a present title in land which will ripen into legal ownership



## OWNER

upon the performance of conditions subsequent. *Hawkins v. Stiles*, Tex.Civ.App., 158 S.W. 1011, 1021. There may therefore be two "owners" in respect of the same property, one the nominal or legal owner, the other the beneficial or equitable owner. In *re Fulham's Estate*, 96 Vt. 308, 119 A. 433, 437.

**General owner.** He who has the primary or residuary title to it; as distinguished from a *special* owner, who has a special interest in the same thing, amounting to a qualified ownership, such, for example, as a bailee's lien. *Farmers' & Mechanics' Nat. Bank v. Logan*, 74 N.Y. 581. One who has both the right of property and of possession.

**General and beneficial owner.** The person whose interest is primarily one of possession and enjoyment in contemplation of an ultimate absolute ownership;—not the person whose interest is primarily in the enforcement of a collateral pecuniary claim, and does not contemplate the use or enjoyment of the property as such. *Ex parte State*, 206 Ala. 575, 90 So. 896.

**Joint owners.** Two or more persons who jointly own and hold title to property, *e. g.*, joint tenants, and also partners and tenants in common. In *re Huggins' Estate*, 96 N.J.Eq. 275, 125 A. 27, 30. In its most comprehensive sense, the term embraces all cases where the property in question is owned by two or more persons regardless of the special nature of their relationship or how it came into being. *Halferty v. Karr*, 188 Mo.App. 241, 175 S.W. 146, 147.

An estate by entirety is a "joint ownership" of a husband and wife as at common law notwithstanding legislative enactments touching joint tenancy. *Cullum v. Rice*, 236 Mo.App. 1113, 162 S.W.2d 342, 344.

**Legal owner.** One who is recognized and held responsible by the law as the owner of property. In a more particular sense, one in whom the legal title to real estate is vested, but who holds it in trust for the benefit of another, the latter being called the "equitable" owner.

**Part owners.** Joint owners; co-owners; those who have shares of ownership in the same thing, particularly a vessel.

**Real owners.** Those who must be joined in actions of *scire facias sur mortgage* under Pennsylvania statutes are the present owners of the title under which the mortgagor claimed when he executed the mortgages, and do not include persons claiming by titles antagonistic to the mortgagor. *Orient Building & Loan Ass'n v. Gould*, 239 Pa. 335, 86 A. 863.

**Record owner.** This term, particularly used in statutes requiring notice of tax delinquency or sale, means the owner of record, not the owner described in the tax roll; *Okanogan Power & Irrigation Co. v. Quackenbush*, 107 Wash. 651, 182 P. 618, 619, 5 A.L.R. 966; the owner of the title at time of notice; *Hunt v. State*, 110 Tex. 204, 217 S.W. 1034, 1035.

**Reputed owner.** One who has to all appearances the title to, and possession of, property; one who,

from all appearances, or from supposition, is the owner of a thing. *Lowell Hardware Co. v. May*, 59 Colo. 475, 149 P. 831, 832. He who has the general credit or reputation of being the owner or proprietor of goods. *Santa Cruz Rock Pav. Co. v. Lyons*, 5 Cal.Unrep.Cas. 260, 43 P. 601.

This phrase is chiefly used in English bankruptcy practice, where the bankrupt is styled the "reputed owner" of goods lawfully in his possession, though the real owner may be another person. The word "reputed" has a much weaker sense than its derivation would appear to warrant; importing merely a supposition or opinion derived or made up from outward appearances, and often unsupported by fact. The term "reputed owner" is frequently employed in this sense. 2 Steph.Comm. 206.

**Riparian owner.** See Riparian.

**Sole and unconditional owner.** An expression commonly used in fire insurance policies, in which the word "sole" means that no one else has any interest in the property as owner, and "unconditional" means that the quality of the estate is not limited or affected by any condition. *Globe & Rutgers Fire Ins. Co. v. Creekmore*, 69 Okl. 238, 171 P. 874, 876; *Hartford Fire Ins. Co. v. McCain*, 141 Miss. 394, 106 So. 529. To be "unconditional and sole," the interest or ownership of the insured must be completely vested, not contingent or conditional, nor in common or jointly with others, but of such nature that the insured must alone sustain the entire loss if the property is destroyed; and this is so whether the title is legal or equitable. *Socicero v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 90 Fla. 820, 106 So. 879; *Livingstone v. Boston Ins. Co.*, 255 Pa. 1, 99 A. 212, 213.

It is sufficient to satisfy the requirements of "sole and unconditional ownership" that the insured is the sole equitable owner and has the full equitable title. *Turner v. Home Ins. Co.*, 195 Mo.App. 138, 189 S.W. 626, 628; *Alliance Ins. Co. v. Enders*, C.C.A.Idaho, 293 F. 485, 489. It is enough that the insured is equitably entitled to immediate and absolute legal ownership. *Exchange Underwriters' Agency of Royal Exchange Assur. of London, England, v. Bates*, 195 Ala. 161, 69 So. 956, 960. The term contemplates beneficial and practical proprietorship and not necessarily technical title. *Royal Ins. Co. v. Drury*, 150 Md. 211, 132 A. 635, 640, 43 A.L.R. 582. See *Giles v. Citizens' Ins. Co. of Missouri*, 32 Ga.App. 207, 122 S.E. 890, 891.

**Special owner.** One who has a special interest in an article of property, amounting to a qualified ownership of it, such, for example, as a bailee's lien; as distinguished from the *general* owner, who has the primary or residuary title to the same thing. *Frazier v. State*, 13 Tex.App. 441. Some person holding property with the consent of, and as representative of, the actual owner. *Mathieu v. Roberts*, 31 N.M. 469, 247 P. 1066, 1068.

**OWNER'S RISK.** An expression employed by carriers with the object of relieving them from responsibility. See [1906] T. S. 973 (So. Afr.); *Heiskell v. Furness, Withy & Co.*, C.C.A.N.Y., 4 F.2d 977, 978.

**OWNERSHIP.** Collection of rights to use and enjoy property, including right to transmit it to others. *Trustees of Phillips Exeter Academy v. Exeter*, 92 N.H. 473, 33 A.2d 665, 673. The complete dominion, title, or proprietary right in a thing or

claim. The entirety of the powers of use and disposal allowed by law. See Property.

The right of one or more persons to possess and use a thing to the exclusion of others. Civ. Code Cal. § 654. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. Civ. Code La. art. 488. The exclusive right of possession, enjoyment, and disposal; *Thompson v. Kreutzer*, 112 Miss. 165, 72 So. 891; involving as an essential attribute the right to control, handle, and dispose; *Hardinge v. Empire Zinc Co.*, 17 Ariz. 75, 148 P. 306, 310.

Ownership is divided into *perfect* and *imperfect*. Ownership is perfect when it is perpetual, and when the thing is unincumbered with any real right towards any other person than the owner. On the contrary, ownership is imperfect when it is to terminate at a certain time or on a condition, or if the thing which is the object of it, being an immovable, is charged with any real right towards a third person; as a usufruct, use, or servitude. When an immovable is subject to a usufruct, the owner of it is said to possess the naked ownership. Civ. Code La. art. 490; *Maestri v. Board of Assessors*, 110 La. 517, 34 So. 658.

In criminal law. In connection with burglary, "ownership" means any possession which is rightful as against the burglar. *Seaba v. State*, 33 Okl. Cr. 59, 242 P. 779, 780; *State v. Bige*, 195 Iowa, 1342, 193 N.W. 17, 21. It is synonymous with occupancy. *State v. Harrison*, Mo. Sup., 285 S.W. 83, 87; *Carneal v. State*, 86 Tex. Cr. R. 274, 216 S.W. 626. When considered as an element of larceny, "ownership" means the same as "possession." *People v. Edwards*, 72 Cal. App. 102, 236 P. 944, 950.

Exclusive ownership. See Exclusive Ownership.

**OXFIELD.** A restitution anciently made by a hundred or county for any wrong done by one that was within the same. *Lamb. Arch.* 125.

**OXGANG.** In old English law. As much land as an ox could till. Co. Litt. 5a. A measure of land of uncertain quantity. In the north of

England a division of a carucate. According to some, fifteen acres. Co. Litt. 69a; *Crompton*, Jurisd. 220. According to *Balfour*, the Scotch *oxengang*, or *oxgate*, contained twelve acres; but this does not correspond with ancient charters. *Bell*, Dict. *Ploughgate*. *Skene and Spelman* say thirteen acres. *Cowell*; 1 Poll. & Maitl. 347.

See *Librata Terrae*.

**OYER.** In Old Practice. Hearing; the hearing a deed read, which a party sued on a bond, etc., might pray or demand, and it was then read to him by the other party; the entry on the record being, "*et ei legitur in hæc verba*," (and it is read to him in these words). *Steph.* Pl. 67, 68; 3 Bl. Comm. 299; 3 Salk. 119.

In Modern practice. A copy of a bond or specially sued upon, given to the opposite party, in lieu of the old practice of reading it.

**OYER AND TERMINER.** A half French phrase applied in England to the assizes, which are so called from the commission of *oyer and terminer* directed to the judges, empowering them to "inquire, hear, and determine" all treasons, felonies, and misdemeanors. This commission is now issued regularly, but was formerly used only on particular occasions, as upon sudden outrage or insurrection in any place. In the United States, the higher criminal courts are called "courts of oyer and terminer." *Burrill*.

**OYER DE RECORD.** A petition made in court that the judges, for better proof's sake, will hear or look upon any record. *Cowell*.

**OYEZ.** Hear ye. A word used in courts by the public crier to command attention when a proclamation is about to be made. Usually pronounced "O yes." 4 Bla. Comm. 340, n.