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OASDI. Old Age, Survivors' and Disability Insurance. See Social Security Administration.

Oath. Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully, e.g. President's oath on entering office, Art. II, Sec. 1, U.S.Const. *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. An outward pledge by the person taking it that his attestation or promise is made under an immediate sense of responsibility to God. A solemn appeal to the Supreme Being in attestation of the truth of some statement. 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. 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.

See also Affirmation; Attestation; False swearing; Jurat; Loyalty oath; Pauper's oath; Verification.

Affirmation in lieu of oath. Fed.R.Civil P. 43 provides that whenever an oath is required under the rules, a solemn affirmation may be accepted in lieu thereof. See also Art. II, Sec. 1, and Art. VI, U.S.Const.

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 oath.

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, to tender the same proposal back again, otherwise the whole was taken as confessed by him.

Extrajudicial oath. One not taken in any judicial proceeding, or without any authority or requirement of law, though taken formally before a proper person.

False oath. See False swearing; 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. See also *Witnesses, below*.

Loyalty oath. See Oath of allegiance.

Oath of office. Various declarations of promises, made by persons who are about to enter upon the duties of a public office, concerning their performance of that office. An oath of office is required, by federal and state constitutions, and by various statutes, to be made by major and minor officials. See e.g. 28 U.S.C.A. § 544 (U.S. attorneys). See also Oath of allegiance; and *Official oath, below*.

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. See Art. VI, U.S. Const. See also *Oath of office above*.

Poor debtor's oath. See Pauper's oath.

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. 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.

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

Solemn oath. A corporal oath.

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. 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.

Witnesses. Before testifying, every witness shall be required to declare that he will testify, truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so. Fed.Evid.R. 603. *See also Affirmation in lieu of oath, above.*

Oath against bribery. In England, one which could have been administered to a voter at an election for members of parliament. Abolished in 1854.

Oath ex officio /ówθ èks əfísh(iy)ow/. In old English law, 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.

Oath in litem /ówθ in láytəm/. 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.

Oath of allegiance or loyalty. 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), and to support its Constitution, administered generally to certain public officers or officials, to members of the armed services, to attorneys on being admitted to the bar, to aliens applying for naturalization (8 U.S.C.A. § 1448), etc. Such oaths which are not overbroad have been upheld. *Elfbrandt v. Russell*, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321; *Cole v. Richardson*, 405 U.S. 676, 92 S.Ct. 1332, 31 L.Ed.2d 593. As to oath of allegiance to the Constitution as required of President, members of Congress, and executive and judicial officers, see Art. II, Sec. 1, and Art. VI, U.S. Const. It is commonly provided that an affirmation may be given in lieu of an oath.

Oath of calumny /ówθ əv káeləmniy/. 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.

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.).

Obæratuſ /òbæréytəs/. Lat. In Roman law, a debtor who was obliged to serve his creditor until his debt was discharged.

Ob contingentiam delicti /òb kòntənénsh(iy)əm dəlík-tay/. On account of contiguity to the offense, i.e., being contaminated by conjunction with something illegal.

Ob contingentiam /òb kòntinjénsh(iy)əm/. On account of connection; by reason of similarity.

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.

Obedientia /əbiydiyénsh(iy)ə/. An office, or the administration of it; a kind of rent; submission; obedience.

Obedientia est legis essentia /əbiydiyénsh(iy)ə èst lǐjyəs əsénsh(iy)ə/. Obedience is the essence of the law.

Obediential obligation /əbiydiyénshəl òbləgéyshən/. *See* Obligation.

Obedientiarius; obedientiary /əbiydiyénshiyériyəs; əbiydiyénshəriy/. A monastic officer.

Ob favorem mercatorum /òb fəvórəm mǎrkətórəm/. In favor of merchants.

Ob infamiam non solet juxta legem terræ aliquis per legem apparentem se purgare, nisi prius convictus fuerit vel confessus in curia /òb inféym(iy)əm nòn sówłət jǎkstə líjyəm téhriy əlǎkwəs pǎr líjyəm əpərəntəm siy pǎrgériy, náysay práyəs kǎnvíktəs vèl kǎnfésəs in kyúr(iy)ə/. 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.

Obit /ówbət/. A funeral solemnity, or office for the dead. The anniversary of a person's death; the anniversary office.

Obiter /ò(w)bətər/. Lat. By the way; in passing; incidentally; collaterally.

Obiter dictum /ò(w)bətər díktəm/. Words of an opinion entirely unnecessary for the decision of the case. *Noel v. Olds*, 78 U.S.App.D.C. 155, 138 F.2d 581, 586. 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. Such are not binding as precedent. *See* Dicta; Dictum.

Obit sine prole /ówbət sáyniy prówliy/. Lat. [He] died without issue.

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. *See also* Objection.

Object, n. End aimed at, the thing sought to be accomplished; the aim or purpose, the thing sought to be attained.

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. 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. It may be used as having the sense of effect.

See also Intent; Motive.

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.

The act of a party who objects to some matter or proceeding in the course of a trial, or an argument or reason urged by him in support of his contention that the matter or proceeding objected to is improper or illegal. Used to call the court's attention to improper evidence or procedure. Such objections in open court are important so that such will appear on the record for purposes of appeal. See Fed.Evid.R. 103(a)(1); Fed.R. Civil P. 46, and Fed.R.Crim.P. 51. See also Contemporaneous objection rule; Object (*v*).

Objection to jury. See Challenge.

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.

Object of an action. Legal relief to prevent or redress the wrong. 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.

Object of a statute. Aim, intent or purpose of its enactment. End or design which it is meant to accomplish, while the "subject" is the matter to which it relates and with which it deals. Matter or thing forming groundwork of statute.

Objects of a power. Those among whom donee is given power to appoint.

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

Oblata /òbléytə/. 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.

Oblata terræ /òbléytə téhriy/. Half an acre, or, as some say, half a perch, of land.

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.

Oblati /òbléytay/. In old European law, voluntary slaves of churches or monasteries.

Oblati actio /òbléytay éksh(iy)ow/. 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.

Oblatio /òbléysh(iy)ow/. 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.

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. They may be commuted by agreement.

Oblationes dicuntur quæcunque a piis fidelibusque christianis offeruntur deo et ecclesiæ, sive res solidæ sive mobiles /òbléyshiyówniyz dækántər kwiykákwiy èy páyəs fədiyləbáskwiy kristiyéynəs ófərántər díyow èt əkliýziyiy, sáyviy ríyz sólədiy sáyviy mówbəliyz/. 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.

Obligatio /òbləgéysh(iy)ow/. Lat. In Roman law, a legal bond which obliges the performance of something in accordance with the law of the land. 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."

Obligatio civilis /òbləgéysh(iy)ow sívələs/. 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 /òbləgéysh(iy)ow èks kəntrákt(iy)uw/. 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.

Obligatio ex delicto, or obligatio ex maleficio /òbləgéysh(iy)ow èks dəlíktow/'mələfísh(iy)ow/. 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.

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. That which a person is bound to do or forbear; any duty imposed by law, promise, contract, relations of society, courtesy, kindness, etc. *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. 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 883, 888. Liabilities created by contract or law (*i.e.* judgments). *Rose v. W. B. Worthen Co.*, 186 Ark. 205, 53 S.W.2d 15, 16. 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. 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.

See also Contract; Duty; Liability.

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. 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. *See* Contract; Impairing the obligation of contracts.

Current obligation. *See* Current obligations.

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. 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. 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. *See also* Love and affection.

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. As, for instance, when the action is barred by the act of limitation, a natural obligation still subsists, although the civil obligation is extinguished. *Ogden v. Saunders*, 25 U.S. 213, 337, (12 Wheat.) 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.

Obediential obligation. One incumbent on parties in consequence of the situation or relationship in which they are placed.

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. 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. *Edwards v. Kearzey*, 96 U.S. 595, 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. 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. 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. 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.

Primary or secondary 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. 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 obligation, rather than to the character and limits of the obligation itself.

A primary 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 nonperformance 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. 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. See *Simple or conditional obligation*, below.

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. 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*, 153 U.S. 465, 14 S.Ct. 898, 38 L.Ed. 785. See *Solidary*.

Obligatio naturalis /òbləgəyʃh(iy)ow nət̩yərəyləs/. 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.

Obligaciones ex delicto or ex maleficio /òbləgəyʃhiyów niyz èks dəlíktow/ˈmələfíʃh(iy)ow/. 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.

Obligaciones ex variis causarum figuris /òbləgəyʃhiyówniyz èks vériyəs kozérəm fəgúrəs/. Although Justinian confined the divisions of obligations to four classes, namely *obligaciones 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, consequently, established a fifth class, to receive the odds and ends which belonged nowhere else, and gave to this class the above designation.

Obligaciones quasi ex contractu /òbləgəyʃhiyówniyz kwéyʒay èks kəntɹákt(y)uw/. 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*. Obligations in the nature of a contract called quasi contract or implied in law contract. See Contract.

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 (*additio hereditatis* and *agnitio bonorum possessionis*); and in many other cases.

Obligaciones quasi ex delicto, or obligaciones quasi ex maleficio /òblàgèyshiyówniyz kwéyzay èks dalik-tow/°mæløfish(iy)ow/. 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.

Obligation of a contract. That which the law in force when contract is made obliges parties to do or not to do, and the remedy and legal means to carry it into effect. The "obligation of a contract" is the duty of performance. The term includes everything within the obligatory scope of the contract, and it includes the means of enforcement.

Obligation solidaire /òbligasyówn sólìdér/. 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 and parties to the obligation.

Obligatio Prætoriae /òblàgèysh(iy)ow prætóriyiy/. 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*.

Obligatory pact. See Pact.

Obligatory rights. See Right.

Obligatory writing. See Writing obligatory.

Obligee /òblàjy/. A promisee. 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. The party to whom someone else is obligated under a contract. Thus, if C loans money to D, C is the obligee and D is the obligor under the loan. The party to whom a bond is given.

Obligor /òblàgər/òblàgór/. A promisor. The person who has engaged to perform some obligation. Person obligated under a contract or bond.

Obliquus /òbláykwəs/. 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. To destroy; wipe or rub out; erase. Erasure or blotting out of written words. A method of revoking a will or a clause therein if accompanied by the required intent to revoke. See also Alteration; Deface; Spoliation.

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. See Amnesty; Pardon.

Oblivious. Evincing oblivion; forgetful; forgetting. Where thing is extinguished from mind.

Obloquy /òbləkwiy/. Censure and reproach. Blame, reprehension, being under censure, a cause or object of reproach, a disgrace.

Obnoxious. "Obnoxious" and "offensive" in ordinary use are synonymous, and mean highly objectionable, disagreeable, displeasing, and distasteful.

Obreptio /òbrèpsh(iy)ow/. Lat. The obtaining a thing by fraud or surprise.

Obreption /òbrèpshən/. Obtaining anything by fraud or surprise. Acquisition of escheats, etc., from the sovereign, by making false representations. See also Subreption.

Obrogare /òbrəgəriy/. 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.

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. See also Abrogation.

Obscene. Objectionable or offensive to accepted standards of decency. Basic guidelines for trier of fact in determining whether a work which depicts or describes sexual conduct is obscene is whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law, and whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. *Miller v. California*, 413 U.S. 15, 24, 93 S.Ct. 2607, 2615, 37 L.Ed.2d 419; *Pope v. Illinois*, 481 U.S. 497, 107 S.Ct. 1918, 95 L.Ed.2d 439. A state may choose to define obscenity offense in terms of "contemporary community standards" without further specification or may choose to define standards in more precise geographic terms. *Jenkins v. Georgia*, 418 U.S. 153, 94 S.Ct. 2750, 41 L.Ed.2d 642. See also Censor; Censorship; Contemporary community standards; Dominant theme; Lewd; Obscenity; Pornographic; Prurient interest.

Obscene libel. That type of defamation which holds up a person to ridicule, scorn or contempt to a considerable and respectable class in the community by printed words or configurations of a lewd and lascivious nature.

Obscenity. The character or quality of being obscene; conduct tending to corrupt the public morals by its indecency or lewdness.

Material is obscene if, considered as a whole, its predominant appeal is to prurient interest, that is, a shameful or morbid interest, in nudity, sex or excretion, and if in addition it goes substantially beyond customary limits of candor in describing or representing such matters. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience. Undeveloped photographs, molds, printing plates, and the like, shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it. Model Penal Code, § 251.4.

Federal laws prohibit the mailing, transportation for sale or distribution, importation, and broadcasting of obscene matters. 18 U.S.C.A. § 1461 et seq.

See also Censor; Censorship; Lewd; Obscene; Pander (*Pandering of obscenity*); Profanity.

Obscure. When applied to words, statements or meanings, it signifies not perspicuous, not clearly expressed, vague, hard to understand.

Observe. To perform that which has been prescribed by some law or usage. To adhere to or abide by.

Obses /'obsiyz/. Lat. In time of war, a hostage. *Obsides*, hostages.

Obsignare /'obsignéiy/. Lat. In the civil law, to seal up; as money that had been tendered and refused.

Obsignatory /'obsignət(ə)riy/. Ratifying and confirming.

Obsolescence. Condition or process of falling into disuse. The diminution in value of property caused by changes in technology, public taste, and new inventions rendering the property less desirable on the market. A decline in market value of an asset caused by improved alternatives becoming available that will be more cost-effective; such decline in market value is unrelated to physical changes in the asset itself. The process whereby property, because of causes other than physical deterioration, loses its economic usefulness to taxpayer. *Anaconda Co. v. Property Tax Dept.*, App., 94 N.M. 202, 608 P.2d 514, 619. See also Economic obsolescence; Functional obsolescence.

Obsolescent. Becoming obsolete; going out of use; not entirely disused, but gradually becoming so. See Obsolescence.

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. See also Obsolescence.

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.

Obstante /'əbstæntiy/. Withstanding; hindering. See Non obstante.

Obsta principiis /'əbstə prinsipiys/. Lat. Withstand beginnings; resist the first approaches or encroachments. *Boyd v. U. S.*, 116 U.S. 616, 635, 6 S.Ct. 524, 535, 29 L.Ed. 746.

Obstinate desertion. "Obstinate" as used of desertion, which is a ground for divorce, means determined, fixed, persistent. Persisted in against the willingness of the injured party to have it concluded.

Obstriction. Obligation; bond.

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. To block up; to interpose obstacles; to render impassable; to fill with barriers or impediments, as to obstruct a road or way. 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. 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.

Obstructing justice. Impeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein. 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, assaulting process server, influencing jurors, obstructing court orders or criminal investigations. 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. *Toledo Newspaper Co. v. U. S.*, 247 U.S. 402, 38 S.Ct. 560, 564, 62 L.Ed. 1186. See 18 U.S.C.A. § 1501 et seq.; Model Penal Code § 242.1 et seq. See also Misprision of felony; Obstructing process; Withholding of evidence.

Obstructing mails. Federal offense consisting of interfering with the mails. 18 U.S.C.A. § 1701.

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.

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 legal process or official duty is knowingly and willfully obstructing, resisting or opposing any person authorized by law to serve process or order of a court, or in the discharge of any official duty. *See e.g.* 18 U.S.C.A. § 1501 et seq. *See also* Obstructing justice.

Obstruction. A hindrance, obstacle, or barrier. Delay, impeding or hindering. *See also* Obstruct.

Obstruction to navigation. Any unnecessary interference with the free movements of vessels.

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. *See also* False pretenses. *Obtaining money or property by false pretenses. See* False pretenses.

Obtemperandum est consuetudini rationabili tanquam legi /əbtēmpərāndəm ɛst kōnswət(y)úwdənay rāsh(iy)ənáybəlaj tánkɹwəm líjaj/. A reasonable custom is to be obeyed as a law.

Obtest /əbtést/. To protest.

Obtulit se /əbtələt síy/. Offered himself. In old English 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.

Ob turpem causam /əb tɹpəm kózam/. For an immoral consideration.

Obventio /əbvénsh(iy)ow/. 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 /əbvénshən/. *See* Oblation; Obventio.

Obvious. Easily discovered, seen, or understood; readily perceived by the eye or the intellect; plain; patent; apparent; evident; clear; manifest.

Whether a patent is "obvious" must be determined by considering the scope and content of the prior art, the differences between the prior art and the claims at issue and the level of ordinary skill in the pertinent art. *Milgo Electronic Corp. v. United Business Communications, Inc.*, C.A.Kan., 623 F.2d 645, 654.

Obvious danger. Apparent in exercise of ordinary observation and disclosed by use of eyes and other senses. Plain and apparent to a reasonably observant person.

Obvious risk. One so plain that it would be instantly recognized by a person of ordinary intelligence. Within an accident policy, one which would be plain and apparent to a reasonably prudent and cautious person in the use of his faculties. It does not mean an unnecessary risk. *See* Assumption of risk.

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."

Ocasion /òkasyówn/. In Spanish law, event.

Occasio /əkéyzh(iy)ow/. In feudal law, a tribute which the lord imposed on his vassals or tenants for his necessity. Hindrance; trouble; vexation by suit.

Occasion, n. That which provides an opportunity for the causal agency to act. Meaning not only particular time but carrying idea of opportunity, necessity, or need, or even cause in a limited sense. Condition of affairs; juncture entailing need; exigency; or juncture affording ground or reason for something.

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.

Occasionari /əkéyzh(iy)ənəray/. To be charged or loaded with payments or occasional penalties.

Occupancy. Taking possession of property and use of the same; said *e.g.* of a tenant's use of leased premises. Period during which person owns, rents, or otherwise occupies real property or premises. 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. 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 to becoming the owner of it. *See also* Occupant; Occupation; Possession.

Term also refers to the constitutional concept of "occupancy of the field" when the federal government has so claimed for its jurisdiction a particular sphere that state action is no longer allowed; *e.g.* sedition and espionage laws. *See* Preemption.

In international law, the taking possession of a newly discovered or conquered country with the intention of holding and ruling it.

See also Adverse possession; Certificate of occupancy; Occupant; Occupation; Occupy; Possession.

Occupant. Person in possession. Person having possessory rights, who can control what goes on on premises. One who has actual use, possession or control of a thing. *Redevelopment Authority of Allegheny County v. Stephanik*, 25 Pa.Cmwlt. 180, 360 A.2d 300, 302. One who takes the first possession of a thing of which there is no owner. One who occupies and takes possession. Person who acquires title by occupancy. *See also* Occupancy; Occupation; Possession.

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."

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*.

Occupantis fiunt derelicta /òkyəpántəs fáyənt dèhrəlìktə/. Things abandoned become the property of the (first) occupant.

Occupare /òkyəpəriy/. Lat. In the civil law, to seize or take possession of; to enter upon a vacant possession; to take possession before another.

Occupatible /òkyəpətàyl/. That which has been left by the right owner, and is now possessed by another.

Occupation. Possession; control; tenure; use. The act or process by which real property is possessed and enjoyed. Where a person exercises physical control over land.

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. Particular business, profession, trade, or calling which engages individual's time and efforts; employment in which one regularly engages or vocation of his life.

Actual occupation. An open, visible occupancy as distinguished from the constructive one which follows the legal title. *See also* Adverse possession.

Occupational. Of or pertaining to an occupation, trade or work.

Occupational disease. A disease (as black lung disease incurred by miners) resulting from exposure during employment to conditions or substances detrimental to health. Impairment of health not caused by accident but by exposure to conditions incidental to and arising out of or in the course of one's employment. Such disease may be found if there is substantial evidence that either employment conditions specifically affected the employee in a matter resulting in contraction of disease, or employment conditions generally tend, to a reasonable medical probability, to cause a particular disease or condition in a given class of workers. *Dealers Transport Co. v. Thompson, Ky.App., 593 S.W.2d 84, 88.*

A disease is compensable under workers' compensation statute as being an "occupational" disease where: (1) the disease is contracted in the course of employment; (2) the disease is peculiar to the claimant's employment by its causes and the characteristics of its manifestation or the conditions of employment result in a hazard which distinguishes the employment in character from employment generally; and (3) the employment creates a risk of contracting the disease in a greater degree and in a different manner than in the public generally. *State ex rel. Ohio Bell Tel. Co. v. Krise, 42 Ohio St.2d 247, 327 N.E.2d 756, 758, 71 O.O.2d 226.*

Compensation for such is provided by state workers' compensation acts and such federal acts as the Black Lung Benefits Act.

Occupational hazard. A risk of accident or disease which is peculiar to a particular calling or occupation. *See also* Injurious exposure.

Occupational Safety and Health Act. Federal law (1970) administered by the Occupational Safety and Health Administration enacted to reduce the incidence of personal injuries, illnesses, and deaths among working men and women in the United States which result from their employment. 29 U.S.C.A. § 651 et seq.

Occupational Safety and Health Administration. Federal agency, established pursuant to the Occupational Safety and Health Act of 1970, to develop and promulgate occupational safety and health standards; develop and issue regulations; conduct investigations and inspections to determine the status of compliance with safety and health standards and regulations; and issue citations and propose penalties for noncompliance with safety and health standards and regulations.

Occupational Safety and Health Review Commission. An independent federal adjudicatory agency established by the Occupational Safety and Health Act to adjudicate enforcement actions initiated under the Act when they are contested by employers, employees, or representatives of employees. 29 U.S.C.A. § 661.

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. An occupation tax is form of excise tax imposed upon persons for privilege of carrying on business, trade or occupation.

Occupative. Pertaining to or involving occupation or the right of occupation.

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

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

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; to take or hold possession. Actual use, possession, and cultivation. *See* Occupancy; Occupant; Occupation; Possession.

Occupying claimant. An occupant claiming right under statute to recover for improvements he has placed on the land subsequently found not to be his. *See* Occupying Claimant Acts.

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 in-

creased the value of the land, and generally giving him a lien therefor.

Occur. To happen; to meet one's eye; to be found or met with; to present itself; to appear; hence, to befall in due course; to take place; to arise.

Occurrence. A coming or happening. Any incident or event, especially one that happens without being designed or expected (from *e.g.* standpoint of insured). *Farmers & Merchants Nat. Bank v. Arrington, Tex.Civ. App., 98 S.W.2d 378, 382.* Within meaning of insurance provision requiring notice of a reportable occurrence to insurer as soon as practicable, "occurrence" means incident which was sufficiently serious to lead a person of ordinary intelligence and prudence to believe that it might give rise to a claim for damages covered by policy. *Starks v. North East Ins. Co., D.C.App., 408 A.2d 980, 983. See also Accident; Act of God; Event.*

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, 150 U.S. 249, 14 S.Ct. 109, 37 L.Ed. 1071.* Body of salt water that covers over 70% of earth's surface.

Ochlocracy /oklókrəsiy/. 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.

Octo tales /óktow téyl(iy)z/. 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.

Octroi /óktroy/ókrwá/. 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.

Oculist /ókyelást/. A duly licensed physician specializing in the diseases of the eye. *See Ophthalmologist.*

Odal /ówdəl/. Complete property, as opposed to feudal tenure. Blackstone notes the relation of this word to "allodial".

Odal right /ówdəl ráyt/. An allodial right.

Odd lot. An amount of stock less than the established 100-share unit or 10-share unit of trading: from 1 to 99 shares for the great majority of issues, 1 to 9 for so-called inactive stocks. *Compare Round lot.*

Odd lot doctrine. Doctrine which permits finding of total disability where claimant is not altogether incapacitated for any kind of work but is nevertheless so handicapped that he will not be able to obtain regular employment in any well-known branch of the competitive labor market absent superhuman efforts, sympathetic friends or employers, a business boom, or temporary good luck. *Vester v. Diamond Lumber Co., 21 Or.App. 587, 535 P.2d*

1373, 1376. Under the "odd-lot doctrine", worker's compensation claimant will be considered to be totally disabled if it appears probable that claimant cannot sell his services in a competitive labor market. *Hill v. U. S. Plywood-Champion Co., 12 Or.App. 1, 503 P.2d 728, 730.*

Odd lot order. Order for less than 100 shares of stock.

Oderunt peccare boni, virtutis amore; oderunt peccare mali, formidine pœnæ /owdirənt pəkəriy bównay vərt(y)úwtəs amóriy; owdirənt pəkəriy məlay formidəniy píyniy/. Good men hate to sin through love of virtue; bad men, through fear of punishment.

Odio et atia /ówd(i)yow èt éysh(iy)ə/. *See De odio et atia.*

Odiosa et inhonesta non sunt in lege præsumenda /owdiyówsə èt in(h)ənéstə nón sənt in líyjiy prèz(y)əméndə/. Odious and dishonest acts are not presumed in law.

Odiosa non præsumentur /owdiyówsə nòn prèz(y)əmántər/. Odious things are not presumed.

Odious /ówd(i)yəs/. Synonymous with infamous; hateful; repugnant.

Odium /owdiyəm/. Condition or fact of being subjected to 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.

Economicus /iykənoməkəs/. L. Lat. In old English law, the executor of a last will and testament.

Economus /iykónoməs/. Lat. In the civil law, a manager or administrator.

Of. A term denoting that from which anything proceeds; indicating origin, source, descent, and the like; as, he is of noble blood. Associated with or connected with, usually in some causal relation, efficient, material, formal, or final. The word has been held equivalent to after; at, or belonging to; in possession of; manufactured by; residing at; from.

Of age. *See Legal age; Majority.*

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 an action, or its presentation on appeal, but who is not the principal attorney of record for the party. United States attorney is "of counsel" to United States in all criminal prosecutions brought within his district, for purposes of mandatory judicial disqualification statute requiring judge to disqualify himself in any case in which he has been of counsel. *Barry v. U.S., C.A.Ill., 528 F.2d 1094, 1098.*

Term is also used to refer to retired or semi-retired member of a law firm, or outside attorney that only does occasional or special legal work for the firm.

Of course. As a matter of right. *Jones v. McGonigle, 327 Mo. 457, 37 S.W.2d 892.* Any action or step taken in the course of judicial proceedings which will be allowed by the court upon mere application, without any request

or contest, or which may be effectually taken without having to apply to the court for leave to take such action; *e.g.* Fed.R. Civil P. 15(a) permits a party to amend his pleadings once as a matter "of course" at any time before a responsive pleading is served.

Off-board. This term may refer to transactions over-the-counter in unlisted securities, or to a transaction involving listed shares which was not executed on a national securities exchange.

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

Offense. A felony or misdemeanor; a breach of the criminal laws; violation of law for which penalty is prescribed. The word "offense," while sometimes used in various senses, generally implies a felony 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. An act clearly prohibited by the lawful authority of the state, providing notice through published laws. *State v. Sykes, Fla.*, 434 So.2d 325, 328.

Criminal offenses may be classified into general categories as felonies and misdemeanors and as offenses against the person (*e.g.* murder, manslaughter), against habitation and occupancy (*e.g.* burglary, arson), against property (*e.g.* larceny), against morality and decency (*e.g.* adultery), against public peace, against government (*e.g.* treason). *See e.g.* 18 U.S.C.A. § 1. Also, for sentencing purposes, offenses may be classified by letter grades, as *e.g.* class A, B, C, etc. felonies or misdemeanors. *See e.g.* 18 U.S.C.A. § 3559.

See also Anticipatory offense; Civil offense; Continuing offense; Crime; Degrees of crime; Delict; Felony; Graded offense; Included offense; Index offenses; Joint offense; Lesser included offense; Misdemeanor; Multiple offenses; Petty offense; Same offense; Tort.

Continuing offense. A transaction or a series of acts set on foot by a single impulse, and operated by an uninterrupted force, no matter how long a time it may occupy. Conspiracy is an example of a continuing offense. *See e.g.* 18 U.S.C.A. § 3237; 21 U.S.C.A. § 848.

Criminal offense. Includes misdemeanors as well as felonies. It is an offense which subjects the offender to imprisonment, and/or fine. *See* Crime; Degrees of crime; Felony; Misdemeanor.

Joinder of offenses. *See* Joinder.

Same offense. As used in a provision against double jeopardy, the term means the same crime, not the same transaction, acts, circumstances, or situation.

Second offense. One committed after conviction for a first offense. 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.

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. *See* Defamation; Libel; Slander.

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 (*q.v.*).

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. 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.

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. *See* Offer of proof.

Offer, n. A proposal to do a thing or pay an amount, usually accompanied by an expected acceptance, counter-offer, return promise or act. A manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. *Restatement, Second, Contracts*, § 24. A promise; a commitment to do or refrain from doing some specified thing in the future. An act on the part of one person whereby that person gives to another the legal power of creating the obligation called contract. *McCarty v. Verson Allsteel Press Co.*, 44 Ill.Dec. 570, 576, 89 Ill.App.3d 498, 411 N.E.2d 936, 942. The offer creates a power of acceptance permitting the offeree by accepting the offer to transform the offeror's promise into a contractual obligation. *See also* Offer and acceptance.

An attempt; endeavor.

With respect to securities, the price at which a person is ready to sell. Opposed to bid, the price at which one is ready to buy. *See also* Offering.

See also Bid; Counteroffer; Firm offer; Issue; Offer and acceptance; Offer of proof; Promise; Proposal; Tender; Utter.

Irrevocable offer. One which may not be withdrawn after it has been communicated without the consent of the offeree.

Public exchange offer. A technique by which an aggressor corporation seeks to obtain control over a target

corporation by offering to exchange a package of its securities for the target corporation's voting shares. Usually, a specified number of target corporation shares must be presented for exchange before the exchange will take place.

Offer and acceptance. In a bilateral contract, the two elements which constitute mutual assent, a requirement of the contract. In a unilateral contract, the acceptance is generally the act or performance of the offeree, though, in most jurisdictions, a promise to perform is inferred if the offeree commences the undertaking and the offeror attempts to revoke before the offeree has had an opportunity to complete the act. *See also* Offer; Parol evidence rule.

Offeree. In contracts, the person to whom an offer is made by the offeror.

Offering. An issue of securities offered for sale to the public or private group. Securities offerings are generally of two types: primary (proceeds going to the company for some lawful purpose) and secondary (where the funds go to a person other than the company; *i.e.*, selling stockholders). Primary offerings are also termed "new issues" as they involve the issuance of securities not previously offered and sold. *See also* Issue; Letter of comment; Prospectus; Red herring; Registration statement; Secondary distribution; Secondary offering; Tombstone ad; Underwrite.

Interstate offerings. A public securities offering made or which may be made to residents of more than one state. Such offerings are regulated by federal securities laws and regulations.

Intrastate offerings. A restricted public securities offering which is made by an issuer organized under the laws of a state, doing its principal business in such state, and offered solely to bona fide residents of such state with substantially all of the proceeds of the offering remaining in the state.

Private offerings. An offering made to a limited number of persons, who are so well-informed concerning the affairs of a company, through the possession of information which would be found in a registration statement, that they do not require the protection afforded by the disclosure provisions of the Securities Act of 1933. Sale of unregistered stock which is exempt from securities laws. *U. S. v. Custer Channel Wing Corp.*, D.C.Md., 247 F.Supp. 481, 487. *See also* Private offering.

Public offerings. The offering of securities at random and in general to anyone who will buy, and whether solicited or unsolicited. Sale of stock to the public in contrast to a "private" offering or placement. Public offerings are generally regulated by federal and state laws and regulations. *See also* Underwrite.

Undigested offering. Newly issued shares and bonds that remain undistributed because there is insufficient public demand at the offer price. *See also* Underwrite.

Offering circular. An offering circular is required to be filed with the S.E.C. and distributed with any securities offerings. The content of such is similar to the prospec-

tus (*q.v.*) and is governed by S.E.C. rules and regulations. *See also* Prospectus.

Offering price. Per share price at which new or secondary offering of stock is sold.

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* Oblation; Obventio.

Offering statement. *See* Offering circular.

Offer of compromise. An offer to settle a dispute or difference amicably for the purpose of avoiding a lawsuit and without admitting liability. A tender or offer to settle or compromise a claim. The fact that such offer has been made is generally not admissible at the trial of the action as an admission of liability. *See* Fed.Evid. Rule 408.

Offer of judgment. *See* Judgment.

Offer of proof. At a trial or hearing, when an objection to a question has been sustained, the party aggrieved by the ruling may indicate for the record (out of the presence of the jury) the answer which would have been given if the question had not been excluded. The appellate court is then in a position to determine from the record the correctness of the ruling and the prejudice in its exclusion, if any. *See* Fed.Evid.Rule 103(a)(2).

Offeror. In contracts, the party who makes the offer and looks for acceptance from the offeree.

Offertorium /'ɔfərtɔri(ɪ)yəm/. 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. A right, and correspondent duty, to exercise a public trust. A public charge or employment. An employment on behalf of the government in any station or public trust, not merely transient, occasional, or incidental. 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. Here the individual acts towards legatees 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.

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. 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 appertain 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. 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.

A place for the regular transaction of business or performance of a particular service.

As to various *particular offices*, see Home office; Land offices; Public office, etc.

County office. Public office filled by the electorate of the entire county.

Judicial office. See Judicial.

Lucrative office. See Lucrative.

Ministerial office. One which gives the officer little or no discretion as to the matter to be done, and requires him to obey mandates of a superior. It is a general rule that a judicial office cannot be exercised by a deputy, while a ministerial office may. See Ministerial.

Office audit. An audit by the Internal Revenue Service of a taxpayer's return which is conducted in the agent's office. It may be distinguished from a correspondence audit or a field audit. See also Audit.

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.

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.

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

Office of honor. See Honor.

Office of judge. In old English law, a criminal suit in an ecclesiastical court, not being directed to the reparation of a private injury, was regarded as a proceeding emanating from the *office of the judge*, and could be instituted by the mere motion of the judge. But, in practice, these suits were instituted by private individuals, with the permission of the judge or his surrogate; and the private prosecutor in any such case was, accordingly, said to "promote the office of the judge."

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. Synonymous with "principal place of business," being the place where the principal affairs of a corporation are transacted.

The office (in or out of the state of incorporation) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located. Rev. Model Bus. Corp. Act, § 1.40.

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. 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.

State office. Public offices to be filled by the electorate of the entire state.

Office-block ballot. A form of ballot in which the names of candidates, with or without party designations, are grouped under the offices for which they are contesting; also called "Massachusetts" ballot.

Office of Personnel Management. Created in 1978, the Office of Personnel Management is responsible for the nationwide recruiting and examining of applicants for positions in the Federal civil service. The OPM also administers the Qualifications Review Board examining process for career Senior Executive Service appointments and examines for administrative law judges. Personnel investigations are used in support of the selection and appointment processes.

Office of Thrift Supervision. An office in the Treasury Department charged with providing for the examination, safe and sound operation, and regulation of savings associations.

Officer. Person holding office of trust, command or authority in corporation, government, armed services, or other institution or organization.

In corporations, a person charged with important functions of management such as president, vice president, treasurer, etc.

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.

For definitions of the various classes and kinds of officers, see the titles Commissioned office; Constitutional; Corporate; Executive; Fiscal; Judicial; Legislative; Ministerial; Municipal; Naval; Non-commissioned; Peace; Public; State; 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. 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 armed services.

Military officer. Commissioned officer in armed services. Officer who has command in armed forces.

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, 118 U.S. 425, 6 S.Ct. 1121, 30 L.Ed. 178. One who actually assumes and exercises duties of public office under color of known and authorized appointment or election, but who has failed to comply with all requirements of law prescribed as precedent to performance of duties of the office. State v. Whelan, 103 Idaho 651, 651 P.2d 916, 920.

Officer de jure. One who is in all respects legally appointed and qualified to exercise the office. One who is clothed with the full legal right and title to the office; he is one who has been legally elected or appointed to an office, and who has qualified himself to exercise the duties thereof according to the mode prescribed by law. Trost v. Tynatishon, 12 Ill.App.3d 406, 299 N.E.2d 14, 17.

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 the 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. Mouat, 124 U.S. 303, 8 S.Ct. 505, 31 L.Ed. 463. See also United States officer.

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. One of necessary characteristics of "public officer" is that he performs public function for public benefit and in so doing he be vested with exercise of some sovereign power of state.

Warrant officer. Officer of armed forces, with rank between commissioned and non-commissioned officer, holding rank by virtue of warrant.

Officia judicialia non concedantur antequam vacent /əfɪʃ(i)yə ˌjʊdɪʃiəli(ɪ)yə nɒn kɒnsədɛntər ɛntək-wænt vɛysənt/. Judicial offices should not be granted before they are vacant.

Official, n. An officer; a person invested with the authority of an office. See also Officer.

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.

Official, adj. Pertaining to an office; invested with the character of an officer; proceeding from, sanctioned by, or done by, an officer. Authorized act.

As to *official* Bond; Liquidator; Log Book; Newspaper; Oath; 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. Authorized act.

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. See Malfeasance; Misfeasance.

Official bond. Type of fidelity bond required to be posted by certain public officials to indemnify the government, municipality or court in the event of defalcation by the officer.

Official Gazette. Weekly publication of U.S. Patent and Trademark Office containing patent and trademark notices and applications, as well as mark registrations.

Official immunity doctrine. Doctrine of "official immunity" provides that government officials enjoy an absolute privilege from civil liability should the activity in question fall within the scope of their authority and if the action undertaken requires the exercise of discretion, and this rule of immunity is not limited to the highest executive officers of the government. Watson v. Barker, D.C.Pa., 428 F.Supp. 590, 592. See Sovereign immunity.

Official map. In zoning and land use, the authorized map for the determination of proper land use in the city or town, showing the zones and areas and their authorized uses.

Official record. Records kept in the performance of official duty by an officer even if not specifically required by statute. State v. Biscoe, 112 Ariz. 98, 537 P.2d 968, 969.

Fed.Evid.R. 803(8) provides, without regard to availability of the declarant, a hearsay exception for: "Records, reports, statements, or data compilations, in any form, of public offices or agencies . . ." Proof of official records at trial is governed by Fed.R.Civil P. 44 and Fed.Evid.R. 1005. Admissibility of official records at administrative proceedings is governed by the Official Records Act (*q.v.*).

Official Records Act. Federal statute applicable to cases in which the Federal Rules of Evidence do not apply (*i.e.* administrative proceedings) providing that books and records of account and minutes of any depart-

ment or agency of the U.S. shall be admissible to prove the act or transaction as a memorandum of which it was made or kept. Properly authenticated copies are equally admissible with the originals. 28 U.S.C.A. § 1733(a).

Official reports or reporters. Publication of court decisions as directed by statute; *e.g.* United States Supreme Court Reports. 28 U.S.C.A. § 411. *See* Reports or reporters.

Officialty. The court or jurisdiction of which an official is head.

Officia magistratus non debent esse vennalia /əfɪʃ(i)yə məjɪstrɛytəs nɒn dəbɛnt ɛsiy vənɛyl(i)yə/. The offices of magistrates ought not to be sold.

Officiariis non faciendis vel amovendis /əfɪʃiəriyəs nɒn fæʃ(h)i:yɛndəs vɛl əmɔvɛndəs/. 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.

Officina justitiæ /ɔfəsáyɪnə jəstɪʃi:yiy/. The workshop or office of justice. The chancery was formerly so called. 3 Bl.Comm. 273.

Officio, ex, oath /ówθ éks əfɪʃ(i)yow/. 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 /əfɪʃhəs wɪl/. A testament by which a testator leaves his property to his family. Inofficious testament.

Officit conatus si effectus sequatur /ɔfəsət kənɛytəs sáy əfɛktəs səkweýtər/. The attempt becomes of consequence, if the effect follows.

Of force. In force; extant; not obsolete; existing as a binding or obligatory power.

Offset. A deduction; a counterclaim; a contrary claim or demand by which a given claim may be lessened or canceled. A claim that serves to counterbalance or to compensate for another claim. *Steinmeyer v. Warner Consolidated Corp.*, 42 Cal.App.3d 515, 116 Cal.Rptr. 57. *See also* Counterclaim; Recoupment; Set-off.

Type of entry in bookkeeping which counters the effect of a prior entry. *See* Offset account.

Offset account. In bookkeeping, a ledger account which has a corresponding account to be washed against it when the books are closed.

Offshore transactions. Refers to transactions in locations outside the United States, *e.g.* 31 CFR § 540.401.

Offspring. Children; issue.

Of grace. This phrase had its origin in an age when kings dispensed their royal favors at the hands of chancellors. 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* Act of grace.

Of record. Recorded; entered on the records; existing and remaining in or upon the appropriate records; *e.g.* a mortgage to be "of record" must normally 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. *See also* Attorney (*Attorney of record*); Court (*Court of record*); Record.

Of right. As a matter of course. *See* Of course; Right.

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. *See* Descent; Next of kin.

Oil and gas lease. Grant of right to extract oil and/or gas from land.

O.K. A conventional symbol often used in commercial practice and occasionally in indorsements on legal documents, signifying "correct," "approved," "accepted," "satisfactory," or "assented to."

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.

Old Age, Survivors' and Disability Insurance. A system established under the Federal Social Security Act providing for retirement, disability, widows', widowers', and dependent benefits. Such program is funded by employer, employee and self-employed contributions. *See* Social Security Administration.

Old natura brevium /ówld nətýúrə briyviyám/. 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.

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.

Oleron, Laws of /lóz əv ówlrɔn/. 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 /óləgàrkiy/. A form of government wherein the administration of affairs is lodged in the hands of a few persons.

Oligopoly /òlågópøliy/. Economic condition where only a few companies sell substantially similar or standardized products. U.S. v. E.I. DuPont De Nemours & Co., D.C.Del., 118 F.Supp. 41, 49. Oligopoly markets often exhibit the lack of competition, high prices and low output of monopoly markets. Harkins Amusement Enterprises, Inc. v. General Cinema Corp., C.A.Ariz., 850 F.2d 477, 490. *See also* Conscientious parallelism; Monopoly.

Olograph /òlåggræf/. An instrument (e.g., a will) wholly written by the person from whom it emanates. *See* Holograph.

Ombudsman /òmbødzmæn/. An official or semi official office or person to which people may come with grievances connected with the government. The ombudsman stands between, and represents, the citizen before the government.

Ome bueno /òwmey bwéynow/. In Spanish law, a good man; a substantial person.

Omissio eorum quæ tacite insunt nihil operatur /əmish(iy)ow iyóram kwiy tæsətiy insənt náy(h)əl òpərəytər/. The omission of those things which are tacitly implied is of no consequence.

Omission. The neglect to perform what the law requires. The intentional or unintentional failure to act which may or may not impose criminal liability depending upon the existence, vel non, of a duty to act under the circumstances. *See also* Neglect.

Omissis omnibus aliis negotiis /əmísəs òmnəbəs əliyəs nəgówshiyəs/. Lat. Laying aside all other businesses.

Omittance /əmítəns/. Forbearance; omission.

Omne actum ab intentione agentis est iudicandum /òmniy əktəm əb intənsiyówniy əjéntəs èst jüwdəkəndəm/. Every act is to be judged by the intention of the doer.

Omne crimen ebrietas et incendit et detegit /òmniy kráymon əbráyətəs et ənsəndət et dətəjtət/. Drunkenness both inflames (or aggravates) and reveals every crime.

Omne jus aut consensus fecit, aut necessitas constituit aut firmavit consuetudo /òmniy jəs òt kənsənsəs fíysət, òt nəsəsətəs kənstítyuwət òt fərméyvat kənswət(y)úwdow/. Every right is either made by consent, or is constituted by necessity, or is established by custom.

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius /òmniy méyjas dignəm trəht əd síy máynəs dignəm, kwəmvís máynəs dignəm sit əntikwiyəs/. Every worthier thing draws to it the less worthy, though the less worthy be the more ancient.

Omne magnum exemplum habet aliquid ex iniquo, quod publica utilitate compensatur /òmniy mægənəm əgzəmpləm héybət əlækwid èks ənáykwow, kwòd pəbləkə yuwtilətéytiy kòmpənséytər/. Every great example has some portion of evil, which is compensated by the public utility.

Omne majus continet in se minus /òmniy méyjas kóntənət in síy máynəs/. Every greater contains in itself the less. The greater always contains the less.

Omne majus dignum continet in se minus dignum /òmniy méyjas dignəm kóntənət in síy máynəs dignəm/. The more worthy contains in itself the less worthy.

Omne majus minus in se complectitur /òmniy méyjas máynəs in síy kəmpléktətər/. Every greater embraces in itself the less.

Omne principale trahit ad se accessorium /òmniy prinsəpéyliy trəht əd síy əksesóriyəm/. Every principal thing draws to itself the accessory.

Omne quod solo inædificatur solo cedit /òmniy kwòd sówlow inèdáfəkéytər sówlow síydət/. Everything which is built upon the soil belongs to the soil.

Omne sacramentum debet esse de certa scientia /òmniy səkkrəməntəm débət èsiy díy sártə sayəns(hi)yə/. Every oath ought to be of certain knowledge.

Omnes actiones in mundo infra certa tempora habent limitationem /òmniy əkshiyówniy in məndow ínfra sártə témpərə héybənt limətəyshiyównəm/. All actions in the world are limited within certain periods.

Omnes homines aut liberi sunt aut servi /òmniy hóməniy òt líbərəy sənt òt sərvay/. All men are free-men or slaves.

Omnes licentiam habere his quæ pro se indulta sunt, renunciare /òmniy ləsəns(hi)yəm həbəriy his kwiy pròw síy indáltə sənt rənəns(hi)yəriy/. [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.

Omnes prudentes illa admittere solent quæ probantur iis qui arte sua bene versati sunt /òmniy pruwdéntiyz íla ədmítəriy sówlənt kwiy prəbəntər áyəs kwáy ártiy s(y)úwə binyiy vərséytay sənt/. All prudent men are accustomed to admit those things which are approved by those who are well versed in the art.

Omnes sorores sunt quasi unus hæres de una hæreditate /òmniy səróriy sənt kwéysay yúwnəs híriy diy yúwnə hərədətéytiy/. All sisters are, as it were, one heir to one inheritance.

Omne testamentum morte consummatum est /òmniy tɛstəməntəm mórtiy kənsəméytəm èst/. Every will is completed by death.

Omnia delicta in aperto leviora sunt /òmniy ədlíktə in əpərtow lèviyóra sənt/. All crimes that are committed openly are lighter [or have a less odious appearance than those committed secretly].

Omnia performavit /òmniyə pərfərméyvat/. He has done all. In pleading. A good plea in bar where all the covenants are in the affirmative.

Omnia præsumuntur contra spoliatorem /òmniyə priy(y)əmántər kóntrə spòwl(i)yətóram/. All things are presumed against a despoiler or wrongdoer.

Omnia præsumuntur legitime facta donec probetur in contrarium /ómniyæ priyz(y)ámántær læjtæmiy fáktæ dównæk prowbiýtær in kåntrériyæm/. All things are presumed to be lawfully done, until proof be made to the contrary.

Omnia præsumuntur rite et solemniter esse acta donec probetur in contrarium /ómniyæ priyz(y)ámántær ráytiy èt sélémnætær ésiy áktæ dównæk præbiýtær in kåntrériyæm/. All things are presumed to have been rightly and duly performed until it is proved to the contrary.

Omnia præsumuntur solemniter esse acta /ómniyæ priyz(y)ámántær sélémnætær ésiy áktæ/. All things are presumed to have been done rightly.

Omnia presumuntur rite esse acta /ómniyæ priyz(y)ámántær ráytiy ésiy áktæ/. A prima facie presumption of the regularity of the acts of public officers exists until the contrary appears.

Omnia quæ jure contrahuntur contrario jure pereunt /ómniyæ kwiy júriy kåntréhántær kåntrériyow júriy péh-riyánt/. All things which are contracted by law perish by a contrary law.

Omnia quæ sunt uxoris sunt ipsius viri /ómniyæ kwiy sént æksóræs sént ipsáyæs víray/. All things which are the wife's are the husband's.

Omnia rite acta præsumuntur /ómniyæ ráytiy áktæ priyz(y)ámántær/. All things are presumed to have been rightly done.

Omnibus /ómnbæs/. For all; containing two or more independent matters. Applied most commonly to a legislative bill which comprises more than one general subject. See Omnibus bill.

Omnibus ad quos præsentés literæ pervenerint, salutem /ómnbæs æd kwóws præzéntiyy lítæriy pærvénærnt sál(y)úwtæm/. To all to whom the present letters shall come, greeting. A form of address with which charters and deeds were anciently commenced.

Omnibus bill /ómnbæs bil/. A legislative bill including in one act various separate and distinct matters, and frequently 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.

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.

Omnibus clause. Clause in a will or decree of distribution passing all property not specifically mentioned or known of at the time.

Such a clause in automotive liability policy extends coverage thereunder to person using automobile owned by named insured with express or implied permission of the latter. *Uber v. Ohio Cas. Ins. Co.*, 247 Cal.App.2d 611, 55 Cal.Rptr. 720, 724.

Omnibus hearing. Hearing at which there are many unrelated matters on the agenda for discussion and consideration.

Omni exceptione majus /ómnay æksèpshiyównay méyjas/. Above all exception.

Omnis actio est loquela /ómnes áksh(iy)ow èst lowkwíylæ/. Every action is a plaint or complaint.

Omnis conclusio boni et veri iudicii sequitur ex bonis et veris præmissis et dictis juratorum /ómnes kånklúwzh(iy)ow bównay èt víray jadíshiyay sékwætær èks bównæs èt víras præmisæs èt díktæs júrátóræm/. Every conclusion of a good and true judgment follows from good and true premises, and the verdicts of jurors.

Omnis consensus tollit errorem /ómnes kånsénsæs tólæt ehróræm/. Every consent removes error. Consent always removes the effect of error.

Omnis definitio in jure civili periculosa est, parum est enim ut non subverti possit /ómnes défánish(iy)ow in júriy sívalay pærikyélówsæ èst, pæram èst énæm èt nõn sæbvértay pósæt/. 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.)

Omnis definitio in lege periculosa /ómnes défánish(iy)ow in líyjiy pærikyélówsæ/. All definition in law is hazardous.

Omnis exceptio est ipsa quoque regula /ómnes æksèpsh(iy)ow èst ípsæ kwówkwiyy régyælæ/. Every exception is itself also a rule.

Omnis indemnatus pro innoxis legibus habetur /ómnes indémnétæs prów anóksæs líyjabæs hæbiýtær/. Every uncondemned person is held by the law as innocent.

Omnis innovatio plus novitate perturbat quam utilitate prodest /ómnes inovéysh(iy)ow plæs nõwvátéytiy partárbæt kwæm yuwtílatéytiy prówdèst/. Every innovation occasions more harm by its novelty than benefit by its utility.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur /ómnes æntærpætéysh(iy)ow, sáy fáyæray pówtæst áytæ fayéndæ èst in instráméntæs, èt ómniyy kåntrériyátéytiyy æmwíviyántær/. 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 /ómnes æntærpætéysh(iy)ow vél dækléræt, vél æksténdæt, vél ræstrínjæt/. Every interpretation either declares, extends, or restrains.

Omnis nova constitutio futuris formam imponere debet, non præteritis /ómnes nõwvæ kånstæt(y)úwsh(iy)ow fyætýúras fórmæm impównæriyy débæt, nõn prætéh-rætæs/. Every new statute ought to prescribe a form to future, not to past, acts.

Omnis persona est homo, sed non vicissim /ómnəs pərsównə èst hówmow sèd nón vasisəm/. Every person is a man, but not every man a person.

Omnis privatio præsупponit habitum /ómnəs prəvéy-sh(i)yow priysəpównət hábətəm/. Every privation presupposes a former enjoyment. A "rule of philosophie" quoted by Lord Coke, and applied to the discontinuance of an estate.

Omnis querela et omnis actio injuriarum limita est infra certa tempora /ómnəs kwəriylə èt ómnəs áksh(i)yow ənjüriyérəm límətə èst ínrə sártə témpərə/. Every plaint and every action for injuries is limited within certain times.

Omnis ratihabitio retrotrahitur et mandato priori æquiparatur /ómnəs rətəhábish(i)yow rətrowtráhətur èt mändéydow prayóray èkwəpəréytər/. Every ratification relates back and is equivalent to a prior authority.

Omnis regula suas patitur exceptiones /ómnəs régyələ s(y)úwəs pátətər əksəpshiyówniyz/. Every rule is liable to its own exceptions.

Omnium /ómniiyəm/. In mercantile law, a term used to express the aggregate value of the different stock in which a loan is usually funded.

Omnium contributione sarciatur quod pro omnibus datum est /ómniiyəm kóntrəbyúwshiyówniy sārshiyéytər kwód prów ómnəbəs déytəm èst/. That which is given for, all is recompensed by the contribution of all. A principle of the law of general average.

Omnium rerum quarum usus est, potest esse abusus, virtute solo excepta /ómniiyəm rírəm kwérəm yúwəs èst, pówtəst ésiy əbyúwəs, vertyúwtiy sówlow əksəptə/. There may be an abuse of everything of which there is a use, virtue only excepted.

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.

On account. Sale on credit. In part payment; in partial satisfaction of an account. The phrase is usually contrasted with "in full." *See also* Account (*Open account*).

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.

On all fours. A judicial decision exactly in point with another as to result, facts, or both. A phrase used to express the idea that a particular case in litigation 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.

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

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 on demand. *See* On demand.

Once a mortgage, always a mortgage. This rule or maxim 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 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. *See also* Jeopardy.

Ouncunne. L. Fr. Accused.

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. Note payable on request. If no due date is stated in note, such is payable on demand. Instruments payable "on demand" include those payable at sight or on presentation and those in which no time for payment is stated. U.C.C. § 3-108.

One person, one vote. Expression used to describe 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, 12 L.Ed.2d 506, which required that the seats in both houses of a bicameral state legislature be apportioned on a population basis. *Gray v. Sanders*, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed.2d 821; *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481; *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663. *See also* Apportionment; Reapportionment.

Onerando pro rata portionis /ównəréndow prów réytə pórshiyównəs/. 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.

Onerari non /ównəréray nòn/. 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 /ównərəysh(i)yow/. Lat. A lading; a cargo.

Oneratur nisi /ównərəyštər náysay/. *See* O.Ni.

Oneris ferendi /ównərəs fərənday/. 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 /ównərəs/. A contract, lease, share, or other right is said to be "onerous" when the obligations attaching to it unreasonably counterbalance or exceed the advantage to be derived from it, either absolutely or with reference to the particular possessor. Unreasonably burdensome or one-sided. *See* Unconscionability.

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 contract. See Contract.

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.

One sided. See Unconscionability.

One year. A calendar year, regardless of whether it be a leap year or otherwise. *Douglas v. Acacia Mut. Life Ins. Co.*, Tex.Civ.App., 118 S.W.2d 643.

On file. Filed; entered or placed upon the files; existing and remaining upon or among the proper files.

O.Ni. In old English practice it was the course of the exchequer, as soon as the sheriff entered into and made up his account for issues, amerciements, 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.

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

Onomastic /*ɔːnəˈmæstɪk*/. A term applied to the signature of an instrument, the body of which is in a different handwriting from that of the signature.

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. For purpose of pleading, term "on or about," with respect to specified date, means generally in time around date specified. *Fortner v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, Tex.App. 5 Dist., 687 S.W.2d 8, 11.

On or about the person. 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 nearby, in close proximity, within immediate reach, or conveniently accessible.

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.

On sale. In context of patent law, an invention may be placed "on sale" in two ways: first, it may be placed on sale by an actual and completed transaction and, alternatively, an invention is placed "on sale" whenever its

inventor or his company engages in any activity to sell the invention, including making an offer for sale; under the first situation, an inventor must construct a physical specimen of his invention and deliver it to a third party who accepts it. *General Motors Corp. v. Toyota Motor Co., Ltd.*, D.C.Ohio, 467 F.Supp. 1142, 1165.

Onset date. A term of art used by the Social Security Administration that marks the commencement of a period of disability for purposes of disability payments. *Michalak v. Weinberger*, D.C.Tex., 416 F.Supp. 1213, 1214.

On the brief. Phrase which refers to the names of all persons who participated in writing the brief, whether or not such persons are attorneys of record.

On the merits. See Merits; Judgment (*Merits, judgment on*).

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. See also On or about.

Onus /*ɔːwnəs*/. Lat. A burden or load; a weight. Burden of responsibility or proof. The lading, burden, or cargo of a vessel. A charge; an incumbrance. *Cum onere* (*q.v.*), with the incumbrance.

Onus episcopale /*ɔːwnəs ɛpɪskəˈpiːli*/. Ancient customary payments from the clergy to their diocesan bishop, of synodals, pentecostals, etc.

Onus probandi /*ɔːwnəs prɒbændi*/. 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.

OPEC. Organization of Petroleum Exporting Countries.

Ope consilio /*ɔːwpij (ət) kənsɪl(i)jəw*/. Lat. By aid and counsel. A civil law term applied to accessaries, similar in import to the "aiding and abetting" of the common law. Often written "*ope et consilio*."

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 (*i.e.* opening statement) of its features to the court, jury, referee, etc., by outlining the nature of the occurrence or transaction on which it is founded, the questions involved, and the character and general course of the evidence to be adduced. See also Opening statement of counsel.

Open a commission. To enter upon the duties under a commission, or commence to act under a commission. Thus, in England the judges of assize and *nisi prius* derived their authority to act under or by virtue of commissions directed to them for that purpose; and, when they commenced acting under the powers so committed to them, they were said to open the commissions; and the day on which they so commenced their proceed-

ings was as such termed the "commission day of the assizes".

Open a court. To open a court is to make a formal announcement, usually by the crier or bailiff, that its session has now begun and that the business before the court will be proceeded with.

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. Fed.R.Civil P. 60 governs relief from judgment because of mistakes, inadvertence, excusable neglect, newly discovered evidence, fraud, etc.

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.

Open a street or highway. To establish it by law and make it passable and available for public travel.

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. This is known as Rule of Completeness. U. S. v. Corrigan, C.C.A.N.Y., 168 F.2d 641, 645. See also Fed.Evid. R. 106.

Open, adj. Patent; visible; apparent; notorious; exposed to public view; not clandestine; not closed, settled, fixed, or terminated.

As an element of adverse possession, *see* Open and notorious.

As to *open* Corporation; Entry; Insolvency; Lewdness; Policy; Possession; Verdict, *see* those titles.

Open account. An unpaid or unsettled account; an account with a balance which has not been ascertained, which is kept open in anticipation of future transactions. Kugler v. Northwest Aviation, Inc., App., 108 Idaho 884, 702 P.2d 922, 925. Type of credit extended by a seller to buyer which permits buyer to make purchases without a note or security and it is based on an evaluation of the buyer's credit. A contractual obligation which may be modified by subsequent agreement of the parties, either by expressed assent or implied from the conduct of the parties, provided the agreement changing the contractual obligation is based upon inde-

pendent consideration. Bloch v. Fedak, 210 Kan. 63, 499 P.2d 1052, 1054. *See also* Open credit; Open-end credit plan.

Open and notorious. Acts on the land of another sufficient to alert the owner of a claim to his land which may ripen into title under adverse possession. *See also* Adverse possession; Notorious possession.

Behavior which is "open and notorious" for purposes of statute prohibiting adultery is behavior which is prominent, conspicuous and generally known and recognized by the public. The prohibition of open and notorious adultery is meant to protect the public from conduct which disturbs the peace, tends to promote breaches of the peace, and openly flouts accepted standards of morality in the community. People v. Cessna, 1 Ill.Dec. 433, 42 Ill.App.3d 746, 356 N.E.2d 621, 623.

Open bid. An offer to perform a contract, generally of a construction nature, in which the bidder reserves the right to reduce his bid to compete with a lower bid.

Open bulk. In the mass; exposed to view; not tied or sealed up.

Open court. Common law requires a trial in open court; "open court" means a court to which the public have a right to be admitted. People v. Rose, 82 Misc.2d 429, 368 N.Y.S.2d 387, 390. 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 spectators. For accused's right to an open/public trial, *see* Public trial.

Open credit. Line of credit extended up to a certain amount by a merchant, bank or supplier so as to permit borrowings or purchases to such amount without posting security or reestablishing credit limit. *See also* Open account; Open-end credit plan.

Open-end contract. Contract which permits buyer to make purchases over a period of time without change in the price or terms by the seller.

Open-end credit plan. Credit extended pursuant to a plan providing for and contemplating continuing or repetitive transactions on credit. Town & Country Co-op v. Lang, N.D., 286 N.W.2d 482, 487. For purposes of Truth in Lending Act, "open end credit plan" is one in which credit terms are initially established with the opening of the account, but no fixed amount of debt is incurred at that time with purchases made from time to time instead being added to the outstanding balance in the account; each new purchase represents an additional extension of credit. Goldman v. First Nat. Bank of Chicago, C.A.Ill., 532 F.2d 10, 17. Examples are credit cards and "revolving charges" where one can pay a part of what he owes each month on several different purchases.

Open-end investment company. A mutual fund which will buy back its shares at net asset value and which is continuously offering to sell new shares to the public. *See* Mutual fund.

Open-end investment trust. Type of trust in which the trustees are permitted to make on-going investments for its portfolio.

Open-end lease. Lease with no fixed termination date. *BNO Leasing Corp. v. Hollins & Hollins, Inc., et al., La.App., 448 So.2d 1329, 1333.*

Open-end mortgage. A mortgage that allows the borrowing of additional sums, usually providing that at least the stated ratio of assets to the debt must be maintained. A mortgage which provides for future advances on the given mortgage and increases the amount of the existing mortgage.

Open-end transaction. Generic term to describe a loose transaction in which the parties may add to or amend the original bargain or agreement. It may include an open-end mortgage or open-end credit arrangement.

Open fields doctrine. This doctrine permits police officers to enter and search a field without a warrant. The term "open fields" may include any unoccupied or undeveloped area outside of the curtilage. *Oliver v. U.S., 466 U.S. 170, 104 S.Ct. 1735, 80 L.Ed.2d 214.* See also *Dow Chemical Co. v. U.S., 476 U.S. 227, 106 S.Ct. 1819, 90 L.Ed.2d 226, U.S. v. Dunn, 480 U.S. 294, 107 S.Ct. 1134, 94 L.Ed.2d 326.*

Opening statement of counsel. Outline or summary of nature of case and of anticipated proof presented by attorney to jury at start of trial, before any evidence is submitted. *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.* Opening statement in criminal case is outline of facts which prosecution in good faith expects to prove. *People v. Roberts, 100 Ill.App.3d 469, 55 Ill.Dec. 779, 426 N.E.2d 1104, 1109.*

Open letter of credit. An unrestricted letter of credit which will be paid on a simple draft without the need of documentary title. See also Letter of credit.

Open listing. A type of real estate listing contract whereby any agent who has a right to participate in the open listing is entitled to a commission if he produces the sale. See also Listing.

Open mortgage clause. See Union mortgage clause.

Open order. An order to buy securities or commodities at or below or above a certain price and such order remains viable until canceled by the customer.

Open price term. The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if: (a) nothing is said as to price; or (b) the price is left to be agreed by the parties and they fail to agree; or (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded. U.C.C. § 2-305.

Open sea. The expanse and mass of any great body of water, as distinguished from its margin or coast, its harbors, bays, creeks, inlets.

Open possession. See Notorious possession; Open and notorious.

Open season. That portion of the year wherein 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. A business in which union and non-union workers are employed indiscriminately. Business in which union membership is not a condition of securing or maintaining employment. See Right to work laws. Contrast Closed shop.

Open space. Any parcel or area of land or water essentially unimproved and set aside, dedicated, designated or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open spaces.

Common open space. An open space area within or related to a site designated as a development and designed and intended for the use or enjoyment of residents and owners of the development. Common open space may contain such complementary structures and improvements as are necessary and appropriate for the use or enjoyment of residents and owners of the development.

Open trial. See Public trial.

Open union. A labor union without restrictive membership provisions. See also Open shop.

Operarii /òpàrériyay/. 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. To perform a function, or operation, or produce an effect. See Operation.

Operating budget. A collection of individual budgets that combine to form a part of a firm's integrated business plan, usually for the next year. It is normally composed of a *sales budget* and a *production budget*.

Operating expenses. Those expenses required to keep the business running, e.g. rent, electricity, heat. Expenses incurred in the course of ordinary activities of an entity.

Operating lease. A lease agreement, usually cancellable, which provides the lessee with the use of an asset for a period of time which is considerably shorter than the useful life of the asset. Unlike a capital lease, the lessee in an operating lease does not assume the economic risks of ownership, and the lessor generally provides all of the maintenance and services on the leased asset.

Operating margin. Net operating income divided by sales for the period.

Operating profit. Deducting the cost of goods sold from sales gives gross profit. Deducting the operating expense (overhead) from the gross profit gives the operating profit.

Operatio /'ɒpərə'ʃ(i)əw/. 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. In surgical practice, the term may be defined as an act or succession of acts performed upon the body of a patient, for his relief or restoration to normal conditions, by the use of surgical instruments as distinguished from therapeutic treatment by the administration of drugs or other remedial agencies.

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. Secret agent or detective.

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, such are the words which effect the transaction intended to be consummated by the instrument.

Operis novi nuntiatio /'ɒpərəs nɔwvay nənʃiə'ʃ(i)əw/. Lat. In the civil law, a protest or warning against [of] a new work.

Opetide /'ɔwptəɪd/. The ancient time of marriage, from Epiphany to Ash-Wednesday.

Ophthalmologist /'ɒfθəlmɔlə'ʒɪst/. 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. See Oculist.

Opiate. Any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability.

OPIC. Overseas Private Investment Corporation.

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 /'ɒpɪn(i)əw ɛst d(ɪ)úwplɛks sɪlɛsət 'ɒpɪn(i)əw vɔl'gɛras, ɔrtə ɪntər grɛyviyɪz ɛt dɛskriyɪtɔws, ɛt kwɪy vɔltəm vɛh'rətɛytəs hɛybət; ɛt 'ɒpɪn(i)əw tɛntəm, ɔrtə ɪntər liyvɪyɪz ɛt vɔl'gɛriyɪz hóməniyɪz, ɛbskwɪy spɪyʃiə'ʃ(i) vɛh'rətɛytəs/. 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.

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; e.g. an opinion of an attorney as to the marketability of a land title as determined from a review of the abstract of title and other public records.

The statement by a judge or court of the decision reached in regard to a cause tried or argued before them, expounding the law as applied to the case, and detailing the reasons upon which the judgment is based.

An expression of the reasons why a certain decision (the judgment) was reached in a case. A *majority opinion* is usually written by one judge and represents the principles of law which a majority of his colleagues on the court deem operative in a given decision; it has more precedential value than any of the following. A *separate opinion* may be written by one or more judges in which he or they concur in or dissent from the majority opinion. A *concurring opinion* agrees with the result reached by the majority, but disagrees with the precise reasoning leading to that result. A *dissenting or minority opinion* disagrees with the result reached by the majority and thus disagrees with the reasoning and/or the principles of law used by the majority in deciding the case. A *plurality opinion* is agreed to by less than a majority as to the reasoning of the decision, but is agreed to by a majority as to the result. A *per curiam opinion* is an opinion "by the court" which expresses its decision in the case but whose author is not identified. A *memorandum opinion* is a holding of the whole court in which the opinion is very concise.

In *accounting*, a document prepared by a certified public accountant regarding the audited financial statements of an entity. There are four types of opinions:

Unqualified: The financial statements are presented fairly in accordance with generally accepted accounting principles (GAAP) and are presented in a manner consistent with the prior year. An unqualified opinion is considered a clean opinion.

Qualified: The financial statements are presented fairly in accordance with GAAP applied on a basis consistent with the prior year, "except for" a particular transaction, or "subject to" a certain event.

Disclaimer: The CPA is unable to render an opinion on the financial statements due to insufficient competent evidential matter.

Adverse: The financial statements are not presented fairly in conformity with GAAP, or do not present fairly the financial position, results of operation, and changes in the financial position of the entity. An adverse opinion is uncommon and generally results when the CPA is unable to convince the client to present the financial statements fairly and in conformity with GAAP. See also Adverse opinion.

See also Audit (Audit opinion).

See also Advisory opinion; Letter ruling; Majority opinion; Opinion evidence or testimony; Plurality; Slip opinion; Title opinion; Unqualified opinion.

Opinion evidence or testimony. 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. The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to "expert witnesses". Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state their opinions as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

By expert witness. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Fed.Evid. Rule 702. See also Expert testimony; Expert witness.

By lay witness. If the witness is not testifying as an expert, his testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of his testimony or the determination of a fact in issue. Fed.Evid. Rule 701.

Opinio quæ favet testamento est tenenda /əpɪn(i)yow kwɪy féyvət tɛstəmɛntow ɛst tənɛndə/. The opinion which favors a will is to be followed.

Opium /ɔwpijəm/. Drug consisting of inspissated juice of opium poppy.

Oportet quod certæ personæ, terræ, et certi status comprehendantur in declaratione usuum /əpɔrtət kwɔd sártiy pərsɔwniy, tɛhriy ɛt sártay stéytəs kɔmpɹəhɛndántər in dɛklərəyshiyɔwniy yúwsyuwəm/. It is necessary that given persons, lands, and estates should be comprehended in a declaration of uses.

Oportet quod certa res deducatur in donationem /əpɔrtət kwɔd sártə rɪz diyd(y)əkéyər in dənɛy-shiyɔwnəm/. It is necessary that a certain thing be brought into the gift, or made the subject of the conveyance.

Oportet quod certa res deducatur in iudicium /əpɔrtət kwɔd sártə rɪz diyd(y)əkéyər in jədɪsh(iy)əm/. A thing certain must be brought to judgment.

Oportet quod certa sit res quæ venditur /əpɔrtət kwɔd sártə sit rɪz kwɪy vɛndɛtər/. 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.

Oppignerare /əpɪgnərəriy/. Lat. In the civil law, to pledge.

Opposer /əpɔwzər/. 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.

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.

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. An act of cruelty, severity, unlawful exaction, or excessive use of authority. An act of subjecting to cruel and unjust hardship; an act of domination.

Oppression which justifies award of punitive damages means act of cruelty, severity, unlawful exaction, or excessive use of authority and results from acts done in manner which violates right of another person with unnecessary harshness or severity as by misuse or abuse of authority or power. *Dunfee v. Baskin-Robbins, Inc.*, 221 Mont. 447, 720 P.2d 1148, 1155.

See Coercion; Cruelty; Threat.

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

Opprobrium /əpɹɔwbriyəm/. In the civil law, ignominy; infamy; shame.

Optimacy /óptəmásiy/. Nobility; men of the highest rank.

Optima est legis interpres consuetudo /óptəmɛ ɛst líyʝəs ɛntərpriy kɔnswət(y)úwdow/. Custom is the best interpreter of the law.

Optima est lex quæ minimum relinquit arbitrio iudicis; optimus iudex qui minimum sibi /óptəmɛ ɛst léks kwáy mínəməm rəlɪŋkwət arɪbriyow júwdəsəs; óptəmɛs júwdeks kwáy mínəməm sɪbay/. 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. 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.

Optimam esse legem, quæ minimum relinquit arbitrio iudicis; id quod certitudo ejus præstat /óptəmɛm ɛsíy líyʝəm kwáy mínəməm rəlɪŋkwət arɪbriyow júwdəsəs; ɪd kwɔd sártət(y)úwdow íyʝəs prɛstət/. That law is the best which leaves the least discretion to the judge; and this is an advantage which results from its certainty.

Optima statuti interpretatrix est (omnibus particulis ejusdem inspectis) ipsum statutum /óptəmɛ stətýúwtay intərpɹətéytrɛks ɛst (ómɲəbəs partíkyələs íyʝəsdəm inspéktəs) ípsəm stətýúwtəm/. The best interpreter of a statute is (all its parts being considered) the statute itself.

Optimus interpres rerum usus /óptəməs əntərpriyz rirəm yúwsəs/. Use or usage is the best interpreter of things.

Optimus interpretandi modus est sic leges interpretari ut leges legibus concordant /óptəməs intəprətənday mówdəs ɛst sik liyjiz intəprətəray ət liyjiz liyjəbəs kəŋkórdənt/. The best mode of interpretation is so to interpret laws that they may accord with each other.

Optimus iudex, qui minimum sibi /óptəməs júwdeks, kwáy mínəməm sibay/. He is the best judge who relies as little as possible on his own discretion.

Optimus legum interpres consuetudo /óptəməs líygəm əntərpriyz kónswət(y)úwdow/. Custom is the best interpreter of the laws.

Option. Right of election to exercise a privilege. Contract made for consideration to keep an offer open for prescribed period. A right, which acts as a continuing offer, given for consideration, to purchase or lease property at an agreed upon price and terms, within a specified time. An option is an agreement which gives the optionee the power to accept an offer for a limited time. *Kelman v. Bohi*, 27 Ariz.App. 24, 550 P.2d 671, 675. An option to purchase or to sell is not a contract to purchase or sell, as optionee has the right to accept or to reject the offer, in accordance with its terms, and is not bound. *Catmull v. Johnson*, Utah, 541 P.2d 793, 795.

An option contract is a promise which meets the requirements for the formation of a contract and limits the promisor's power to revoke an offer. Restatement, Second, Contracts, § 25.

A privilege existing in one person, for which he has paid money, which gives him the right to buy certain commodities 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 commodities or securities 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."

The sale or exchange of an option to buy or sell property results in capital gain or loss if the property is a capital asset.

See also Call; Cash value option; Local option; Option to purchase; Put.

Commodity futures option. The right—but not the obligation—to buy or sell a futures contract at a specified price within a fixed period, say, three, six, nine months or longer. The option buyer pays a premium to the dealer for this right, plus the usual commission and nothing else. The option buyer does not have to be concerned about margin calls. All he can lose is the premium paid and commission.

Commodity option. A right that is purchased by the option holder entitling him either to buy ("call option")

from or to sell ("put option") at a stated price and within a stated time an underlying physical commodity (such as a specific quantity of gold, a train carload of coffee, etc.), or a commodity futures contract relating to that commodity. The price paid for the option right is referred to as the "premium," and the price at which the option purchaser is entitled to buy or sell the underlying commodity for futures contract is referred to as the "striking price." "Exercise" is the decision of an option holder to require performance by the grantor of his obligation with respect to the underlying commodity or futures contract. The period during which an option may be exercised is specified in the contract. The "exercise date" or "expiration date" is the final day on which the option holder may exercise the option.

Index option. A type of security in which the holder has the right to buy or sell, for a specified price at a specified future date, a theoretical interest in stocks making up the index. The option is exercised in cash, in an amount equal to the difference between the closing level of the index on the exercise date and the exercise price of the option, multiplied by the index "multiplier." *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Yang*, C.A.Cal. 679 F.Supp. 981, 983.

Naked options. Options sold by investors granting others the right to buy stock from them even though they own no stock to back up those commitments.

Option premium. The consideration paid to keep a contractual offer to buy or sell open for a specified period of time.

Stock option. The right to buy stock in the future at a price fixed in advance. See also Stock.

Incentive stock option. See *Qualified stock option, below*.

Non-qualified stock option. Stock option which does not meet the qualifications of a restricted stock option. See *Restricted stock option, below*.

Qualified stock option. An option to purchase shares provided to an employee of the corporation under terms that qualify the option for special tax treatment under the Internal Revenue Code. I.R.C. § 421 et seq.

Restricted stock option. A right granted to an employee prior to 1964 which allows such an employee to buy stock at a fixed price established in advance. The options are restricted with respect to the option price, time of exercise, amount owned by the optionee, non-transferability, and minimum holding period. Restricted stock options were replaced by Qualified Stock Options in 1964, and Incentive Stock Options in 1981. I.R.C. § 424.

Optional writ. In old English 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.

Optionee. One who receives an option.

Option spread. In securities trading, the difference between the option price and the fair market value of

the stock at the time of exercise of the stock option. *Divine v. C.I.R.*, C.A.2, 500 F.2d 1041, 1051.

Option to purchase. A bilateral contract in which one party is given the right to buy the property within a period of time for a consideration paid to the seller. A right acquired by contract to accept or reject a present offer within a limited or reasonable time and is simply a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. *Crockett v. Lowther*, Wyo., 549 P.2d 303, 308. *See also* Option.

Opus /'ɔpwəs/. Lat. Work; labor; the product of work or labor.

Opus locatum /'ɔpwəs lowkétəm/. 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 /'ɔpwəs mənəfish(iy)əm/. In old English law, labor done by the hands; manual labor; such as making a hedge, digging a ditch.

Opus novum /'ɔpwəs nówvəm/. 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.

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.

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." The word "or" is to be used as a function word to indicate an alternative between different or unlike things. *City of Toledo v. Lucas County Budget Commission*, 33 Ohio St.2d 62, 294 N.E.2d 661, 663. In some usages, the word "or" creates a multiple rather than an alternative obligation; where necessary in interpreting an instrument, "or" may be construed to mean "and." *Atchison v. City of Englewood, Colo.*, 568 P.2d 13, 18.

Oraculum /'ɔrəkyləm/. 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 argument. Presentation of reasons for affirmance, reversal, modification, etc. by appellee and appellant before appellate court; generally limited in time by court rule; *eg.* Fed.R.App.P. 34.

Statement before court in support of, or in objection to, motion or other legal relief sought.

Oral confession. Statement given orally by defendant in which he admits the commission of the crime. Its admissibility in evidence is dependent upon its volun-

tariness, the condition of the defendant at the time of the confession, the length of time during which the defendant was held by the police before being brought before a magistrate and other factors. Federal courts generally hold that the burden of establishing the constitutional admissibility of a confession rests upon the prosecution. *Pea v. United States*, 130 U.S.App.D.C. 66, 397 F.2d 627. *See also* Confession; Miranda Rule; Self incrimination.

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. *See also* Contract (*Parol contract*).

Oral evidence. Evidence given by word of mouth; the oral testimony of a witness. *See* 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.

Oral trust. The transfer of property in trust informally through an oral declaration in contrast to a formal trust which is in writing. Real estate trusts may not be created orally. *See* Frauds, Statute of.

Oral will. *See* Nuncupative will.

Orando pro rege et regno /'ɔrəndow pròw ríjijy èt régnow/. 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.

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 /'ɔrétrəks/. A female petitioner; a female plaintiff in a bill of chancery was formerly so called. This term is obsolete.

Orbation /'ɔrbéyshən/. Deprivation of one's parents or children, or privation in general.

Orcinus libertus /'ɔrsənəs ləbártəs/. 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*.

Ordain. To institute or establish; to make an ordinance; to enact a constitution or law. To confer on a person the holy orders of priest or deacon.

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.

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.

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 /órdelf/. A liberty whereby a man claims the ore found in his own land; also, the ore lying under land.

Ordels /ordiyzl/. In old English law, the right of administering oaths and adjudging trials by ordeal within a precinct or liberty.

Order. A mandate; precept; command or direction authoritatively given; rule or regulation. *Brady v. Interstate Commerce Commission*, D.C.W.Va., 43 F.2d 847, 850. Direction of a court or judge made or entered in writing, and not included in a judgment, which determines some point or directs some step in the proceedings. An application for an order is a motion.

In commercial law, a designation of the person to whom a bill of exchange or negotiable promissory note is to be paid. An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession. U.C.C. § 3-102(1)(b). With respect to documents of title, is a direction to deliver goods to a specified person or to his or her order.

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

See also Appealable order; Back order; Decision; Decree; Executive order; Intermediate order; Judgment; Limit order; Payable to order; Percentage order; Restraining order.

Day order. Order from a customer to a broker to buy or sell a security on the particular day and such order is automatically cancelled at the end of that day.

Decretal order. In chancery practice, an order made by the court of chancery, in the nature of a decree, upon a motion or petition. 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.

Discretionary order. An order from a customer to a broker to sell a security at a price deemed acceptable by the broker.

Final order. One which either terminates the action itself, or finally 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. *See also* Final decision rule.

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. General orders have generally been replaced by rules of court.

Interlocutory order. An order which decides not the cause, but only settles some intervening matter relating to it or affords some temporary relief (e.g. temporary restraining order).

Limit order. An order from a customer to a broker in which the customer places a lower limit on the price at which the security may be sold and a ceiling on the price at which the security may be bought.

Market order. An order from a customer to a broker to buy or to sell a security at the market price then prevailing and hence the order must be executed promptly.

Money order. *See* Money.

Open order. An order from a customer to a broker to buy or to sell a security and the order remains in force until it is either executed or cancelled by the customer.

Percentage order. *See* that title.

Restraining order. 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. Fed.R. Civil P. 65. *See also* Injunction; Restraining order; Temporary restraining order.

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.

Stop order. Order to stockbroker to wait until the market price of the particular security reaches a specified figure, and then to "stop" the transaction by either selling or buying, as the case may be, as well as possible.

Stop payment order. Order from the drawer of a check to the drawee bank to stop payment on a check which has been drawn and given to the payee or lost.

Order bill of lading. A negotiable bill of lading directing that the goods be delivered to the person named or his order upon indorsement.

Order document. A document of title that runs to a named person, either because the document was so issued or because the document was specially indorsed, which can therefore be negotiated only by the named person indorsing it. See U.C.C. § 7-501(1)-(3).

Order instrument. A negotiable instrument that is payable to order either because the instrument was so issued, or because the instrument was specially indorsed. See U.C.C. §§ 3-110 (when instruments originally payable to order); 3-204(1).

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 Coif. See Coif.

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

Order paper. A negotiable instrument which is payable to a specific payee or to any person the payee, by his or her indorsement, designates. See U.C.C. § 3-104(1)(d); § 3-110. See also Order document; Order instrument.

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.

Order to show cause. See Show cause order.

Ordinance. A rule established by authority; a permanent rule of action; a law or statute. In its most common meaning, the term is used to designate the enactments of the legislative body of a municipal corporation. It designates a local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct relating to the corporate affairs of the municipality. *Morris v. Town of Newington*, 36 Conn.Sup. 74, 411 A.2d 939, 943. An ordinance is the equivalent of a municipal statute, passed by the city council, or equivalent body, and governing matters not already covered by federal or state law. Ordinances commonly govern zoning, building, safety, etc. matters of municipality.

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 North-West Territory," enacted by congress in 1787.

See also Municipal ordinance. Compare Resolution.

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.

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.

Ordinandi lex /òrdənánday léks/. 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 /òrdənériyəs áyta disètər kwáya héybət òrdənériyəm jürəsdikshiyónəm in júryi prówpriyow èt nón próptər dèpyətèyshiyównəm/. 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 had 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.

In American law, a judicial officer, in several of the states, clothed by statute with powers in regard to wills, probate, administration, guardianship, etc. See also Court of Ordinary.

Former term for a public house where food and lodging were furnished to the traveler and his beast, at fixed rates, open to whoever may apply for accommodation, and where intoxicating liquor was sold at retail.

In the civil law, a judge who has authority to take cognizance of causes in his own right, and not by deputation.

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.

As to *ordinary Care*; Diligence; Negligence, see those titles.

Ordinary and necessary expenses. The phrase "ordinary and necessary expenses", as found in business deduction section of Internal Revenue Code, implies that the expenses are reasonable and bear proximate relation to management of property held for production of income. *National Can Corp. v. U.S.*, D.C.Ill., 520 F.Supp. 567, 579. "Ordinary" means normal and expected and "necessary" means appropriate and helpful. *McCabe v. C.I.R.*, C.A.2, 688 F.2d 102, 105. For an item to qualify as an "ordinary and necessary expense" deductible under Internal Revenue Code section, five requirements must be met: item must be paid or incurred during taxable year, must be for carrying on any trade or business, must be an expense, must be necessary, and must be ordinary. *Iowa-Des Moines Nat. Bank v. C.I.R.*, C.A.8, 592 F.2d 433, 435. See also Necessary; and *Ordinary expenses, below.*

Ordinary calling. Those things which are repeated daily or weekly in the course of business.

Ordinary care. That degree of care which ordinarily prudent and competent person engaged in same line of business or endeavor should exercise under similar circumstances, and in law means same as "due care" and

"reasonable care." *Warner v. Kiowa County Hospital Authority*, Okl.App., 551 P.2d 1179, 1188. That care which reasonably prudent persons exercise in the management of their own affairs, in order to avoid injury to themselves or their property, or the persons or property of others. Ordinary care is not an absolute term, but a relative one. Thus, in deciding whether ordinary care was exercised in a given case, the conduct in question must be viewed in the light of all the surrounding circumstances, as shown by the evidence in the case. *See also Care*.

Ordinary course of business. The transaction of business according to the common 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. Term used in connection with sales made by a merchant as part of his regular business and in contrast with a sale in bulk which is regulated by statute, e.g. U.C.C. § 6-102(1). In general, any matter which transpires as a matter of normal and incidental daily customs and practices in business.

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.

Ordinary expenses. Common and accepted in the general business in which the taxpayer is engaged. It comprises one of the tests for the deductibility of normal and expected expenses incurred or paid in connection with a trade or business; for the production or collection of income; for the management, conservation, or maintenance of property held for the production of income; or in connection with the determination, collection, or refund of any tax. I.R.C. § 162(a). *See also Necessary*; and *Ordinary and necessary expenses, above*.

Ordinary income. As tax term used in connection with a business, means earnings from the normal operations or activities of a business. In terms of an individual, ordinary income is income from such sources as wages, commissions, interest, etc.

Ordinary loss. A loss on the sale or exchange of an item used in a trade or business which is not considered a capital asset. In taxation, ordinary losses reduce ordinary income such as; salaries, interest, etc., while capital losses serve to reduce capital gains and those in excess of capital gains may reduce ordinary income up to a certain amount.

Ordinary negligence. The failure to use that degree of care which the ordinary or reasonably prudent person would have used under the circumstances and for which the negligent person is liable. Term is used in contradistinction to gross negligence which is more serious and a more flagrant lack of care. *See also Negligence*, and *Ordinary care, above*.

Ordinary persons. Men of ordinary care and diligence in relation to any particular thing.

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 current Rules of Civil Procedure and Codes to be such a proceeding as is started by the issuance of a summons, and results in a judgment enforceable by execution.

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. *Compare Improvements*.

Ordinary risks. Those incident to the business, and do not imply the result of the employer's negligence. The expression "extraordinary risks" is generally used to describe risks arising from the negligence of the employer, and they are generally held not to be assumed unless known or obvious.

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.

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.

Ordinary written law. Law made, within constitutional restrictions, by the Legislature; i.e. statutes.

Ordination. Ceremony by which a bishop confers on a person the privileges and powers necessary for the execution of sacerdotal functions in the church.

Ordinatum est /órdanéytəm èst/. In old practice, it is ordered. The initial words of rules of court when entered in Latin.

Ordine placitandi servato, servatur et jus /órdəniy pläsətəndəy sərvéytow, sərvéytər èt jəs/. When the order of pleading is observed, the law also is observed.

Ordines /órdəniyz/. A general chapter or other solemn convention of the religious of a particular order.

Ordinis beneficium /órdənəs bənəffish(iy)əm/. 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.

Ordo attachamentorum /órdow ətəch(iy)əmèntórəm/. In old English practice, the order of attachments.

Ordo judiciorum /órdow jədishiyórəm/. In the canon law, the order of judgments; the rule by which the due course of hearing each cause was prescribed.

Ordonnance /órdownón(t)s/órdənən(t)s/. 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.

Ore-leave. A license or right to dig and take ore from land.

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

Ore tenus rule. Under the "ore tenus rule," reviewing court must affirm the trial court unless its findings are plainly and palpably erroneous. *Hamaker v. Hamaker*, 57 Ala.App. 333, 328 So.2d 588, 592.

Orfgild /órfgild/. 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.

Organic Act. An act of Congress conferring powers of government upon a territory. *in re Lane*, 135 U.S. 443, 10 S.Ct. 760, 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.

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.

Organization. As term is used in commercial law, includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity. U.C.C. § 1-201(28). *See also* Charitable organizations.

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.

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. *City of Beaumont v. City of Beaumont Independent School Dist.*, Tex.Civ.App., 164 S.W.2d 753, 757.

Organized labor. Segments of labor force represented by unions; *eg.* AFL-CIO.

Orgild /órgild/. 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.

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. *See also Original evidence, below.*

In copyright law means that the work owes its creation or origin to the author and this in turn means that the work must not consist in actual copying. *L. Batlin & Son Inc. v. Jeffrey Snyder and Etna Products Co. Inc.*, C.A.N.Y., 536 F.2d 486, 489.

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. The ancient mode of commencing actions in the English court of King's bench. *See Bill.*

Original contractor. One who for a fixed price agrees with owner to perform certain work or furnish certain material.

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 cost. Total of all costs associated with acquisition of an asset.

Original entry. The first entry of an item of an account made by a merchant or other person in his account-books, as distinguished from entries posted into the ledger or copied from other books.

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.

An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" or a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight shown to reflect the data accurately, is an "original". Fed.Evid.R. 1001(3). *See also Copy; Duplicate.*

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.

Original jurisdiction. Jurisdiction to consider a case in the first instance. Jurisdiction of court 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*, 179 U.S. 343, 21 S.Ct. 132, 45 L.Ed. 224. *See also* Original package doctrine.

Original plat. The first plat of a town from the subsequent additions, and "original town" is employed in the same way.

Original process. *See* Process.

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.

Original writ. *See* Writ.

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

Original document rule. The best evidence of the contents of a document is the original of that document. The party bearing the burden of proving the contents of a document is required to introduce the original unless he is excused from its production because of its nonavailability and in this instance, secondary evidence is admissible. There are no degrees of secondary evidence. *See also* Best evidence.

Original grade doctrine. This doctrine relieves public body from any liability for property damaged in the reduction of the surface of the street to the grade line for the first time established. *Dickson v. City of Pullman*, 11 Wash.App. 813, 525 P.2d 838-841.

Originalia /ˌɔrɪjənəl(i)jə/. In old 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.

Original issue. The first issue of stocks or bonds of a particular kind or series.

Original package doctrine. In *Brown v. Maryland*, 25 U.S. (12 Wheat.) 419, 6 L.Ed. 678, a landmark case under the commerce clause of the U.S. Const., the Supreme Court held that a state was free to levy a tax or license fee on imports only after the original package had been broken because at this juncture the goods no longer were in the flow of interstate commerce and therefore no longer subject to federal regulation.

Origination clause. Article I, Section 7 of U.S. Constitution provides that "All Bills for raising Revenue shall originate in the House of Representatives."

Origination fee. Charge to borrower (of *e.g.*, mortgage loan) to cover costs of issuing loan, including credit and title checks, property appraisals, etc.

Origine propria neminem posse voluntate sua eximium manifestum est /ˌɔrɪjənɪj ɹɔwɹɪjə nɛmənəm ɹɔsɪj vɔləntɛtɪj s(y)úwə mənəfɛstəm ɛst/. It is evident that

no one is able of his own pleasure, to do away with his proper origin.

Origo rei inspicere debet /óhrəgow rɪjəy ɪnspəsjə débət/. The origin of a thing ought to be regarded.

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*.

ORP. Ordinary, reasonable and prudent (man). *See* Negligence. The standard of care on which negligence cases are based. *See* Reasonable man doctrine or standard.

Orphan /órfən/. Any person (but particularly a minor or infant) who has lost both (or, sometimes, one) of his or her parents.

Orphanotrophi /òrfənətrɔwɹəfaj/. In the civil law, managers of houses for orphans.

Orphan's courts. Courts in several New England states with probate jurisdiction.

Orphan's deduction. Deduction from the taxable estate of the decedent permitted if the decedent does not have a surviving spouse, and is survived by a minor child who, immediately after the death of the decedent, has no known parent. The amount of the deduction is governed by I.R.C. § 2057.

Orwige, sine wita. In old English law, without war or feud, such security being provided by the laws, for homicides under certain circumstances, against the *foe*th, or deadly feud, on the part of the family of the slain.

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

OSHA. Occupational Safety and Health Act.

Ostendit vobis /osténdət vɔwbəs/. Lat. In old pleading, "shows to you." Formal words with which a demandant began his count.

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. It is, strictly speaking, no agency at all, but is in reality based entirely upon estoppel.

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 ownership. Apparent ownership derived from conduct or words. Theory of "ostensible ownership" estops an owner of property who clothes another with apparent title from later asserting his title against an innocent third party who has been induced to deal with apparent owner. *Domarad v. Fisher & Burke, Inc.*, 270 Cal.App.2d 543, 76 Cal.Rptr. 529, 535.

Ostensible partner. One whose name appears to the world as such, though he has no interest in the firm.

Ostensio /osténsh(iy)ow/. A tax anciently paid by merchants, etc., for leave to show or expose their goods for sale in markets.

Osteopath /óstiyəpæθ/. One who practices osteopathy.

Osteopathy /óstiyópəθiy/. A system of complete medical practice based on the maintenance of proper relationships among the various parts of the body. Osteopathic physicians, licensed in all 50 states, employ manipulative therapy, drugs, surgery, x-ray, and all other accepted therapeutic methods in the treatment of disease and injury.

Osteopathic medicine focuses special attention on the biological mechanisms by which the musculoskeletal system, through the nervous and circulatory systems, interacts with all body organs and systems in both health and disease. D.O.S., or Doctors of Osteopathy, diagnose and treat disorders of the musculoskeletal system through palpation and appropriately applied manipulative procedures. See *Holt v. College of Osteopathic Physicians and Surgeons*, 61 Cal.2d 750, 40 Cal.Rptr. 244, 394 P.2d 932.

OTB. Off-track betting.

O.T.C. See *Over-the-counter market*.

Other. Different or distinct from that already mentioned; additional, or further. Following an enumeration of particular classes "other" must be read as "other such like," and includes only others of like kind and character.

Other income. In taxation, income from sources other than in the operation of a business. An example of "other income" of a corporation includes, but is not limited to, interest and dividend income.

Otherwise. In a different manner; in another way, or in other ways.

Othesworthe /ówθ(ə)swə̀rθ/. In Saxon law, oathsworth; oathworthy; worthy or entitled to make oath.

Ought. This word, though generally directory only, will be taken as mandatory if the context requires it.

OUI. Abbreviation for state statutes involving operation of motor vehicle while under influence of liquor or drugs. See *Driving while intoxicated*.

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

Ourlop. The lierwite or fine paid to the lord by the inferior tenant when his daughter was debauched.

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

Ouster. 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. An "ouster" is a wrongful

dispossession or exclusion of a party from real property and involves a question of intent. *Hamilton v. MacDonald*, C.A.Ariz., 503 F.2d 1138, 1146. Notorious and unequivocal act by which one cotenant deprives another of right to common and equal possession and enjoyment of property. *Young v. Young*, 37 Md.App. 211, 376 A.2d 1151, 1158. See also *Ejectment*.

Ouster le main /áwstər ləméyn/. L. Fr. Literally, out of the hand.

Ouster le mer /áwstər lámér/. L. Fr. Beyond the sea; a cause of excuse if a person, being summoned, did not appear in court. Spurious form for "Oulter le mer".

Ouster of jurisdiction. A condition which exists when a court which once had jurisdiction over a matter ceases to retain its jurisdiction.

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*, 107 U.S. 38, 2 S.Ct. 44, 27 L.Ed. 370.

Outbuilding. Something used in connection with a main building. A small building appurtenant to a main building, and generally separated from it; e.g. outhouse; storage shed. See also *Outhouse*.

Outcome test. In a diversity of citizenship action in the federal court, the result should be the same as if the action had been commenced in the state court. *Guaranty Trust Co. of N. Y. v. York*, 326 U.S. 99, 109, 65 S.Ct. 1464, 1470, 89 L.Ed. 2079.

Outer bar. Refers to those barristers in the English court system who sit in the "outer" or "utter" bar; called junior barristers as distinguished from the King's counsel.

Outer continental shelf. All lands lying submerged seaward and not including lands beneath navigable waters. The subsoil and sea bed of such lands are subject to the jurisdiction and control of the United States. 43 U.S.C.A. § 1331.

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.

Outfangthef /áwtfæŋθiyf/. 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. See *Infangenthef*.

Outgo. Expenditures.

Outhouse. A building subservient to, yet distinct from, the principal dwelling, located either within or without the curtilage. 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, outside privy, 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. *See also* Outbuilding.

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.

Outlaw. In English law, one who is put out of the protection or aid of the law. 3 Bl.Comm. 283, 284. Popularly, a person violating the law; a fugitive.

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 old 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.

In the United States, the process of outlawry seems to be unknown, at least in civil cases. *Hall v. Lanning*, 91 U.S. 160, 23 L.Ed. 271.

Outline. The line which marks the outer limits of an object or figure; an exterior line or edge; contour.

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. Term now generally refers to an area of land on a plat which is to be used for a purpose other than a building site.

Out of benefit. A term descriptive of insurance policyholders who have been suspended for nonpayment of premiums.

Out-of-court settlement. The phrase is used with reference to agreements and transactions in regard to a pending suit which are arranged or take place between 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." *See* Settlement (*Structured settlement*).

Out-of-pocket expenses. Said of an expenditure usually paid for with cash. An incremental cost.

Out-of-pocket loss. As measure of damages, is the difference between the value of what the purchaser parted with (*i.e.*, the purchase price paid by him) and the value of what he has received (*i.e.*, the actual market value of the goods). *Otte v. Ron Tonkin Chevrolet Co.*, 264 Or. 265, 503 P.2d 716, 720. Also called "out-of-pocket loss rule."

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.

Out of the state. In reference to rights, liabilities, or jurisdictions arising out of the common law, this phrase is equivalent to "beyond sea" (*q.v.*). 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. But a foreign corporation maintaining an agent within the state is not deemed to be "out of the state," within various statutes dealing with jurisdiction over foreign corporations "doing business" within state.

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, computed 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."

Outparters /áwtpártarz/. Stealers of cattle. A spurious form for "outputters".

Output contract. *See* Contract; Entire output contract.

Outrage. A grave injury; injurious violence. The tort of "outrage" (intentional infliction of serious mental distress) requires that defendant engage in outrageous and extreme conduct which results in intentionally or recklessly inflicted severe emotional distress. *Spencer v. King County*, 39 Wash.App. 201, 692 P.2d 874, 880.

Outriders. In old 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.

Outright. Free from reserve or restraint; direct; positive; down-right; altogether; entirely; openly.

Outroper /áwtrôwpər/. A person to whom the business of selling by auction was confined by statute.

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.

Outside. To the exterior of; without; outward from.

Outside director. A member of a corporate board of directors who is not an employee or company officer and does not participate in the corporation's day-to-day management. Outside directors, however, may include investment bankers, attorneys, or others who provide advice or services to incumbent management and thus have financial ties with management.

Outside salesman. An outside salesman is one who solicits business away from the employer's place of business on a full-time basis. If an employee qualifies as an outside salesman, all employment related expenses are deductible.

Outstanding. Remaining undischarged; unpaid; uncollected; as an outstanding debt. Constituting an effective obligation. When said of stock, the shares issued less treasury stock. When said of checks, it means a

check issued but not yet presented for payment; a check that did not clear the drawer's bank prior to the bank statement date.

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.

Outstanding balance. Current amount owed on debt.

Outstroke. To mine by outstroke is to take out mineral from adjoining property through the tunnels and shafts of the demised premises.

Ouverture des successions /üwvertyúr dey saksè-syówn/. In French law, the right of succession which arises to one upon the death, whether natural or civil, of another.

Ovell /ow(v)él/. L. Fr. Equal.

Ovelty /ów(v)ältiy/. In old English law, equality.

Over. Above; overhead; more than; in excess of.

Continued;—sometimes written on one page or sheet to indicate a continuation of matter on a separate page or sheet.

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.

Overawe /öwvəró/. To subjugate or restrain by awe, or profound reverence.

Overbreadth doctrine. This doctrine, which derives from First Amendment, serves to invalidate legislation so sweeping that, along with its allowable proscriptions, it also restricts constitutionally protected rights of free speech, press or assembly. *McCrary v. State*, Ala.Cr. App., 429 So.2d 1121, 1123. The doctrine requires that a statute be invalidated if it is fairly capable of being applied to punish people for constitutionally protected speech or conduct. A law is void on its face if it "does not aim specifically at evils within the allowable area of [government] control, but . . . sweeps within its ambit other activities that constitute an exercise" of protected expressive or associational rights. *Thomhill v. Alabama*, 310 U.S. 88, 97, 60 S.Ct. 296, 84 L.Ed. 460. A plausible challenge to a law as *void for overbreadth* can be made only when (1) the protected activity is a significant part of the law's target, and (2) there exists no satisfactory way of severing the law's constitutional

from its unconstitutional applications so as to excise the latter clearly in a single step from the law's reach.

Overcharge. With respect to public carriers or public utilities, a charge collected above a lawful tariff rate; a charge of more than is permitted by law. As regards interest rates, *see Usury*.

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.

Overcyted, or overcyhsed. Proved guilty or convicted.

Overdraft. A check written on a checking account containing less funds than the amount of the check. Term may also refer to the condition which exists when vouchers or purchase orders are drawn in amounts in excess of budgeted or appropriated amount. *See also* Kiting; NSF check.

Overdraw. To draw upon a person or a bank in 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 also* Overdraft.

Overdue. Due and more than due; delayed or unpaid. *Bliss v. California Co-op Producers*, Cal.App., 156 P.2d 259, 260. The circumstance of an instrument that has not been paid despite arrival of the time for paying it, as by arrival of a date specified for payment or by acceleration or demand. A negotiable instrument or other evidence of debt is overdue when the day of its maturity is past and it remains unpaid.

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).

Overhaul. To inquire into; to review; to disturb. To examine thoroughly, as machinery, with a view to repairs.

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. 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.

Any cost not specifically or directly associated with the production of identifiable goods and services. Sometimes called "burden" or "indirect costs" and, in Britain, "oncosts." Frequently limited to manufacturing overhead.

Overhærnissa /ðwværhærnisa/. In Saxon law, contumacy or contempt of court.

Over-insurance. See Double insurance.

Overissue. To issue in excessive quantity; to issue in excess of fixed legal limits. Thus, "overissued stock" of a corporation is capital stock issued in excess of the amount limited and prescribed by the charter or certificate of incorporation. U.C.C. § 8-104(2). See also Over-subscription.

Overload. To cause to bear too heavy a burden; to load too heavily.

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*, 33 Cal.2d 908, 207 P.2d 17, 28.

Overplus. What is left beyond a certain amount; the residue; the surplus; the remainder of a thing.

Overrate. In its strictest signification, a rating by way of excess and not one which ought not to have been made at all.

Overreaching. In connection with commercial and consumer transactions, is that which results from an inequality of bargaining power or other circumstances in which there is an absence of meaningful choice on the part of one of the parties. *Leprino v. Intermountain Brick Co.*, Colo. 759 P.2d 835, 836; *Hertz Corp. v. Attorney General of New York*, 136 Misc.2d 420, 518 N.Y.S.2d 704, 708. See also Adhesion contract; Unconscionability.

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.

Override. An estate carved out of working interest under an oil or gas lease. Commissions paid to managers on sales made by subordinates. Provision in real estate brokers listing agreement giving him right to certain commission for a reasonable period of time after expiration of listing in event owner sells to purchaser with whom broker negotiated during term of listing.

Overriding 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. Royalty interest carved out of working interest created by oil and gas lease, and is interest in oil and gas produced at surface free of expense of production and its outstanding characteristic is that its duration is limited by duration of lease under which it is created. *Cline v. Angle*, 216 Kan. 328, 532 P.2d 1093, 1097.

Overrule. To supersede; annul; reverse; 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 judgment 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. See Reverse; Vacate.

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.

Oversamessa. In old English law, a forfeiture for contempt or neglect in not pursuing a malefactor.

Over sea. Beyond the sea; outside the limits of the state or country. See Beyond the seas.

Overseer /ðwværsi(y)æ/ðwværsiyær/. A superintendent or supervisor; a public officer whose duties involve general superintendence of routine affairs. Member of a University board. See also Regent.

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.

Oversubscription. Condition which exists when there are more orders or subscriptions for corporate stock than can be issued. See also Overissue.

Overt. Open; manifest; public; issuing in action, as distinguished from that which rests merely in intention or design.

Market overt. See Market.

Overt act. 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.

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. 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.

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. One which manifests the intention of the traitor to commit treason.

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.

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.

Overtake. To come or catch up with in a course of motion. *Ringwald v. Beene*, 170 Tenn. 116, 92 S.W.2d 411, 413. To catch up with and pass.

Over-the-counter market. Refers to the broad securities market consisting of brokers who purchase or sell securities by computer hook-up or telephone rather than through the facilities of a securities exchange. At one time completely unorganized, the over-the-counter market is now relatively organized with computerized quotation and transaction reporting services. See NASD; NASDAQ.

Overtime. After regular working hours; beyond the regular fixed hours.

Overtime wage. Portion of wages paid employee for services rendered beyond regularly fixed working hours.

Overture. An opening; a proposal.

Overt word. An open, plain word, not to be misunderstood.

Owe. To be bound to do or omit something, especially to pay a debt. May also refer to a moral or social obligation.

Owely /*owɛlti*/. Equality; an equalization charge.

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. The power to grant owely has been exercised by the courts of equity from time immemorial.

Owely of services. In the feudal law, the condition obtaining when there is lord, mesne, and tenant, and the tenant holds the mesne by the same service that the mesne holds over the lord above him.

Owing. Unpaid. A debt, for example, is owing while it is unpaid, and whether it be due or not.

Owling /*aw(ə)liŋ*/. 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.

Owner. The person in whom is vested the ownership, dominion, or title of property; proprietor. 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.

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. 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.

The term "owner" is used to indicate a person in whom one or more interests are vested for his own benefit. The person in whom the interests are vested has "title" to the interests whether he holds them for his own benefit or for the benefit of another. Thus the term "title," unlike "ownership," is a colorless word; to say without more that a person has title to certain property does not indicate whether he holds such property for his own benefit or as trustee. Restatement, Second, Trusts, § 2, Comment (d); Restatement of Property, § 10.

See also *Ownership*.

Beneficial owner. See *Beneficial owner*; also *Equitable owner*, below.

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 upon the performance of conditions subsequent. 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. See also *Beneficial owner*.

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. *See also* Beneficial owner.

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. One who has both the right of property and of possession.

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 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. 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. *See also* Joint estate; Tenancy.

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. *See Joint owners, above.*

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; the owner of the title at time of notice.

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. He who has the general credit or reputation of being the owner or proprietor of goods.

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. 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. 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. It is enough that the insured is equitably entitled to immediate and absolute legal ownership. The term contem-

plates beneficial and practical proprietorship and not necessarily technical title.

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. Some person holding property with the consent of, and as representative of, the actual owner.

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.

The right of one or more persons to possess and use a thing to the exclusion of others. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. The exclusive right of possession, enjoyment, and disposal; involving as an essential attribute the right to control, handle, and dispose.

Ownership of property is either absolute or qualified. The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws. The ownership is qualified when it is shared with one or more persons, when the time of enjoyment is deferred or limited, or when the use is restricted. *Calif.Civil Code*, §§ 678-680.

There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the goodwill of a business, trademarks and signs, and of rights created or granted by statute. *Calif.Civil Code*, § 655.

In connection with burglary, "ownership" means any possession which is rightful as against the burglar.

See also Equitable ownership; Exclusive ownership; Hold; Incident of ownership; Interest; Interval ownership; Ostensible ownership; Owner; Possession; Title.

Oxford /óksfild/. In old English law, a restitution anciently made by a hundred or county for any wrong done by one that was within the same.

Oxgang. In old English law, as much land as an ox could till. A measure of land of uncertain quantity. In the north of England a division of a carucate. According to some, fifteen acres.

Oyer /óyər/. In old English 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). 3 Bl.Comm. 299.

A copy of a bond or specialty sued upon, given to the opposite party, in lieu of the old practice of reading it.

Oyer and terminer /óyər ən tɜ̀rmənər/. 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, certain higher criminal courts were called "courts of oyer and terminer."

Oyer de record /óyər də rékərd/. A petition made in court that the judges, for better proof's sake, will hear or look upon any record.

Oyez /óyeyz/^(t)s/. 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 Bl.Comm. 340.