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OASDHL *abbr.* Old Age, Survivors, Disability, and Health Insurance. See OLD-AGE AND SURVIVORS' INSURANCE.

OASDL *abbr.* Old Age, Survivors, and Disability Insurance. See OLD-AGE AND SURVIVORS' INSURANCE.

OASI *abbr.* OLD-AGE AND SURVIVORS' INSURANCE.

oath. **1.** A solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise. ● The person making the oath implicitly invites punishment if the statement is untrue or the promise is broken. The legal effect of an oath is to subject the person to penalties for perjury if the testimony is false. **2.** A statement or promise made by such a declaration. **3.** A form of words used for such a declaration. **4.** A formal declaration made solemn without a swearing to God or a revered person or thing; AFFIRMATION.

"The word 'oath' (apart from its use to indicate a profane expression) has two very different meanings: (1) a solemn appeal to God in attestation of the truth of a statement or the binding character of such a promise; (2) a statement or promise made under the sanction of such an appeal." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 515 (3d ed. 1982).

assertory oath (ə-sər-tə-ree). An oath by which one attests to some factual matter, rather than making a promise about one's future conduct. ● A courtroom witness typically takes such an oath.

corporal oath (kɒr-pər-əl). An oath made solemn by touching a sacred object, esp. the Bible.

"Oath (*Juramentum*) Is a calling Almighty God to witness that the Testimony is true; therefore it is aptly termed *Sacramentum*, a Holy Band, a Sacred Tye, or Godly Vow. And it is called a *Corporal Oath*, because the party when he swears, toucheth with his right hand the *Holy Evangelists* or Book of the *New Testament*." Thomas Blount, *Nomo-Lexicon: A Law-Dictionary* (1670).

decisive oath. *Civil law*. An oath by a party in a lawsuit, used to decide the case because the party's adversary, not being able to furnish adequate proof, offered to refer the deci-

sion of the case to the party. — Also termed *decisory oath*.

extrajudicial oath. An oath that, although formally sworn, is taken outside a legal proceeding or outside the authority of law.

judicial oath. An oath taken in the course of a judicial proceeding, esp. in open court.

loyalty oath. See *oath of allegiance*.

oath ex officio (eks ə-fish-ee-oh). At common law, an oath under which a member of the clergy who was accused of a crime could swear innocence before an ecclesiastical court.

oath in litem (lɪ-tem or -təm). *Civil law*. An oath taken by a plaintiff in testifying to the value of the thing in dispute when there is no evidence of value or when the defendant has fraudulently suppressed evidence of value.

oath of allegiance. An oath by which one promises to maintain fidelity to a particular sovereign or government. ● This oath is most often administered to a high public officer, to a soldier or sailor, or to an alien applying for naturalization. — Also termed *loyalty oath*; *test oath*.

oath of calumny (kəl-əm-nee). An oath, taken by a plaintiff or defendant, that attests to the party's good faith and to the party's belief that there is a bona fide cause of action. See CALUMNY.

oath of office. An oath taken by a person about to enter into the duties of public office, by which the person promises to perform the duties of that office in good faith.

oath of supremacy. *Hist. English law*. An oath required of those taking office, along with the oaths of allegiance and abjuration, declaring that the sovereign is superior to the church in ecclesiastical matters.

oath purgatory. See *purgatory oath*.

oath suppletory. See *suppletory oath*.

pauper's oath. An affidavit or verification of poverty by a person requesting public funds or services. See *poverty affidavit* under AFFIDAVIT; IN FORMA PAUPERIS.

promissory oath. An oath that binds the party to observe a specified course of conduct in the future. • Both the oath of office and the oath of allegiance are types of promissory oaths.

purgatory oath. An oath taken to clear oneself of a charge or suspicion. — Also termed *oath purgatory*.

suppletory oath (səp-lə-tor-ee). **1. Civil law.** An oath administered to a party, rather than a witness, in a case in which a fact has been proved by only one witness. • In a civil-law case, two witnesses are needed to constitute full proof. See HALF-PROOF. **2.** An oath administered to a party to authenticate or support some piece of documentary evidence offered by the party. — Also termed *oath suppletory*.

test oath. See *oath of allegiance*.

oath against an oath. See SWEARING CONTEST.

oath ex officio. See OATH.

oath-helper. See COMPURGATOR.

oath in litem. See OATH.

oath of abjuration. See ABJURATION.

oath of allegiance. See OATH.

oath of calumny. See OATH.

oath of office. See OATH.

oath of supremacy. See OATH.

Oath or Affirmation Clause. The clause of the U.S. Constitution requiring members of Congress and the state legislatures, and all member of the executive or judicial branches — state or local — to pledge by oath or affirmation to support the Constitution. U.S. Const. art. VI, cl. 3.

oath purgatory. See *purgatory oath* under OATH.

oath-rite. The form or ceremony used when taking an oath.

oath suppletory. See *suppletory oath* under OATH.

oathworthy, adj. Legally capable of making an oath.

obaeratus (oh-bə-ray-təs). [Latin] *Roman law.* A debtor obliged to serve the creditor until the debt is discharged.

ob continentiam delicti (ob kon-tə-nen-shee-əm də-lik-ti). [Latin] On account of contiguity to the offense; being contaminated by association with something illegal.

ob contingentiam (ob kon-tin-jen-shee-əm). [Latin] On account of connection; in case of contingency.

obedience. Compliance with a law, command, or authority.

obediential obligation. See OBLIGATION.

ob favorem mercatorum (ob fə-vor-əm mər-kə-tor-əm). [Latin] In favor of merchants.

obiit (oh-bee-it). [Latin] He died; she died.

obiit sine prole (oh-bee-it si-nee proh-lee also sin-ay prohl). [Latin] He died without issue. — Abbr. *o.s.p.*

obit. 1. Archaic. A memorial service on the anniversary of a person's death. **2.** A record or notice of a person's death; an obituary.

obiter (oh-bid-ər), *adv.* [Latin "by the way"] Incidentally; in passing <the judge said, obiter, that a nominal sentence would be inappropriate>.

obiter, n. See OBITER DICTUM.

obiter dictum (ob-i-tər dik-təm). [Latin "something said in passing"] A judicial comment made during the course of delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (though it may be considered persuasive). — Often shortened to *dictum* or, less commonly, *obiter*. Pl. **obiter dicta**. See DICTUM. Cf. HOLDING (1); RATIO DECIDENDI.

"Strictly speaking an 'obiter dictum' is 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 the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion. . . . In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as 'dicta,' or 'obiter dicta,' these two terms being used interchangeably." William M. Lile et al., *Brief Making and the Use of Law Books* 304 (3d ed. 1914).

obiter ex post facto (ob-i-tər eks post fak-toh).

A court's holding that, according to a later court, was expressed in unnecessarily broad terms. • Some authorities suggest that this is not, properly speaking, a type of obiter dictum at all.

object (ob-jekt), *n.* **1.** A person or thing to which thought, feeling, or action is directed <the natural object of one's bounty>. See NATURAL OBJECT. **2.** Something sought to be attained or accomplished; an end, goal, or purpose <the financial objects of the joint venture>.

object (əb-jekt), *vb.* **1.** To state in opposition; to put forward as an objection <the plaintiff objected that the defendant's discovery requests were overbroad>. **2.** To state or put forward an objection, esp. to something in a judicial proceeding <the defense objected to the testimony on the ground that it was privileged>. — **objector**, *n.*

objectant. See CONTESTANT.

objection, *n.* A formal statement opposing something that has occurred, or is about to occur, in court and seeking the judge's immediate ruling on the point. • The party objecting must usu. state the basis for the objection to preserve the right to appeal an adverse ruling.

continuing objection. A single objection to all the questions in a given line of questioning. • A judge may allow a lawyer to make a continuing objection when the judge has overruled an objection applicable to many questions, and the lawyer wants to preserve the objection for the appellate record. — Also termed *running objection*.

general objection. An objection made without specifying any grounds in support of the objection. • A general objection preserves only the issue of relevancy. — Also termed *broadside objection*.

speaking objection. An objection that contains more information (often in the form of argument) than needed by the judge to sustain or overrule it. • Many judges prohibit lawyers from using speaking objections, and sometimes even from stating the grounds for objections, because of the potential for influencing the jury.

specific objection. An objection that is accompanied by a statement of one or more grounds in support of the objection.

objection in point of law. A defensive pleading by which the defendant admits the facts alleged by the plaintiff but objects that they do not make out a legal claim.

objective, *adj.* **1.** Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions <the objective facts>. **2.** Without bias or prejudice; disinterested <because her son was involved, she felt she could not be objective>. Cf. SUBJECTIVE.

objective ethics. See MORAL ABSOLUTISM.

objective meaning. See MEANING.

objective novation. See NOVATION.

objective standard. See STANDARD.

objective theory of contract. The doctrine that a contract is not an agreement in the sense of a subjective meeting of the minds but is instead a series of external acts giving the objective semblance of agreement. — Often shortened to *objective theory*. Cf. SUBJECTIVE THEORY OF CONTRACT; MEETING OF THE MINDS.

object of a right. The thing in respect of which a right exists; the subject matter of a right. — Also termed *subject of a right*. See SUBJECT OF A RIGHT.

object offense. See OFFENSE (1).

object of the power. See *permissible appointee* under APPOINTEE.

object of the power of appointment. See *permissible appointee* under APPOINTEE.

objurgatrix (ob-jər-gay-triks). *Hist.* A common scold. See SCOLD.

oblatio (ah-blay-shee-oh). [Latin] *Roman law.* A tender of payment (as of a debt).

oblation (ah-blay-shən). An offering or sacrifice, esp. one in a religious or ritualistic ceremony.

obligate, *vb.* **1.** To bind by legal or moral duty. **2.** To commit (funds, property, etc.) to meet or secure an obligation.

obligatio (ah-blə-gay-shee-oh). [Latin] *Roman law*. An obligation; a legal bond. Pl. **obligationes** (ah-blə-gay-shee-oh-nee-z).

obligatio civilis (ah-blə-gay-shee-oh sə-vi-lis). [Latin "civil obligation"] **1.** An obligation recognized under *jus civile* as opposed to one recognized only under *jus honorarium*. — Also termed **obligatio praetoria** (ah-blə-gay-shee-oh pri-tor-ee-ə); **obligatio honoraria** (ah-blə-gay-shee-oh [h]on-ə-rair-ee-ə). **2.** A legally enforceable obligation, such as one by contract.

obligatio ex contractu (ah-blə-gay-shee-oh eks kən-trak-t[y]oo). [Latin "contractual obligation"] A contractual obligation.

obligatio ex delicto (ah-blə-gay-shee-oh eks də-lik-toh). [Latin "tortious obligation"] An obligation arising from a wrongdoing against the person or property of another; an obligation enforceable in tort. — Also termed **obligatio ex maleficio** (mal-ə-fish-ee-oh).

obligatio naturalis (ah-blə-gay-shee-oh nach-ə-ray-lis). [Latin "natural obligation"] An obligation that is not legally enforceable; an obligation deriving only from the law of nature.

obligatio quasi ex contractu (ah-blə-gay-shee-oh kway-sī [or -zī] eks kən-trak-t[y]oo). [Latin "obligation from quasi-contract"] An obligation arising between two persons who have not contracted with each other but have formed a relationship similar to a contractual one; a quasi-contractual obligation. See *implied-in-law contract* under CONTRACT.

obligatio quasi ex delicto (ah-blə-gay-shee-oh kway-sī [or -zī] eks də-lik-toh). [Latin "obligation from something resembling a tort"] An obligation arising from a wrong that is not covered by an **obligatio ex delicto** but that nonetheless creates liability. — Also termed **obligatio quasi ex maleficio** (mal-ə-fish-ee-oh).

obligation, n. **1.** A legal or moral duty to do or not do something. **2.** A formal, binding agreement or acknowledgment of a liability to pay a certain amount or to do a certain thing for a particular person or set of persons. — Also termed *legal obligation*. See DUTY; LIABILITY.

"[I]n English-speaking countries an unfortunate habit has arisen of using 'obligation' in a lax manner as co-extensive with duties of every kind." Frederick Pollock, *A First Book of Jurisprudence* 82 (1896).

"A man cannot be obliged or bound to the entire community: his duties to the political society of which he is a member are matters of public, or criminal law. Nor can the whole community be under an obligation to him: the rights on his part correlative to the duties owed to him

would be rights *in rem*, would be in the nature of property as opposed to obligation. The word *obligation* has been unfortunately used in this sense by Austin and Bentham as including the general duty, which the law imposes on all, to respect such rights as the law sanctions. Whether the rights are to personal freedom or security, to character, or to those more material objects which we commonly call property, they impose corresponding duties on all to forbear from molesting the right. Such rights are rights *in rem*. But it is of the essence of obligation that the duties which it imposes are imposed on definite persons, and are themselves definite: the rights which it creates are rights *in personam*." William R. Anson, *Principles of the Law of Contract* 9 (Arthur L. Corbin ed., 3d Am. ed. 1919).

"Obligation in its popular sense is merely a synonym for duty. Its legal sense, derived from Roman law, differs from this in several respects. In the first place, obligations are merely one class of duties, namely, those which are the correlatives of rights *in personam*. An obligation is the *vinculum juris*, or bond of legal necessity, which binds together two or more determinate individuals. . . . Secondly, the term obligation is in law the name, not merely of the duty, but also of the correlative right. It denotes the legal relation or *vinculum juris* in its entirety, including the right of the one party, no less than the liability of the other. Looked at from the point of view of the person entitled, an obligation is a right; looked at from the point of view of the person bound, it is a duty. . . . An obligation, therefore, may be defined as a proprietary right *in personam* or a duty which corresponds to such a right." John Salmond, *Jurisprudence* 460 (Glanville L. Williams ed., 10th ed. 1947).

absolute obligation. An obligation requiring strict fulfillment according to the terms of the engagement, without any alternatives to the obligor.

accessory obligation. An obligation that is incidental to another obligation. • For example, a mortgage to secure payment of a bond is an accessory obligation. The primary obligation is to pay the bond itself. Cf. *primary obligation* (1).

alternative obligation. An obligation that can be satisfied in two different ways, at the choice of the obligor.

bifactoral obligation (bi-fak-tər-əl). An obligation created by two parties.

conditional obligation. An obligation that depends on an uncertain event.

conventional obligation. An obligation that results from actual agreement of the parties; a contractual obligation. Cf. *obediential obligation*.

correal obligation (kor-ee-əl or kə-ree-əl). *Roman law*. A joint obligation.

"A correal obligation means a plurality of obligations based on a community of obligation: a joint liability in respect of the whole of the same debt or a joint right in respect of the whole of the same claim." Rudolph Sohm, *The Institutes: A Textbook of the History and System of*

Roman Private Law 361 (James Crawford Ledlie trans., 3d ed. 1907).

current obligation. An obligation that is presently enforceable, but not past due.

inheritable obligation. An obligation that may be enforced by a successor of the creditor or against a successor of the debtor. — Also termed *heritable obligation*.

joint obligation. **1.** An obligation that binds two or more debtors to a single performance for one creditor. **2.** An obligation that binds one debtor to a single performance for two or more creditors.

natural obligation. *Civil law.* A moral duty that is not enforceable by judicial action. • Natural obligations are recognized in civil-law jurisdictions. While they are not enforceable by judicial action, something that has been performed under a natural obligation may not be reclaimed. For example, if an indigent patient in a hospital has no legal obligation to pay for the treatment but does so anyway, that person cannot later reclaim the payments voluntarily made. — Also termed *obligatio naturalis*.

obediential obligation (ə-bee-dee-en-shəl). An obligation incumbent on the parties as a result of their situation or relationship, such as an obligation of parents to care for their children. Cf. *conventional obligation*.

primary obligation. **1.** An obligation that arises from the essential purpose of the transaction between the parties. Cf. *accessory obligation*. **2.** A fundamental contractual term imposing a requirement on a contracting party from which other obligations may arise.

pure obligation. *Scots law.* An absolute obligation already due and immediately enforceable.

secondary obligation. A duty, promise, or undertaking that is incident to a primary obligation; esp., a duty to make reparation upon a breach of contract. — Also termed *accessory obligation*.

several obligation. **1.** An obligation that binds two or more debtors to separate performances for one creditor. **2.** An obligation that binds one debtor to separate performances for two or more creditors.

simple obligation. An obligation that does not depend on an outside event; an unconditional obligation.

single obligation. An obligation with no penalty attached for nonperformance, as when one party simply promises to pay 20 dollars to another.

solidary obligation (sol-ə-der-ee). *Roman & civil law.* An obligation that binds each of two or more debtors for the entire performance. • Solidary obligations are analogous to common-law joint and several obligations.

“A solidary obligation means the *separate* liability of several persons in respect of one and the same object. The normal case of a solidary obligation is a joint delict, as when two or more persons, acting jointly, do damage to property or commit a theft. So far as the obligation creates a duty to pay damages, it is solidary. Each of the co-delinquents is liable to make good the whole of the same damage.” Rudolph Sohm, *The Institutes: A Textbook of the History and System of Roman Private Law* 361–62 (James Crawford Ledlie trans., 3d ed. 1907).

statutory obligation. An obligation — whether to pay money, perform certain acts, or discharge duties — that is created by or arises out of a statute, rather than based on an independent contractual or legal relationship.

unifactoral obligation (yoo-nə-fak-tər-əl). An obligation created by one party.

obligation, mutuality of. See MUTUALITY OF OBLIGATION.

obligational. See OBLIGATORY.

obligatio naturalis. See OBLIGATIO.

obligation bond. See *general obligation bond* under BOND (3).

obligationes innominati. See INNOMINATE OBLIGATIONS.

Obligation of Contracts Clause. See CONTRACTS CLAUSE.

obligations, law of. See LAW OF OBLIGATIONS.

obligatio praetoria. See *obligatio civilis* (1) under OBLIGATIO.

obligatio quasi ex contractu. See OBLIGATIO.

obligatio quasi ex delicto. See OBLIGATIO.

obligatio quasi ex maleficio. See *obligatio quasi ex delicto* under OBLIGATIO.

obligatory (ə-blig-ə-tor-ee), *adj.* **1.** Legally or morally binding <an obligatory promise>. **2.** Required; mandatory <attendance is not obligatory>. **3.** Creating or recording an obligation <a writing obligatory>. — Also termed (rarely) *obligational*.

oblige (ə-blj), *vb.* **1.** To bind by legal or moral duty; obligate. **2.** To bind by doing a favor or service.

obligee (ob-lə-jeə). **1.** One to whom an obligation is owed; a promisee or creditor. **2. Archaic.** One who is obliged to do something; OBLIGOR (1).

"Several dictionaries, such as *The Random House College Dictionary* (rev. ed. 1988) and *Webster's New World Dictionary* (1979), define *obligee* in its etymological sense ['obliged'], as if it were synonymous with *obligor*. *Random House*, for example, defines *obligee* as 'a person who is under obligation,' but that meaning ought to be reserved for *obligor*. An *obligee*, in modern usage, is one to whom an obligation is owed." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 609 (2d ed. 1995).

obligor (ob-lə-gor or ob-lə-gor). **1.** One who has undertaken an obligation; a promisor or debtor. **2. Archaic.** One who obliges another to do something; OBLIGEE (1).

oblique (ə-bleek), *adj.* **1.** Not direct in descent; collateral <an oblique heir>. **2.** Indirect; circumstantial <oblique evidence>.

oblique evidence. See *circumstantial evidence* under EVIDENCE.

obliquus (ob-lī-kwəs). [Latin "oblique"] *Hist.* (Of a line of descent) collateral; indirect. Cf. RECTUS.

obliterate, *vb.* **1.** To wipe out, rub off, or erase (a writing or other markings). **2.** To remove from existence; to destroy all traces of. — **obliteration**, *n.*

obliterated corner. See CORNER.

oblivion. **1.** The act or fact of forgetting or having forgotten <the oblivion of sleep>. **2.** The state of being completely forgotten or unknown <a once-famous politician now in oblivion>. **3.** An official disregard of an offense; pardon; amnesty <an act of oblivion by Parliament>.

obloquy (ob-lə-kwee). **1.** Abusive or defamatory language; CALUMNY. **2.** The state or condition of being ill spoken of; disgrace or bad repute.

obnoxious, *adj.* **1.** Offensive; objectionable <obnoxious behavior>. **2.** Contrary; opposed <a practice obnoxious to the principle of equal protection under the law>. **3. Archaic.** Exposed to harm; liable to something undesirable <actions obnoxious to criticism>.

obreption (ob-rep-shən). The obtaining of a gift or dispensation from a sovereign or ecclesiastical authority by fraud. Cf. SUBREPTION.

obrogate (ob-rə-gayt), *vb.* *Civil law.* To modify or repeal (a law) in whole or in part by passing a new law. — **obrogation**, *n.* Cf. ABROGATE.

obscene, *adj.* Extremely offensive under contemporary community standards of morality and decency; grossly repugnant to the generally accepted notions of what is appropriate. ● Under the Supreme Court's three-part test, material is legally obscene — and therefore not protected under the First Amendment — if, taken as a whole, the material (1) appeals to the prurient interest in sex, as determined by the average person applying contemporary community standards; (2) portrays sexual conduct, as specifically defined by the applicable state law, in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value. *Miller v. California*, 413 U.S. 15, 93 S.Ct. 2607 (1973).

"If there be no abstract definition, ... should not the word 'obscene' be allowed to indicate the present critical point in the compromise between candor and shame at which the community may have arrived here and now?" *United States v. Kennerley*, 209 F. 119, 121 (S.D.N.Y. 1913) (per Hand, J.).

obscene libel. See LIBEL.

obscenity, *n.* **1.** The quality or state of being morally abhorrent or socially taboo, esp. as a result of referring to or depicting sexual or excretory functions. **2.** Something (such as an expression or act) that has this quality. See CONTEMPORARY COMMUNITY STANDARD. Cf. INDECENCY.

"Obscenity is not deemed to be protected by the First Amendment, and the operative legal tests for obscenity are spongy and leave much to the vagaries of juries asked to evaluate expert testimony on literary merit, offensiveness, and other unmeasurables." Richard A. Posner, *Law and Literature: A Misunderstood Relation* 329 (1988).

observe, *vb.* To adhere to or abide by (a law, rule, or custom) <a traffic citation for failing to observe the speed limit>.

observer. *Int'l law.* A representative of a country or international organization who attends meetings of an international body (such as the United Nations) to which the observer's country does not belong. ● Observers do not vote or sign documents, but they are sometimes allowed to participate in discussions.

obses (ob-seez), *n.* [Latin] A hostage in wartime. Pl. **obsides**.

obsignare (ob-sig-nair-ee), *vb.* [Latin] *Civil law.* To seal up, as with money that has been tendered and refused.

obsignation, *n.* A formal ratification or confirmation, esp. by an official seal. — **obsignatory** (ob-sig-nə-tor-ee), *adj.*

obsolescence (ob-sə-les-ənts). **1.** The process or state of falling into disuse or becoming obsolete. **2.** A diminution in the value or usefulness of property, esp. as a result of technological advances. • For tax purposes, obsolescence is usu. distinguished from physical deterioration. Cf. DEPRECIATION.

economic obsolescence. Obsolescence that results from external economic factors, such as decreased demand or changed governmental regulations.

functional obsolescence. Obsolescence that results either from inherent deficiencies in the property, such as inadequate equipment or design, or from improvements in the property since its use began.

planned obsolescence. A system or policy of deliberately producing consumer goods that will wear out or become outdated after limited use, thus inducing consumers to buy new items more frequently. — Also termed *built-in obsolescence*.

obsolescent, *adj.* Going out of use; becoming obsolete.

obsolete, *adj.* No longer in general use; out-of-date.

obstante (ob-stan-tee or əb-). [Latin] Withstanding; hindering. See NON OBSTANTE VEREDICTO.

obsta principiis (ob-stə prin-sip-ee-is). [Latin] Withstand beginnings; resist the first approaches or encroachments.

obstinate desertion. See DESERTION.

obstrict (əb-strikt), *vb.* To coerce. — **obstrictive**, *adj.* — **obstrictiveness**, *n.*

"The element of coercion or obstrictiveness. The contrast here is between voluntary and obstricted (or coerced) conduct. The coercion need not be actual (objective), but may be merely potential (subjective) by fear of the possible force; as, when the faithful canine, Towser, susceptible to the sight of a feline enemy, is tempted to pursue,

but upon his owner's stern voice and a shake of the stick, Towser turns humbly back and crushes his impulse." John Henry Wigmore, *Problems of Law* 7-8 (1920).

obstriction. *Archaic.* Obligation; bond.

obstruction of justice. Interference with the orderly administration of law and justice, as by giving false information to or withholding evidence from a police officer or prosecutor, or by harming or intimidating a witness or juror. • Obstruction of justice is a crime in most jurisdictions. — Also termed *obstructing justice*; *obstructing public justice*.

"The goal, — to proscribe every wilful act of corruption, intimidation or force which tends in any way to distort or impede the administration of law either civil or criminal — has been very largely attained, partly by aid of legislation. And any punishable misdeed of such a nature which is not recognized as a distinct crime, is usually called 'obstruction of justice,' or 'obstructing justice,' — a common-law misdemeanor." Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 552 (3d ed. 1982).

obtaining property by false pretenses. See FALSE PRETENSES.

obtest (ob- or əb-test), *vb.* **1.** To call to or invoke as a witness. **2.** To ask for earnestly; beseech; implore. **3.** To protest.

obtulit se (ob-t[y]ə-lit see). [Latin] Offered himself. • In old English practice, these words were entered on the record when one party appeared ("offered himself") in court against an opposing party who did not appear.

ob turpem causam (ob tər-pəm kaw-zəm). [Latin] For an immoral consideration.

obvention (ob- or əb-ven-shən). *Eccles. law.* An incoming fee or revenue, esp. one that comes occasionally or incidentally.

obviate (ob-vee-ayt), *vb.* **1.** To dispose of or do away with (a thing); to anticipate and prevent from arising <they obviated the growing problem through legislation>. **2.** To make unnecessary <the movant obviated the all-night drafting session by getting the opponent to agree to an extension>. — **obviation**, *n.* — **obviator**, *n.*

obviousness, *n.* *Patents.* The quality or state of being easily apparent to a person with ordinary skill in a given art, considering the scope and content of the prior art, so that the person could reasonably believe that, at the time it was conceived, the invention was to be expect-

ed. • An invention that is determined to be obvious cannot be patented. — **obvious**, *adj.* Cf. NONOBVIOUSNESS.

obviousness double patenting. See DOUBLE PATENTING.

o.c. *abbr.* **1.** OPE CONSILIO. **2.** Orphan's court. See *probate court* under COURT.

occasio (ə-kay-zhee-oh). [Law Latin] *Hist.* **1.** A tax that a lord imposed on his vassals or tenants for his necessity. **2.** Hindrance or trouble; esp., vexatious litigation.

occupancy. **1.** The act, state, or condition of holding, possessing, or residing in or on something; actual possession, residence, or tenancy; esp. of a dwelling or land. **2.** The act of taking possession of something that has no owner (such as abandoned property) so as to acquire legal ownership. See ADVERSE POSSESSION. **3.** The period or term during which one owns, rents, or otherwise occupies property. **4.** The state or condition of being occupied. **5.** The use to which property is put.

occupant. **1.** One who has possessory rights in, or control over, certain property or premises. **2.** One who acquires title by occupancy.

general occupant. A person who occupies land in the interim arising after the death of a *pur autre vie* tenant but before the death of the person who serves as the measuring life for the estate. • A general occupancy can arise when the grant to the *pur autre vie* tenant does not state who may occupy the land after the death of the first tenant. Because no heir is named, the land can be occupied by the first possessor of the land. — Also termed *common occupant*. Cf. CESTUI QUE VIE.

special occupant. A *pur autre vie* tenant's heir who occupies land in the interim between the death of the tenant and the death of the person who serves as the measuring life for the estate. • A special occupancy can arise when the grant to the *pur autre vie* tenant provides that possession is for the life of the tenant, then to the tenant's heirs.

occupare (ok-yə-pair-ee), *vb.* [Latin] *Civil law.* To seize or take possession of (property); to enter (land) upon a vacant possession.

occupatible (ok-yə-pə-tl). *Hist.* Property that has been left by its rightful owner and is now possessed by another.

occupatio (ok-yə-pay-shee-oh). *Roman law.* A mode of acquisition by which a person obtains absolute title by first possessing a thing that previously belonged to no one, such as a fish in the sea or a wild bird.

occupation. **1.** An activity or pursuit in which a person is engaged; esp., a person's usual or principal work or business. **2.** The possession, control, or use of real property; OCCUPANCY. **3.** The seizure and control of a territory by military force; the condition of territory that has been placed under the authority of a hostile army. **4.** The period during which territory seized by military force is held.

occupational-disability insurance. See INSURANCE.

occupational disease. A disease that is contracted as a result of exposure to debilitating conditions or substances in the course of employment. • Employees who suffer from occupational diseases are eligible for workers' compensation. Courts have construed the term to include a variety of ailments, including lung conditions (such as asbestosis or black lung), hearing loss, and carpal tunnel syndrome. — Also termed *industrial disease*.

"Certain diseases and infirmities which develop gradually and imperceptibly as a result of engaging in particular employments and which are generally known and understood to be usual incidents or hazards thereof, are distinguished from those having a traumatic origin, or otherwise developing suddenly and unexpectedly, by the terms 'occupational,' and 'industrial.'" 82 Am. Jur. 2d *Workers' Compensation* § 326 (1992).

occupational hazard. A danger or risk that is peculiar to a particular calling or occupation. • Occupational hazards include both accidental injuries and occupational diseases.

Occupational Safety and Health Act of 1970. A 1970 federal statute that requires employers to (1) keep the workplace free from recognized hazards that cause or are likely to cause death or serious physical harm to employees, and (2) comply with standards promulgated by the Secretary of Labor. — *Abbr.* OSHA (oh-shə).

"Although OSHA has been one of the most controversial pieces of protective legislation ever enacted, Congress has not passed any substantive amendments to the Act. There have been, however, some limitations on OSHA enforcement activity attached to appropriations bills. In addition, OSHA has been affected by newer laws such as the Criminal Fine Enforcement Act, the Equal Access to Justice Act, and the Surface Transportation Assistance Act. . . . The Act covers employment in every state, the

District of Columbia, Puerto Rico, and all American territories, an estimated 5 million workplaces and 75 million employees." Mark A. Rothstein, *Occupational Safety and Health Law* 7 (1990).

Occupational Safety and Health Administration. A federal agency that establishes and enforces health and safety standards in various industries. • This agency, created in 1970 as part of the Labor Department, routinely conducts inspections of businesses and issues citations for noncompliance with its standards. — Abbr. OSHA.

occupational tax. See *occupation tax* under TAX.

occupation tax. See TAX.

occupavit (ok-yə-pay-vit). [Law Latin] *Hist.* A writ to regain possession to land or a tenement from which one was ejected in time of war.

occupying claimant. A person who claims the right under a statute to recover for the cost of improvements done to land that is later found not to belong to the person.

occupying-claimant act. See BETTERMENT ACT.

occurrence. Something that happens or takes place; specif., an accident, event, or continuing condition that results in personal injury or property damage that is neither expected nor intended from the standpoint of an insured party. • This specific sense is the standard definition of the term under most liability policies.

occurrence policy. See INSURANCE POLICY.

occurrence rule. *Civil procedure.* The rule that a limitations period begins to run when the alleged wrongful act or omission occurs, rather than when the plaintiff discovers the injury. • This rule applies, for example, to most breach-of-contract claims. See STATUTE OF LIMITATIONS. Cf. DISCOVERY RULE.

ocean. **1.** The continuous body of salt water that covers more than 70% of the earth's surface; the high seas; the open sea. See SEA. **2.** Any of the principal geographic divisions of this body. • There are generally considered to be five oceans: Atlantic, Pacific, Indian, Arctic, and Antarctic.

ocean bill of lading. See BILL OF LADING.

ocean marine insurance. See INSURANCE.

octo tales (ok-toh tay-leez or taylz). [Latin "eight such"] **1.** A supply of eight additional jurors for a trial. **2.** A writ commanding a sheriff to summon eight more jurors for a trial. See TALES.

octroi (ok-troy or ahk-trwah), *n.* [French] **1.** *Hist.* A grant or privilege of a charter by a sovereign. **2.** A local tax levied on certain goods that are brought into a city (esp. in some European countries). **3.** The place where such a tax is collected. **4.** The agency for collecting such a tax.

octroy (ok-troy), *vb.* (Of a sovereign) to grant or concede as a privilege.

o/d. *abbr.* OVERDRAFT (2).

OD. *abbr.* **1.** Overdose. **2.** OVERDRAFT (2). **3.** See *ordinary seaman* under SEAMAN.

odal (oh-dəl), *n.* *Hist.* Land not subject to feudal duties or burdens; ALLODIUM. — Also termed *odel*; *odhal*; *odhall*. — **odal**, *adj.* <an odal right>.

odd lot. See LOT (3).

odd-lot, *adj.* Of, relating to, or designating a worker who is so substantially disabled as to be unable to find stable employment in the ordinary labor market, and thus is considered totally disabled and entitled to workers'-compensation benefits under the odd-lot doctrine <an odd-lot worker who could find only sporadic employment>.

odd-lot doctrine. *Workers' compensation.* The doctrine that permits a finding of total disability for an injured claimant who, though able to work sporadically, cannot obtain regular employment and steady income and is thus considered an "odd lot" in the labor market.

odel. See ODAL.

odhal. See ODAL.

odhall. See ODAL.

odio et atia. See DE ODIO ET ATIA.

odium (oh-dee-əm). **1.** The state or fact of being hated. **2.** A state of disgrace, usu. resulting from detestable conduct. **3.** Hatred or strong

aversion accompanied by loathing or contempt. — **odious**, *adj.*

oeconomicus (ee-kə-nom-ə-kəs). [Law Latin] *Hist.* An executor of a will.

oeconomus (ee-kon-ə-məs). [Latin] *Civil law.* A manager or administrator.

of counsel. See COUNSEL.

of course. 1. Following the ordinary procedure <the writ was issued as a matter of course>. 2. Naturally; obviously; clearly <we'll appeal that ruling, of course>.

off-board, *adj.* Outside a major exchange; over-the-counter or between private parties <an off-board securities transaction>. — Also termed *off-the-board*. See OVER-THE-COUNTER.

offender. A person who has committed a crime.

adult offender. 1. A person who has committed a crime after reaching the age of majority. 2. A person who, having committed a crime while a minor, has been convicted after reaching the age of majority. 3. A juvenile who has committed a crime and is tried as an adult rather than as a juvenile.

first offender. A person who authorities believe has committed a crime but who has never before been convicted of a crime. ● Such a person is often treated leniently at sentencing or in plea negotiations.

repeat offender. A person who has been convicted of a crime more than once; RECIDIVIST.

status offender. A youth who engages in conduct that — though not criminal by adult standards — is considered inappropriate enough to bring a charge against the youth in juvenile court; a juvenile who commits a status offense. Cf. *youthful offender*; JUVENILE DELINQUENT.

youthful offender. 1. A person in late adolescence or early adulthood who has been convicted of a crime. ● A youthful offender is often eligible for special programs not available to older offenders, including community supervision, the successful completion of which may lead to erasing the conviction from the offender's record. 2. JUVENILE DELINQUENT. — Also termed *young offender*; *youth offender*. Cf. *status offender*.

offense (ə-fents). 1. A violation of the law; a crime, often a minor one. See CRIME.

acquisitive offense. An offense characterized by the unlawful appropriation of another's property. ● This is a generic term that refers to a variety of crimes (such as larceny) rather than a particular one.

anticipatory offense. See *inchoate offense*.

arrestable offense. *English law.* An offense for which the punishment is fixed by law or for which a statute authorizes imprisonment for five years, or an attempt to commit such an offense. ● This statutory category, created in 1967, abolished the traditional distinction between felonies and misdemeanors. — Also spelled (esp. in BrE) *arrestable offence*.

capital offense. A crime for which the death penalty may be imposed. — Also termed *capital crime*.

civil offense. See *public tort* under TORT.

cognate offense. A lesser offense that is related to the greater offense because it shares several of the elements of the greater offense and is of the same class or category. ● For example, shoplifting is a cognate offense of larceny because both crimes require the element of taking property with the intent to deprive the rightful owner of that property. Cf. *lesser included offense*.

continuing offense. A crime that is committed over a period of time, such as a conspiracy, so that the last act of the crime controls for the commencement of the statute of limitations.

cumulative offense. An offense committed by repeating the same act at different times.

divisible offense. A crime that includes one or more crimes of lesser grade. ● For example, murder is a divisible offense comprising assault, battery, and assault with intent to kill.

extraneous offense. An offense beyond or unrelated to the offense for which a defendant is on trial.

graded offense. A crime that is divided into various degrees of severity with corresponding levels of punishment, such as murder (first-degree and second-degree) or assault (simple and aggravated). See DEGREE (2).

impeachable offense. See IMPEACHABLE OFFENSE.

inchoate offense. A step toward the commission of another crime, the step in itself being serious enough to merit punishment. ● In criminal law, the three inchoate offenses are attempt, conspiracy, and solicitation. The term is sometimes criticized (see quot. be-

low). — Also termed *anticipatory offense*; *inchoate crime*; *preliminary crime*.

"These preliminary crimes have sometimes been erroneously described as 'inchoate' offenses. This is misleading because the word 'inchoate' connotes something which is not yet completed, and it is therefore not accurately used to denote something which is itself complete, even though it be a link in a chain of events leading to some object which is not yet attained. The offence of incitement is fully performed even though the person incited immediately repudiates the suggested deed, a conspiracy is committed although the conspirators have not yet moved to execute their purposed crime, and the performance of a criminal attempt must always have been reached before the end is gained. In all these instances it is the ultimate crime which is inchoate and not the preliminary crime, the position indeed being just the same as in the example imagined above of a man who stole a revolver and committed other crimes in order to effect his purpose of murder. There the murder was inchoate, but the larceny and other crimes (including the attempt) were completed." J.W. Cecil Turner, *Kenny's Outlines of Criminal Law* 77 (16th ed. 1952).

included offense. See *lesser included offense*.

index offense. One of eight classes of crimes reported annually by the FBI in the Uniform Crime Report. • The eight classes are murder (and nonnegligent homicide), rape, robbery, aggravated assault, burglary, larceny-theft, arson, and auto theft. — Also termed *index crime*.

indictable offense. A crime that can be prosecuted only by indictment. • In federal court, such an offense is one punishable by death or by imprisonment for more than one year or at hard labor. Fed. R. Crim. P. 7(a). See INDICTMENT.

joint offense. An offense (such as conspiracy) committed by the participation of two or more persons.

lesser included offense. A crime that is composed of some, but not all, of the elements of a more serious crime and that is necessarily committed in carrying out the greater crime <battery is a lesser included offense of murder>. • For double-jeopardy purposes, a lesser included offense is considered the "same offense" as the greater offense, so that acquittal or conviction of either offense precludes a separate trial for the other. — Also termed *included offense*; *necessarily included offense*. Cf. *cognate offense*.

liquor offense. Any crime involving the inappropriate use or sale of intoxicating liquor. See DRAM-SHOP LIABILITY; DRIVING WHILE INTOXICATED.

multiple offense. An offense that violates more than one law but that may require

different proof so that an acquittal or conviction under one statute does not exempt the defendant from prosecution under another.

necessarily included offense. See *lesser included offense*.

negligent offense. A violation of law arising from a defective discharge of duty or from criminal negligence. See *criminal negligence* under NEGLIGENCE.

object offense. The crime that is the object of the defendant's attempt, solicitation, conspiracy, or complicity. • For example, murder is the object offense in a charge of attempted murder. — Also termed *target offense*.

offense against property. A crime against another's personal property. • The common-law offenses against property were larceny, embezzlement, cheating, cheating by false pretenses, robbery, receiving stolen goods, malicious mischief, forgery, and uttering forged instruments. Although the term *crimes against property*, a common term in modern usage, includes crimes against real property, the term *offense against property* is traditionally restricted to personal property. Cf. CRIMES AGAINST PROPERTY.

offense against public justice and authority. A crime that impairs the administration of justice. • The common-law offenses of this type were obstruction of justice, barratry, maintenance, champerty, embracery, escape, prison breach, rescue, misprision of felony, compounding a crime, subornation of perjury, bribery, and misconduct in office.

offense against the habitation. A crime against another's house — traditionally either arson or burglary.

offense against the person. A crime against the body of another human being. • The common-law offenses against the person were murder, manslaughter, mayhem, rape, assault, battery, robbery, false imprisonment, abortion, seduction, kidnapping, and abduction. Cf. CRIMES AGAINST PERSONS.

offense against the public health, safety, comfort, and morals. A crime traditionally viewed as endangering the whole of society. • The common-law offenses of this type were nuisance, bigamy, adultery, fornication, lewdness, illicit cohabitation, incest, miscegenation, sodomy, bestiality, buggery, abortion, and seduction.

offense against the public peace. A crime that tends to disturb the peace. • The common-law offenses of this type were riot, unlawful assembly, dueling, rout, affray, forcible

entry and detainer, and libel on a private person.

petty offense. A minor or insignificant crime.

"[W]e find . . . an apparent implication that a 'petty offense' is not a 'crime.' Much could be said for such a position but it is not the law at the present time. In the federal penal code, for example, it is provided that any misdemeanor 'the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both, is a petty offense.'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 22 (3d ed. 1982) (quoting 18 USCA § 1(3)).

political offense. See POLITICAL OFFENSE.

public offense. An act or omission forbidden by law.

public-welfare offense. A minor offense that involves no moral delinquency, being intended only to secure the effective regulation of conduct in the interest of the community. • An example is driving a car with one brake-light missing. — Also termed *regulatory offense*; *contravention*.

regulatory offense. 1. A statutory crime, as opposed to a common-law crime. 2. See *public-welfare offense*.

same offense. 1. For double-jeopardy purposes, the same criminal act, omission, or transaction for which the person has already stood trial. See DOUBLE JEOPARDY. 2. For sentencing and enhancement-of-punishment purposes, an offense that is quite similar to a previous one.

second offense. An offense committed after conviction for a first offense. • The previous conviction, not the indictment, forms the basis of the charge of a second offense.

separate offense. 1. An offense arising out of the same event as another offense but containing some differences in elements of proof. • A person may be tried, convicted, and sentenced for each separate offense. 2. An offense arising out of a different event entirely from another offense under consideration.

serious offense. An offense not classified as a petty offense and usu. carrying at least a six-month sentence. — Also termed *serious crime*. Cf. *petty offense*.

sexual offense. An offense involving unlawful sexual conduct, such as prostitution, indecent exposure, incest, pederasty, and bestiality.

status offense. 1. See *status crime* under CRIME. 2. A minor's violation of the juvenile code by doing some act that would not be considered illegal if an adult did it, but that indicates that the minor is beyond parental control. • Examples include running away

from home, truancy, and incorrigibility. See JUVENILE DELINQUENCY.

substantive offense (səb-stən-tiv). A crime that is complete in itself and is not dependent on another crime for one of its elements. — Also termed *substantive crime*.

summary offense. An offense (such as a petty misdemeanor) that can be prosecuted without an indictment. Cf. *indictable offense*.

target offense. See *object offense*.

unnatural offense. See SODOMY.

unrelated offense. A crime that is independent from the charged offense.

2. *Civil law.* An intentional unlawful act that causes injury or loss to another and that gives rise to a claim for damages. • This sense of *offense* is essentially the same as the common-law intentional tort.

quasi-offense. *Civil law.* A negligent unlawful act that causes injury or loss to another and that gives rise to a claim for damages. • This is equivalent to the common-law tort of negligence. — Also termed *quasi-delict*.

offense against property. See OFFENSE (1).

offense against public justice and authority. See OFFENSE (1).

offense against the habitation. See OFFENSE (1).

offense against the person. See OFFENSE (1).

offense against the public health, safety, comfort, and morals. See OFFENSE (1).

offense against the public peace. See OFFENSE (1).

offensive (ə-fen-siv), *adj.* 1. Of or for attack <an offensive weapon>. 2. Unpleasant or disagreeable to the senses; obnoxious <an offensive odor>. 3. Causing displeasure, anger, or resentment; esp., repugnant to the prevailing sense of what is decent or moral <patently offensive language and photographs>. See OBSCENE.

offensive and defensive league. *Int'l law.* A league binding the parties not only to aid one another when attacked but also to support one another when attacking in offensive warfare.

offensive collateral estoppel. See COLLATERAL ESTOPPEL.

offensive strike. See STRIKE.

offensive-use waiver. An exemption from the attorney-client privilege, whereby a litigant is considered to have waived the privilege by seeking affirmative relief, if the claim relies on privileged information that would be outcome-determinative and that the opposing party has no other way to obtain. Cf. AT-ISSUE WAIVER.

offer, n. **1.** The act or an instance of presenting something for acceptance <the prosecutor's offer of immunity>. **2.** A promise to do or refrain from doing some specified thing in the future; a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract <she accepted the \$750 offer on the Victorian armoire>. Cf. ACCEPTANCE.

"[A]n offer is, in effect, a promise by the offeror to do or abstain from doing something, provided that the offeree will accept the offer and pay or promise to pay the 'price' of the offer. The price, of course, need not be a monetary one. In fact, in bilateral contracts, as we explained earlier, the mere promise of payment of the price suffices to conclude the contract, while in a unilateral contract it is the actual payment of the price which is required." P.S. Atiyah, *An Introduction to the Law of Contract* 44 (3d ed. 1981).

irrevocable offer (i-rev-ə-kə-bəl). An offer that includes a promise to keep it open for a specified period, during which the offer cannot be withdrawn without the offeror's becoming subject to liability for breach of contract. • Traditionally, this type of promise must be supported by consideration to be enforceable, but under UCC § 2-205, a merchant's signed, written offer giving assurances that it will be held open — but lacking consideration — is nonetheless irrevocable for the stated period (or, if not stated, for a reasonable time not exceeding three months). — Also termed (in the UCC) *firm offer*; (specif.) *merchant's firm offer*.

"It has sometimes been asserted that an irrevocable offer is 'a legal impossibility.' See Langdell, Summary of the Law of Contracts, § 178, also § 4; Wormser, 'The True Conception of Unilateral Contracts,' 26 *Yale Law Journal*, 137, note; Lee, Title Contracts, in Jenks' Dig. of Eng. Civ. Law, § 195; Ashley, Contracts, § 13. A close analysis shows that there is nothing impossible either in the conception itself or in its application. If we define 'offer' as an act on the part of the offeror . . . , then no offer can ever be revoked, for it is of yesterday — it is indeed *factum*. But if we mean by 'offer' the legal relation that results from the offeror's act, the power then given to the offeree of creating contractual relations by doing certain voluntary acts on his part, then the offer may be either revocable or irrevocable according to the circumstances. The idea of an irrevocable power is not at all an

unfamiliar one." William R. Anson, *Principles of the Law of Contract* 53-54 n.3 (Arthur L. Corbin ed., 3d Am. ed. 1919).

offer to all the world. An offer, by way of advertisement, of a reward for the rendering of specified services, addressed to the public at large. • As soon as someone renders the services, a contract is made.

public-exchange offer. A takeover attempt in which the bidder corporation offers to exchange some of its securities for a specified number of the target corporation's voting shares. Cf. TENDER OFFER.

standing offer. An offer that is in effect a whole series of offers, each of which is capable of being converted into a contract by a distinct acceptance.

two-tier offer. See TWO-TIER OFFER.

3. A price at which one is ready to buy or sell; BID <she lowered her offer to \$200>. **4.** ATTEMPT (2) <an offer to commit battery>. — **offer, vb.** — **offeror, n.** — **offeree, n.**

"Where criminal assault has been given this dual scope, a definition in terms of 'an attempt or offer' to commit a battery is assumed to represent both grounds. The word 'offer,' it is said, signifies a threat that places the other in reasonable apprehension of receiving an immediate battery. It would be a mistake, however, to assume that the word carried any such significance when it first appeared in the definition of this offense. In one of its meanings, 'offer' is a synonym of 'attempt.'" Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 163 (3d ed. 1982).

offer in compromise. See OFFER OF COMPROMISE.

offering, n. **1.** The act of making an offer; something offered for sale. **2.** The sale of an issue of securities. See ISSUE (2).

all-or-none offering. An offering that allows the issuer to terminate the distribution if the entire block of offered securities is not sold.

initial public offering. A company's first public sale of stock; the first offering of an issuer's equity securities to the public through a registration statement. — Abbr. IPO.

negotiated offering. A securities offering in which the terms (including the underwriters' compensation) have been negotiated between the issuer and the underwriters.

primary offering. An offering of newly issued securities.

private offering. An offering made only to a small group of interested buyers. — Also termed *private placement*.

public offering. An offering made to the general public.

registered offering. A public offering of securities registered with the SEC and with appropriate state securities commissions. — Also termed *registered public offering*.

rights offering. An issue of stock-purchase rights allowing shareholders to buy newly issued stock at a fixed price, usu. below market value, and in proportion to the number of shares they already own. — Also termed *privileged subscription*. Cf. PREEMPTIVE RIGHT.

secondary offering. 1. Any offering by an issuer of securities after its initial public offering. 2. An offering of previously issued securities by persons other than the issuer. See *secondary distribution* (1) under DISTRIBUTION.

special offering. An offering of a large block of stock that, because of its size and the market in the particular issue, is specially handled on the floor of the stock exchange.

undigested offering. A public offering of securities that remain unsold because there is insufficient demand at the offered price.

offering circular. A document, similar to a prospectus, that provides information about a private securities offering. — Also termed *offering statement*.

offering price. See *asking price* under PRICE.

offering statement. See OFFERING CIRCULAR.

offer of compromise. An offer by one party to settle a dispute amicably (usu. by paying money) to avoid or end a lawsuit or other legal action. • An offer of compromise is usu. not admissible at trial as evidence of the offering party's liability. — Also termed *offer in compromise*; *offer of settlement*.

offer of judgment. A settlement offer by one party to allow a specified judgment to be taken against the party. • In federal procedure (and in many states), if the adverse party rejects the offer, and if a judgment finally obtained by that party is not more favorable than the offer, then that party must pay the costs incurred after the offer was made. Fed. R. Civ. P. 68.

offer of performance. *Contracts.* One party's reasonable assurance to the other, through words or conduct, of a present ability to fulfill contractual obligations. • When performances are to be exchanged simultaneously, each party

is entitled to refuse to proceed with the exchange until the other party makes an appropriate offer of performance.

"The requirement of an offer of performance is to be applied in the light of what is reasonably to be expected by the parties in view of the practical difficulties of absolute simultaneity and is subject to the agreement of the parties, as supplemented or qualified by usage and course of dealing." Restatement (Second) of Contracts § 238 cmt. b (1981).

offer of proof. *Procedure.* A presentation of evidence for the record (but outside the jury's presence) usu. made after the judge has sustained an objection to the admissibility of that evidence, so that the evidence can be preserved on the record for an appeal of the judge's ruling. • An offer of proof, which may also be used to persuade the court to admit the evidence, consists of three parts: (1) the evidence itself, (2) an explanation of the purpose for which it is offered (its relevance), and (3) an argument supporting admissibility. Such an offer may include tangible evidence or testimony (through questions and answers, a lawyer's narrative description, or an affidavit). Fed. R. Evid. 103(a)(2). — Also termed *avowal*.

offer of settlement. See OFFER OF COMPROMISE.

offer to all the world. See OFFER.

office. 1. A position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose <the office of attorney general>. 2. (*often cap.*) A division of the U.S. government ranking immediately below a department <the Patent and Trademark Office>. 3. A place where business is conducted or services are performed <a law office>.

alienation office. *English law.* An office for the recovery of fines levied upon writs of covenant and entries.

lucrative office. 1. A position that produces fee revenue or a salary to the office holder. 2. A position that yields a salary adequate to the services rendered and exceeding incidental expenses; a position whose pay is tied to the performance of the office's duties.

office audit. See AUDIT.

office-block ballot. See BALLOT (4).

office expense. See OVERHEAD.

office grant. See GRANT.

office hours. See *nonjudicial punishment* under PUNISHMENT.

office lawyer. See OFFICE PRACTITIONER.

office of honor. An uncompensated public position of considerable dignity and importance to which public trusts or interests are confided.

office practice. A law practice that primarily involves handling matters outside of court, such as negotiating and drafting contracts, preparing wills and trusts, setting up corporations and partnerships, and advising on tax or employment issues.

office practitioner. A lawyer who does not litigate; an attorney whose work is accomplished primarily in the office, without court appearances. — Also termed *office lawyer*.

officer. 1. A person who holds an office of trust, authority, or command. • In public affairs, the term refers esp. to a person holding public office under a national, state, or local government, and authorized by that government to exercise some specific function. In corporate law, the term refers esp. to a person elected or appointed by the board of directors to manage the daily operations of a corporation, such as a CEO, president, secretary, or treasurer. Cf. DIRECTOR (2).

acting officer. One performing the duties of an office — usu. temporarily — but who has no claim of title to the office.

administrative officer. 1. An officer of the executive department of government, usu. of inferior rank. **2.** A ministerial or executive officer, as distinguished from a judicial officer.

corporate officer. An officer of a corporation, such as a CEO, president, secretary, or treasurer.

county officer. An officer whose authority and jurisdiction are confined to the limits of the county served.

de facto officer. See *officer de facto*.

de jure officer. See *officer de jure*.

legislative officer. 1. A member of a federal, state, or municipal legislative body. **2.** A government official whose duties relate primarily to the enactment of laws, such as a federal or state congressman. • State and federal constitutions generally restrict legislative officers' duties to the enactment of legislation. But legislative officers occasionally exercise judicial functions, such as presenting or hearing

cases of impeachment of other government officers.

ministerial officer. An officer who primarily executes mandates issued by the officer's superiors. • One who performs specified legal duties when the appropriate conditions have been met, but who does not exercise personal judgment or discretion in performing those duties.

officer de facto (di fak-toh). **1.** An officer who exercises the duties of an office under color of an appointment or election, but who has failed to qualify for office for any one of various reasons, as by being under the required age, having failed to take the oath, having not furnished a required bond, or having taken office under a statute later declared unconstitutional. **2. Corporations.** One who is acting under color of right and with apparent authority, but who is not legally a corporate officer. • The corporation is bound by all acts and contracts of an officer de facto in the same way as it is with those of an officer de jure. — Also termed *de facto officer*.

officer de jure (di juur-ee). **1.** An officer who exercises the duties of an office for which the holder has fulfilled all the qualifications. **2.** A duly authorized corporate officer. — Also termed *de jure officer*.

state officer. 1. A person whose authority or jurisdiction extends to the general public or state as a whole, as distinguished from an officer whose authority and jurisdiction is confined to the limits of a particular political subdivision. **2.** An officer exercising authority under a state — rather than the federal — government.

subordinate officer. 1. An officer ranking below and performing under the direction of another officer. **2.** An independent officer subject only to statutory direction.

United States officer. An officer appointed under the authority of the federal government; specif., an officer appointed in the manner described in Article II, section 2, of the U.S. Constitution.

2. Military law. One who holds a commission in the armed services, or a military post higher than that of the lowest ranks.

brevet officer (brə-vet or brev-it). A military officer who holds a nominal rank above that for which the person is paid.

commissioned officer. An officer in the armed forces who holds grade and office under a presidential commission.

general officer. A military officer whose command extends to a body of forces composed of several regiments. • Examples are generals, lieutenant-generals, major-generals, and brigadiers.

legal officer. **1.** The officer responsible for handling military justice within a command. **2.** The adviser and assistant to a commanding officer on military-law matters. **3.** Any commissioned officer of the Navy, Marine Corps, or Coast Guard who has been designated to perform legal duties for a command.

noncommissioned officer. An enlisted person in the Army, Air Force, or Marine Corps in certain pay grades above the lowest pay grade. • Examples are sergeants and corporals.

officer of the day. An officer who has charge, for the time being, of the guard, prisoners, and police of a military force or camp. — Also termed *orderly officer*.

officer of the guard. A commissioned officer whose detail is to command the guard of a military force or camp. • The officer of the guard is under the command of the officer of the day.

orderly officer. See *officer of the day*.

petty officer. An enlisted person in the Navy or Coast Guard with a pay-grade of E-4 or higher.

presiding officer. **1.** The president of the court in a special court-martial that does not have a military judge. **2.** In a court-martial with a military judge, the military judge.

superior commissioned officer. A commissioned officer who is superior in command or rank.

warrant officer. A person who holds a commission or warrant in a warrant-officer grade. • A warrant officer's rank is below a second lieutenant or ensign but above cadets, midshipmen, and enlisted personnel.

officer de facto. See OFFICER (1).

officer de jure. See OFFICER (1).

officer of the court. A person who is charged with upholding the law and administering the judicial system. • Typically, *officer of the court* refers to a judge, clerk, bailiff, sheriff, or the like, but the term also applies to a lawyer, who is obliged to obey court rules and who owes a duty of candor to the court. — Also termed *court officer*.

officer of the day. See OFFICER (2).

officer of the guard. See OFFICER (2).

officer of the peace. See PEACE OFFICER.

official (ə-fish-əl), *adj.* **1.** Of or relating to an office or position of trust or authority <official duties>. **2.** Authorized or approved by a proper authority <a company's official policy>.

official, n. **1.** One who holds or is invested with a public office. **2.** One authorized to act for a corporation or organization, esp. in a subordinate capacity. **3.** (*usu. cap.*) OFFICIAL PRINCIPAL.

official bond. See BOND (2).

official corruption. See *official misconduct* under MISCONDUCT.

official misconduct. See MISCONDUCT.

official newspaper. See NEWSPAPER.

official principal. (*usu. cap.*) *Eccles. law.* A person appointed by an archbishop, bishop, or deacon to exercise jurisdiction in and preside over an ecclesiastical court. — Sometimes shortened to *official*.

official privilege. See PRIVILEGE (3).

official report. See REPORT (2).

official use. See USE (4).

officina brevium (aw-fə-sī-nə bree-vee-əm). [Latin "workshop of writs"] *Hist.* OFFICINA JUSTITIAE.

officina justitiae (aw-fə-sī-nə jās-tish-ee-ee). [Latin "workshop of justice"] *Hist.* The court of chancery, where the king's writs were issued. — Also termed *officina brevium*. See CHANCERY.

officio. See EX OFFICIO.

officious intermeddler (ə-fish-əs). A person who confers a benefit on another without being requested or having a legal duty to do so, and who therefore has no legal grounds to demand restitution for the benefit conferred. — Sometimes shortened to *intermeddler*.

officious testament. See TESTAMENT.

officious will. See *officious testament* under TESTAMENT.

off point. Not discussing the precise issue at hand; irrelevant. Cf. ON POINT.

offset, n. Something (such as an amount or claim) that balances or compensates for something else; SETOFF.

offset, vb. To balance or calculate against; to compensate for <the gains offset the losses>.

offset account. See ACCOUNT.

offspring. Children; issue; progeny.

off-the-board, adj. See OFF-BOARD.

off-year election. See ELECTION.

of record. 1. Recorded in the appropriate records <counsel of record>. See ATTORNEY OF RECORD. 2. (Of a court) that has proceedings taken down stenographically or otherwise documented <court of record>. See *court of record* under COURT.

of the essence. (Of a contractual requirement) so important that if the requirement is not met, the promisor will be held to have breached the contract and a rescission by the promisee will be justified <time is of the essence>.

OID. *abbr.* ORIGINAL-ISSUE DISCOUNT.

oil-and-gas lease. See LEASE.

Oireachtas (*air-ək-thəs* or *eer-ək-təs*). The Parliament of the Republic of Ireland.

old-age and survivors' insurance. (*usu. cap.*) A system of insurance, subsidized by the federal government, that provides retirement benefits for persons who turn 65 and payments to survivors upon the death of the insured. • This was the original name for the retirement and death benefits established by the Social Security Act of 1935. As the scope of these benefits expanded, the name changed to Old Age, Survivors, and Disability Insurance (OASDI), and then to Old Age, Survivors, Disability, and Health Insurance (OASDHI). Today, the system is most often referred to as *social security*. — *Abbr.* OASI. See SOCIAL SECURITY.

Old *Natura Brevium* (*nə-t[y]oor-ə bree-vee-əm*). *Hist.* A treatise on the writs in use during the reign of Edward III. — *Abbr.* O.N.B. See BREVE.

old style. The system of ordering time according to the Julian method, introduced by Julius Caesar in 46 B.C., by which all years have 366 days except the years divisible by 4, which have 366 days. • This differs from the modern calendar in that it assumes that there are exactly 365.25 days in a year. But there are actually slightly less than 365.25 days in a year, so the old-style calendar adds too many days over time. The Julian calendar was reformed by Pope Gregory XIII in 1582. — *Abbr.* o.s. — Also termed *Julian calendar*. Cf. NEW STYLE.

Oléron, laws of (*oh-lə-ron* or *aw-lay-ron*). See LAWS OF OLÉRON.

oligarchy (*ol-ə-gahr-kee*), *n.* A government in which a small group of persons exercises control; the persons who constitute such a government. — **oligarchic, oligarchical, adj.**

oligopoly (*ol-ə-gop-ə-lee*), *n.* Control or domination of a market by a few large sellers, creating high prices and low output similar to those found in a monopoly. — **oligopolistic, adj.** — **oligopolist, n.** See MONOPOLY.

oligopsony (*ol-ə-gop-sə-nee*), *n.* Control or domination of a market by a few large buyers or customers. — **oligopsonistic, adj.** — **oligopsonist, n.**

olograph, n. HOLOGRAPH. — **olographic, adj.**

olographic will. See *holographic will* under WILL.

ombudsman (*om-bədz-mən*). 1. An official appointed to receive, investigate, and report on private citizens' complaints about the government. 2. A similar appointee in a nongovernmental organization (such as a company or university). — Often shortened to *ombuds*.

"An ombudsman serves as an alternative to the adversary system for resolving disputes, especially between citizens and government agencies An ombudsman is . . . (1) an independent and nonpartisan officer of the legislature who supervises the administration; (2) one who deals with specific complaints from the public against administrative injustice and maladministration; and (3) one who has the power to investigate, criticize and publicize, but not to reverse administration action." 4 Am. Jur. 2d *Alternative Dispute Resolution* § 23 (1995).

omission, *n.* **1.** A failure to do something; esp., a neglect of duty <the complaint alleged that the driver had committed various negligent acts and omissions>. **2.** The act of leaving something out <the contractor's omission of the sales price rendered the contract void>. **3.** The state of having been left out or of not having been done <his omission from the roster caused no harm>. **4.** Something that is left out, left undone, or otherwise neglected <the many omissions from the list were unintentional>. — Formerly also termed *omittance*. — **omit**, *vb.* — **omissive**, **omissible**, *adj.*

omittance. *Archaic.* OMISSION.

omnibus (om-ni-bəs), *adj.* Relating to or dealing with numerous objects or items at once; including many things or having various purposes.

omnibus bill. See BILL (3).

omnibus clause. **1.** A provision in an automobile-insurance policy that extends coverage to all drivers operating the insured vehicle with the owner's permission. **2.** RESIDUARY CLAUSE.

omnibus count. See COUNT.

omnibus hearing. See HEARING.

omnibus motion. See MOTION.

omnium (om-nee-əm). The total amount or value of the items in a combined fund or stock. ● The term is used primarily in mercantile law and in Great Britain.

OMVI. *abbr.* Operating a motor vehicle while intoxicated. See DRIVING UNDER THE INFLUENCE.

OMVUI. *abbr.* Operating a motor vehicle under the influence. See DRIVING UNDER THE INFLUENCE.

on all fours. (Of a law case) squarely on point (with a precedent) on both facts and law; nearly identical in all material ways <our client's case is on all fours with the Supreme Court's most recent opinion>. Cf. WHITEHORSE CASE.

"The courts, nowadays, are governed largely by precedent, and this imposes on the advocate the necessity of supporting his client's cause by concrete authorities — cases 'on all fours' with, or at least analogous to, the case at bar." William M. Lile et al., *Brief Making and the Use of Law Books* 98 (3d ed. 1914).

O.N.B. *abbr.* OLD NATURA BREVIUM.

on board bill of lading. See BILL OF LADING.

on demand. When presented or upon request for payment <this note is payable on demand>. — Also termed *on call*. See PAYABLE.

one-action rule. In debtor-creditor law, the principle that when a debt is secured by real property, the creditor must foreclose on the collateral before proceeding against the debtor's unsecured assets.

one-court-of-justice doctrine. A principle in some states holding that there is but a single court in the state and that this court is composed of several divisions, such as the supreme court, the courts of appeals, and district courts, probate courts, and any other legislatively created courts. ● Michigan, for example, has embodied this doctrine in its constitution (art. VI, § 1). — Also termed *one court of justice*.

one-day, one-trial method. A system of summoning and using jurors whereby a person answers a jury summons and participates in the venire for one day only, unless the person is actually impaneled for a trial, in which event the juror's service lasts for the entire length of the trial. ● This system, which is used in several states, reduces the average term of service and expands the number of individual jurors called.

180-day rule. **1.** A rule that, in some jurisdictions, allows a person charged with a felony to be released on personal recognizance if the person has been in jail for 180 days without being brought to trial, and if the delay has not resulted from the defendant's own actions. **2.** A rule requiring all pending charges against a prison inmate to be brought to trial in 180 days or to be dismissed with prejudice.

one-month liquidation. See LIQUIDATION.

one-person, one-vote rule. *Constitutional law.* The principle that the Equal Protection Clause requires legislative voting districts to have about the same population. *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964). — Also termed *one-man, one-vote rule*. See APPORTIONMENT.

onerando pro rata portione. See DE ONERANDO PRO RATA PORTIONE.

onerare (on-ə-rair-ee), *vb.* [Latin] *Hist.* To burden or load.

onerari non (on-ə-**rair**-I non). [Law Latin] *Hist.* Ought not to be charged. • In pleading, these words were used by a defendant to begin a plea in a debt action. Cf. ACTIO NON.

oneratio (on-ə-**ray**-shee-oh). [Law Latin] *Hist.* A cargo or lading.

onerous (oh-nər-əs or on-ər-əs), *adj.* **1.** Excessively burdensome or troublesome; causing hardship <onerous discovery requests>. **2.** Having or involving obligations that outweigh the advantages <onerous property>. **3.** *Civil law.* Done or given in return for something of equivalent value; supported by consideration <an onerous contract>. — **onerousness**, *n.* Cf. GRATUITOUS.

onerous contract. See CONTRACT.

onerous gift. See GIFT.

onerous title. See TITLE (2).

one-satisfaction rule. The principle that a plaintiff is only entitled to one recovery for a particular harm, and that the plaintiff must elect a single remedy if the jury has awarded more than one. • This rule is, for example, one of the foundations of a defendant's right to have a jury verdict reduced by the amount of any settlements the plaintiff has received from other entities for the same injury. — Also termed *single-recovery rule*.

one-subject rule. The principle that a statute should embrace only one topic, which should be stated in its title.

onomastic (on-ə-**mas**-tik), *adj.* **1.** Of or relating to names or nomenclature. **2.** (Of a signature on an instrument) in a handwriting different from that of the body of the document; esp., designating an autograph signature alone, as distinguished from the main text in a different hand or in typewriting. Cf. HOLOGRAPH; SYMBOLIC. — **onomastics** (for sense 1), *n.*

on or about. Approximately; at or around the time specified. • This language is used in pleading to prevent a variance between the pleading and the proof, usu. when there is any uncertainty about the exact date of a pivotal event. When used in nonpleading contexts, the phrase is mere jargon.

on pain of. Followed by punishment inflicted if one does not comply with a command or condi-

tion <ordered to cease operations on pain of a \$2,000 fine>.

on point. Discussing the precise issue now at hand; apposite <this opinion is not on point as authority in our case>. — Also termed *in point*. Cf. OFF POINT.

on-sale bar. *Patents.* A statutory bar prohibiting patent eligibility if an invention was sold or offered for sale more than one year before the filing of a patent application.

on the brief. (Of a lawyer) having participated in preparing a given brief. • The names of all the lawyers on the brief are typically listed on the front cover.

on the merits. (Of a judgment) delivered after the court has heard and evaluated the evidence and the parties' substantive arguments.

on the pleadings. (Of a judgment) rendered for reasons that are apparent from the faces of the complaint and answer, without hearing or evaluating the evidence or the substantive arguments. See SUMMARY JUDGMENT.

onus (oh-nəs). **1.** A burden; a load. **2.** A disagreeable responsibility; an obligation. **3.** ONUS PROBANDI.

onus probandi (oh-nəs prə-**ban**-dī). [Latin] BURDEN OF PROOF. — Often shortened to *onus*.

op. *abbr.* (*often cap.*) **1.** OPINION (1). **2.** Opinions.

OPEC (oh-pek). *abbr.* Organization of Petroleum Exporting Countries.

ope consilio (oh-pee kən-**sil**-ee-oh). [Latin] *Civil law.* By aid and counsel. • The term is usu. applied to accessories to crimes. It is analogous to the common-law concept of aiding and abetting. — *Abbr.* o.c. Also spelled *ope et consilio*.

open, *adj.* **1.** Manifest; apparent; notorious. **2.** Visible; exposed to public view; not clandestine. **3.** Not closed, settled, fixed, or terminated.

open account. See ACCOUNT.

open and notorious. **1.** NOTORIOUS (2). **2.** (Of adultery) known and recognized by the public and flouting the accepted standards of morality in the community.

open and notorious adultery. See ADULTERY.

open and notorious possession. See *notorious possession* under POSSESSION.

open bid. See BID (2).

open court. 1. A court that is in session, presided over by a judge, attended by the parties and their attorneys, and engaged in judicial business. • *Open court* usu. refers to a proceeding in which formal entries are made on the record. The term is distinguished from a court that is hearing evidence in camera or from a judge that is exercising merely magisterial powers. **2.** A court session that the public is free to attend. • Most state constitutions have open-court provisions guaranteeing the public's right to attend trials.

open credit. See *revolving credit* under CREDIT (4).

open diplomacy. See DIPLOMACY.

open-door law. See SUNSHINE LAW.

open-end, adj. 1. Allowing for future changes or additions <open-end credit plan>. **2.** Continuously issuing or redeeming shares on demand at the current net asset value <open-end investment company>. — Also termed *open-ended*.

open-end fund. See MUTUAL FUND.

open-end mortgage. See MORTGAGE.

open-end mortgage bond. See BOND (3).

open entry. See ENTRY (1).

open-fields doctrine. *Criminal procedure.* The rule permitting a warrantless search of the area outside a property owner's curtilage, which includes the home and any adjoining land (such as a yard) that is within an enclosure or otherwise protected from public scrutiny. — Also termed *open-field doctrine*; *open-fields rule*. Cf. PLAIN-VIEW DOCTRINE.

open guaranty. See *continuing guaranty* under GUARANTY.

opening statement. At the outset of a trial, an advocate's statement giving the fact-finder a preview of the case and of the evidence to be presented, but not containing argument. — Also termed (incorrectly) *opening argument*.

open letter of credit. See LETTER OF CREDIT.

open listing. See LISTING (1).

open market. See MARKET.

open-meeting law. See SUNSHINE LAW.

open mortgage clause. See MORTGAGE CLAUSE.

open order. See ORDER (4).

open-perils policy. See INSURANCE POLICY.

open policy. See *unvalued policy* under INSURANCE POLICY.

open possession. See *notorious possession* under POSSESSION.

open price. See PRICE.

open sea. See HIGH SEAS.

open season. A specific time of year when it is legal to hunt or catch game or fish.

open session. See SESSION.

open shop. See SHOP.

open-shop-closed-shop operation. See DOUBLE-BREADED OPERATION.

open town. *Int'l law.* An undefended city in a combat zone that is laid open to the grasp of the attacking forces.

open union. See UNION.

open verdict. See VERDICT.

operating a motor vehicle under the influence. See DRIVING UNDER THE INFLUENCE.

operating a motor vehicle while intoxicated. See DRIVING UNDER THE INFLUENCE.

operating-cost ratio. The ratio between the net sales of a business and its operating costs.

operating expense. See EXPENSE.

operating income. See *ordinary income* under INCOME.

operating interest. See WORKING INTEREST.

operating lease. See LEASE.

operating profit. See PROFIT.

operating under the influence. See DRIVING UNDER THE INFLUENCE.

operating while intoxicated. See DRIVING UNDER THE INFLUENCE.

operational, *adj.* 1. Engaged in operation; able to function. 2. Ministerial.

operation of law. The means by which a right or a liability is created for a party regardless of the party's actual intent <because the court didn't rule on the motion for rehearing within 30 days, it was overruled by operation of law>.

operative, *adj.* 1. Being in or having force or effect; esp., designating the part of a legal instrument that gives effect to the transaction involved <the operative provision of the contract>. 2. Having principal relevance; essential to the meaning of the whole <*may* is the operative word of the statute>.

operative fact. See FACT.

operative performance bond. See PERFORMANCE BOND.

operis novi nuntiatio (op-ər-is noh-vī nən-shee-ay-shee-oh). [Latin "declaration of a new work"] *Civil law.* A protest or warning against a new work undertaken by another to one's detriment.

OPIC. *abbr.* OVERSEAS PRIVATE INVESTMENT CORPORATION.

opinio juris sive necessitatis (ə-pin-ee-oh joor-is si-vee nə-ses-i-tay-tis). [Latin "opinion that an act is necessary by rule of law"] *Int'l law.* The principle that for a country's conduct to rise to the level of international customary law, it must be shown that the conduct stems from the country's belief that international law (rather than moral obligation) mandates the conduct. — Also termed *opinio juris*.

opinion. 1. A court's written statement explaining its decision in a given case, usu. including the statement of facts, points of law, rationale, and dicta. — *Abbr.* op. — Also termed *judicial opinion*. See DECISION. Cf. JUDGMENT; RULING.

advisory opinion. 1. A nonbinding statement by a court of its interpretation of the law on a matter submitted for that purpose. ● Federal courts are constitutionally prohibited from issuing advisory opinions by the case-or-controversy requirement, but other courts, such as the International Court of Justice, render them routinely. See CASE-OR-CONTROVERSY REQUIREMENT. 2. A written statement, issued only by an administrator of an employee benefit plan, that interprets ERISA and applies it to a specific factual situation. ● Only the parties named in the request for the opinion can rely on it, and its reliability depends on the accuracy and completeness of all material facts.

concurring opinion. See CONCURRENCE (3).

dissenting opinion. An opinion by one or more judges who disagree with the decision reached by the majority. — Often shortened to *dissent*. — Also termed *minority opinion*.

majority opinion. An opinion joined in by more than half of the judges considering a given case. — Also termed *main opinion*.

memorandum opinion. A unanimous opinion stating the decision of the court; an opinion that briefly reports the court's conclusion, usu. without elaboration because the decision follows a well-established legal principle or does not relate to any point of law. — Also termed *memorandum decision*.

minority opinion. See *dissenting opinion*.

per curiam opinion (pər kyoor-ee-əm). An opinion handed down by an appellate court without identifying the individual judge who wrote the opinion. — Sometimes shortened to *per curiam*.

plurality opinion. An opinion lacking enough judges' votes to constitute a majority, but receiving more votes than any other opinion.

seriatim opinions (seer-ee-ay-tim). A series of opinions written individually by each judge on the bench, as opposed to a single opinion speaking for the court as a whole.

slip opinion. 1. A court opinion that is published individually after being rendered and then collectively in advance sheets before being released for publication in a reporter. ● Unlike an unpublished opinion, a slip opinion can usu. be cited as authority. Cf. ADVANCE SHEETS. 2. *Archaic.* A preliminary draft of a court opinion not yet ready for publication. — Also termed *slip decision*. Cf. *unpublished opinion*.

unpublished opinion. An opinion that the court has specifically designated as not for publication. • Court rules usu. prohibit citing an unpublished opinion as authority. Such an opinion is considered binding on only the parties to the particular case in which it is issued. Cf. *slip opinion*.

2. A formal expression of judgment or advice based on an expert's special knowledge; esp., a document, usu. prepared at a client's request, containing a lawyer's understanding of the law that applies to a particular case. — Also termed *opinion letter*.

"The essence of a lawyer's job is to obtain the facts and the law with due diligence and then to give advice. But, strangely, no controlling definition has evolved for what is an 'opinion.' The lack of a definition is not crucial for some purposes. On the other hand, a definition is vital in other areas; for example, to determine within a law firm when peer review is necessary . . ." 8 Arnold S. Jacobs, *Opinion Letters in Securities Matters* § 3, at Intro-12 (1998).

adverse opinion. An outside auditor's opinion that a company's financial statements do not conform with generally accepted accounting principles or do not accurately reflect the company's financial position.

audit opinion. A certified public accountant's opinion regarding the audited financial statements of an entity.

coverage opinion. A lawyer's opinion on whether a particular event is covered by a given insurance policy.

legal opinion. A written document in which an attorney provides his or her understanding of the law as applied to assumed facts. • The attorney may be a private attorney or attorney representing the state or other governmental entity. Private attorneys frequently render legal opinions on the ownership of real estate or minerals, insurance coverage, and corporate transactions. A party may be entitled to rely on a legal opinion, depending on factors such as the identity of the parties to whom the opinion was addressed and the law governing these opinions. See *coverage opinion*.

title opinion. A lawyer's or title company's opinion on the state of title for a given piece of real property, usu. describing whether the title is clear and marketable or whether it is encumbered. See *TITLE SEARCH*.

unqualified opinion. An audit opinion given by an accountant who is satisfied that the financial statements reviewed were fairly presented and consistent with the previous year, and that the audit was performed in accor-

dance with generally accepted auditing standards.

3. A witness's thoughts, beliefs, or inferences about facts in dispute, as opposed to personal knowledge of the facts themselves. — Also termed (in sense 3) *conclusion*. See *opinion evidence* under *EVIDENCE*.

opinion evidence. See *EVIDENCE*.

opinion letter. See *OPINION* (2).

opinion rule. *Evidence.* The principle that a witness should testify to facts, not opinions, and that a witness's opinions are often excludable from evidence. • Traditionally, this principle is regarded as one of the important exclusionary rules in evidence law. It is based on the idea that a witness who has observed data should provide the most factual evidence possible, leaving the jury to draw inferences and conclusions from the evidence. Under this system, the witness's opinion is unnecessary.

"This rule [the opinion rule] is an historical blunder, for the early cases excluding 'opinion' meant a belief by a person who had personally seen and known nothing, and was therefore not qualified to speak; whereas the modern rule applies it to witnesses who have had personal observation as a basis for their inference. Moreover, it is a senseless rule, for not once in a thousand times can the observed data be exactly and fully reproduced in words. Still further, no harm could be done by letting the witness offer his inference, except perhaps the waste of a moment's time, whereas the application of the rule wastes vastly more time. And finally the rule is so pedantically applied by most courts that it excludes the most valuable testimony, such as would be used in all affairs of life outside a court room." John H. Wigmore, *A Students' Textbook of the Law of Evidence* 156 (1935).

"The [opinion] rule in its stark simplicity might be interpreted as excluding all value judgments, that is to say all statements not being factual propositions susceptible of some sort of empirical proof or disproof. The rule, if it is to be given any purely logical meaning at all, must be interpreted as excluding at least all inferences drawn from perceived data. Even if value judgments are saved by construing the rule as having application only to factual propositions, the rule would seem to purport to exclude all such propositions in the formulation of which inference by the witness has played some part." Zelman Cowen, *Essays on the Law of Evidence* 162 (1956).

opinion testimony. See *TESTIMONY*.

oppignorate (ə-pig-nə-rayt), *vb.* *Archaic.* To pawn or pledge. — Also spelled *oppignorate*. Cf. *PIGNORATE*.

opponent. **1.** An adverse party in a contested matter. **2.** A party that is challenging the admissibility of evidence — opposed to *proponent*.

opportunity. The fact that the alleged doer of an act was present at the time and place of the act.

opportunity cost. See COST (1).

opportunity to be heard. The chance to appear in a court or other tribunal and present evidence and argument before being deprived of a right by governmental authority. ● The opportunity to be heard is a fundamental requirement of procedural due process. It ordinarily includes the right to receive fair notice of the hearing, to secure the assistance of counsel, and to cross-examine adverse witnesses. See *procedural due process* under DUE PROCESS.

opposer. 1. *Intellectual property.* One who formally seeks to prevent the grant of a patent or the registration of a trademark. 2. *Hist.* APPOSER.

oppression. 1. The act or an instance of unjustly exercising authority or power. 2. An offense consisting in the abuse of discretionary authority by a public officer who has an improper motive, as a result of which a person is injured. ● This offense does not include extortion, which is typically a more serious crime. 3. *Contracts.* Coercion to enter into an illegal contract. ● Oppression is grounds for the recovery of money paid or property transferred under an illegal contract. See DURESS; UNCONSCIONABILITY. 4. *Corporations.* Unfair treatment of minority shareholders (esp. in a close corporation) by the directors or those in control of the corporation. See FREEZE-OUT. — Also termed (in sense 4) *shareholder oppression*. — **oppress**, *vb.* — **oppressive**, *adj.*

oppressor. A public official who unlawfully or wrongfully exercises power under color of authority in a way that causes a person harm; one who commits oppression.

OPRA. *abbr.* OPTIONS PRICE REPORTING AUTHORITY.

optimal-use value. See VALUE.

opt in, *vb.* To choose to participate in (something) <when the choice of settling or not settling came, the Joneses opted in, hoping to avoid a lengthy trial>.

option, *n.* 1. The right or power to choose; something that may be chosen <the lawyer was running out of options for settlement>. 2. A contract made to keep an offer open for a

specified period, so that the offeror cannot revoke the offer during that period <the option is valid because it is supported by consideration>. — Also termed *option contract*. See *irrevocable offer* under OFFER. 3. The right conveyed by such a contract <Phil declined to exercise his first option to buy the house>. 4. The right (but not the obligation) to buy or sell a given quantity of securities, commodities, or other assets at a fixed price within a specified time <trading stock options is a speculative business>. Cf. FUTURES CONTRACT.

call option. An option to buy something (esp. securities) at a fixed price even if the market rises; the right to require another to sell. — Often shortened to *call*.

cash-value option. The right of a life-insurance policyholder to surrender the policy for its cash value at a specified time or at any time.

commodity option. An option to buy or sell a commodity.

futures option. An option to buy or sell a futures contract.

naked option. A call option that grants another the right to buy stock even though the option-giver does not own the stock to back up that commitment. — Also termed *uncovered option*.

nonforfeiture option. A policyholder's option, upon the lapse of premium payments, to continue an insurance policy for a shorter period than the original term, to surrender the policy for its cash value, to continue the policy for a reduced amount, or to take some other action rather than forfeit the policy.

option to purchase real property. A contract by which an owner of realty enters an agreement with another allowing the latter to buy the property at a specified price within a specified time, or within a reasonable time in the future, but without imposing an obligation to purchase upon the person to whom it is given.

put option. An option to sell something (esp. securities) at a fixed price even if the market declines; the right to require another to buy. — Often shortened to *put*.

seller's option. A special stock-exchange transaction that gives the seller the right to deliver the security within a specified period, usu. 5 to 60 days.

settlement option. *Insurance.* A life-insurance-policy clause providing choices in the method of paying benefits to a beneficiary, as

by lump-sum payment or periodic installments.

stock option. See STOCK OPTION.

uncovered option. See *naked option*.

option, vb. To grant or take an option on (something) <Ward optioned his first screenplay to the studio for \$50,000>.

option agreement. *Corporations.* A share-transfer restriction that commits the shareholder to sell, but not the corporation or other shareholders to buy, the shareholder's shares at a fixed price when a specified event occurs. Cf. BUY-SELL AGREEMENT (2); OPTION (2).

optional bond. See BOND (3).

optional completeness, rule of. See RULE OF OPTIONAL COMPLETENESS.

optional-completeness doctrine. See RULE OF OPTIONAL COMPLETENESS.

optional writ. See WRIT.

option contract. See OPTION (2).

optionee (op-shə-nee). One who receives an option from another. — Also termed *option-holder*.

optionor (op-shə-nər or op-shə-nor). One who grants an option to another. — Also spelled *optioner*. — Also termed *option-giver*.

option premium. See PREMIUM (4).

option spread. *Securities.* The difference between the option price and the fair market value of the underlying stock when the option is exercised. See SPREAD.

Options Price Reporting Authority. A national market-system plan approved by the SEC for collecting and disseminating last-sale and quotation information on options traded on a five-member exchange consisting of the American Stock Exchange, the Chicago Board of Options Exchange, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange. — Abbr. OPRA.

option tender bond. See *put bond* under BOND (3).

option to purchase real property. See OPTION.

opt out, vb. To choose not to participate in (something) <with so many plaintiffs opting out of the class, the defendant braced itself for multiplicitous lawsuits>.

opus (oh-pəs), *n.* [Latin “work”] A product of work or labor; esp., an artistic, literary, or musical work or composition. Pl. **opuses, opera** (ah-pə-rə or oh-pə-rə).

opus novum (oh-pəs noh-vəm). [Latin “new work”] *Civil law.* A structure newly built on land. See NOVI OPERIS NUNTIATIO.

O.R. *abbr.* Own recognizance; on one's own recognizance <the prosecutor agreed not to object to releasing the suspect O.R.>. See RECOGNIZANCE.

oraculum (ə-rak-yə-ləm). [Latin “a prophetic declaration”] *Roman law.* A response or sentence delivered by the emperor.

oral, adj. Spoken or uttered; not expressed in writing. Cf. PAROL.

oral argument. An advocate's spoken presentation before a court (esp. an appellate court) supporting or opposing the legal relief at issue.

“[T]he oral argument is the one chance for you (not for some chance-assigned mere judge) to answer any questions you can stir any member of the court into being bothered about and into bothering with, and the one chance to sew up each such question into a remembered point in favor. . . . In any but freak situations, oral argument is a must.” Karl N. Llewellyn, *The Common Law Tradition: Deciding Appeals* 240 (1960).

oral confession. See CONFESSION.

oral contract. See *parol contract* (1) under CONTRACT.

oral deposition. See DEPOSITION.

oral trust. See TRUST.

oral will. See WILL.

oratio consultoria (or-ay-shee-oh kon-səl-tor-ee-ə). See LIBELLUS CONSULTORIA.

orator (or-ə-tər). **1.** *Roman law.* An advocate or pleader. **2.** *Hist.* A plaintiff or petitioner in an action in chancery.

oratrix (or-ə-triks). *Hist.* A female orator.

orbation (or-bay-shən). *Hist.* Bereavement or deprivation of one's parents or children.

ordeal. *Hist.* A primitive form of trial in which an accused person was subjected to a dangerous or painful physical test, the result being considered a divine revelation of the person's guilt or innocence. ● The participants believed that God would reveal a person's culpability by protecting an innocent person from the torture. The ordeal was commonly used in Europe as late as the 13th century, and was sporadically used even later. — Also termed *trial by ordeal*; *judicium Dei* ("judgment of God"); *vulgaris purgatio*. Cf. CANFARA.

"Ordeals involved an appeal to God to reveal the truth in human disputes, and they required priestly participation to achieve this rapport with the Deity. Several forms of ordeal were recognised by the early Christian Church, but in England they usually took the form of fire or water. In the former, a piece of iron was put into a fire and then in the party's hand; the hand was bound, and inspected a few days later: if the burn had festered, God was taken to have decided against the party. The ordeal of cold water required the party to be trussed and lowered into a pond; if he sank, the water was deemed to have 'received him' with God's blessing, and so he was quickly fished out. . . . In 1215, the Lateran Council . . . took the decisive step of forbidding clergy to participate any more in ordeals. This led in England to the introduction of the criminal trial jury." J.H. Baker, *An Introduction to English Legal History* 5-6 (3d ed. 1990).

ordeal by fire. An ordeal in which the accused person was forced to hold a piece of hot metal or to walk barefoot across a hot surface, the judgment of guilt or innocence depending on how quickly the person's hands or feet healed. — Also termed *fire ordeal*.

ordeal by water. **1.** An ordeal in which guilt or innocence depended on whether the accused person floated or sank after being submerged in cold water. ● Those who sank were declared innocent, while those who floated were adjudged guilty because floating revealed the water's (and therefore God's) rejection of the accused. This type of ordeal was used esp. in witchcraft trials. — Also termed *ordeal by cold water*. **2.** An ordeal in which guilt or innocence was determined by how quickly the accused person's arm healed after being placed in boiling water. — Also termed (in sense 2) *ordeal by hot water*; (in both senses) *water ordeal*.

ordelf (or-delf). See OREDELFF.

ordels (or-deelz). *Hist. English law.* The right to conduct trials by ordeal within a given jurisdiction.

order, *n.* **1.** A command, direction, or instruction. **2.** A written direction or command delivered by a court or judge. — Also termed *court order*; *judicial order*.

"An order is the mandate or determination of the court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings." 1 Henry Campbell Black, *A Treatise on the Law of Judgments* § 1, at 5 (2d ed. 1902).

administrative order. **1.** An order issued by a government agency after an adjudicatory hearing. **2.** An agency regulation that interprets or applies a statutory provision.

decretal order (di-kree-təl). A court of chancery's interlocutory order that is issued on motion of a party and has the effect of a final decree. See *decree nisi* under DECREE.

ex parte order (eks pahr-tee). An order made by the court upon the application of one party to an action without notice to the other.

final order. An order that is dispositive of the entire case. See *final judgment* under JUDGMENT.

interim order. **1.** A temporary court decree that takes effect until something else occurs. **2.** See *interlocutory order*.

interlocutory order (in-tər-lok-yə-tor-ee). An order that relates to some intermediate matter in the case; any order other than a final order. ● Most interlocutory orders are not appealable until the case is fully resolved. But by rule or statute, most jurisdictions allow some types of interlocutory orders (such as preliminary injunctions and class-certification orders) to be immediately appealed. — Also termed *interlocutory decision*; *interim order*; *intermediate order*. See *appealable decision* under DECISION; COLLATERAL-ORDER DOCTRINE.

minute order. **1.** An order recorded in the minutes of the court rather than directly on a case docket. ● Although practice varies, traditionally when a trial judge is sitting officially, with or without a court reporter, a clerk or deputy clerk keeps minutes. When the judge makes an oral order, the only record of that order may be in the minutes. It is therefore referred to as a minute order. — Also termed *minute entry*. **2.** A court order not directly relating to a case, such as an order adopting a local rule of court. ● In this sense, the court is not a single judge acting in an adjudicatory capacity, but a chief judge, or a group of two

or more judges, acting for a court in an administrative or some other nonadjudicatory capacity.

preclusion order. An order barring a litigant from presenting or opposing certain claims or defenses for failing to comply with a discovery order.

show-cause order. An order directing a party to appear in court and explain why the party took (or failed to take) some action or why the court should or should not grant some relief. — Also termed *order to show cause*.

standing order. A forward-looking order that applies to all cases pending before a court. • Some individual judges issue a standing order on a subject when there is no local rule bearing on it, often because a rule would not be acceptable to other judges on the court. Standing orders are frequently criticized because they undermine uniformity of procedural rules, esp. at the local level.

turnover order. An order by which the court commands a judgment debtor to surrender certain property to a judgment creditor, or to the sheriff or constable on the creditor's behalf. • Such an order is usu. directed to property that is difficult to acquire by the ordinary judgment-collection process, such as share certificates and accounts receivable.

3. The words in a draft (such as a check) directing one person to pay money to or deliver something to a designated person. • An order should appear to be the demand of a right as opposed to the request for a favor. See *order paper* under PAPER. 4. *Securities.* A customer's instructions to a broker about how and when to buy or sell securities.

all-or-none order. An order to buy a security to be executed either in its entirety or not at all.

alternative order. An order to buy a security by either of two alternatives (e.g., buy a stock at a limited price or buy on a stop order). — Also termed *either-or order*.

buy order. An investor's instruction to purchase stock.

day order. An order to buy or sell on one particular day only. Cf. *open order*.

discretionary order. An order to buy or sell at any price acceptable to the broker.

either-or order. See *alternative order*.

fill-or-kill order. An order that must be executed as soon as it reaches the trading

floor. • If the order is not filled immediately, it is canceled.

limit order. An order to buy or sell at a specified price, regardless of market price. Cf. *no-limit order*.

market order. An order to buy or sell at the best price immediately available on the market. — Also termed *order at the market*.

matched order. An order to buy and sell the same security, at about the same time, in about the same quantity, and at about the same price.

no-limit order. An order to buy or sell securities with no limits on price. Cf. *limit order*.

open order. An order that remains in effect until filled by the broker or canceled by the customer. Cf. *day order*.

order at the market. See *market order*.

percentage order. An order to buy or sell a stated amount of a certain stock after a fixed number of shares of the stock have traded.

scale order. An order to buy or sell a security at varying price ranges.

sell order. An investor's instruction to sell stock.

split order. An order directing a broker to sell some stock at one price and some stock at another price.

stop order. An order to buy or sell when the security's price reaches a specified level (the *stop price*) on the market. • By fixing the price beforehand, the investor is cushioned against stock fluctuations. — Also termed *stop-loss order*.

time order. An order that becomes a market or limited-price order at a specified time.

order absolute. See *decree absolute* under DECREE.

order assigning residue. A probate court's order naming the persons entitled to receive parts of an estate and allotting that share to each.

order at the market. See *market order* under ORDER (4).

order bill of lading. See BILL OF LADING.

order document. See *order paper* under PAPER.

ordered, adjudged, and decreed. Judicially mandated; required by court order.

"The usual style of a decree is 'it is ordered, adjudged, and decreed'; and of an order or rule, 'it is ordered,' etc."
 1 Henry Campbell Black, *A Treatise on the Law of Judgments* § 2, at 6-7 (2d ed. 1902).

order instrument. See *order paper* under PAPER.

orderly officer. See *officer of the day* under OFFICER (2).

order nisi. See *decree nisi* under DECREE.

Order of the Coif (koyf). **1.** Formerly, the order of serjeants-at-law, the highest order of counsel at the English Bar. • The last serjeant was appointed to the Order in 1875. **2.** An honorary legal fraternity composed of a select few law students with the highest grades. See COIF.

order paper. See PAPER.

order to show cause. See *show-cause order* under ORDER (2).

ordinance (or-də-nənts). An authoritative law or decree; esp., a municipal regulation. • Municipal governments can pass ordinances on matters that the state government allows to be regulated at the local level. — Also termed *bylaw*; *municipal ordinance*.

"An ordinance . . . may be purely administrative in nature, establishing offices, prescribing duties, or setting salaries; it may have to do with the routine or procedure of the governing body. Or it may be a governmental exercise of the power to control the conduct of the public — establishing rules which must be complied with, or prohibiting certain actions or conduct. In any event it is the determination of the sovereign power of the state as delegated to the municipality. It is a legislative enactment, within its sphere, as much as an act of the state legislature." 1 Judith O'Gallagher, *Municipal Ordinances* § 1A.01, at 3 (2d ed. 1998).

ordinandi lex (or-də-nan-dī leks). [Latin] The law of procedure, as distinguished from substantive law.

ordinarily prudent person. See REASONABLE PERSON.

ordinary, adj. **1.** Occurring in the regular course of events; normal; usual. Cf. EXTRAORDINARY. **2.** (Of a judge) having jurisdiction by right of office rather than by delegation. **3.** (Of jurisdiction) original or immediate, as opposed to delegated.

ordinary, n. **1.** *Eccles. law.* A high-ranking official who has immediate jurisdiction over a specified territory, such as an archbishop over a province or a bishop over a diocese. **2.** *Civil law.* A judge having jurisdiction by right of office rather than by delegation. **3.** A probate judge. • The term is used in this sense only in some U.S. states.

ordinary and necessary business expense. See *ordinary and necessary expense* under EXPENSE.

ordinary and necessary expense. See EXPENSE.

ordinary annuity. See ANNUITY.

ordinary care. See *reasonable care* under CARE.

ordinary course of business. See COURSE OF BUSINESS.

ordinary diligence. See DILIGENCE.

ordinary gain. See GAIN (3).

ordinary goods. See GOODS.

ordinary high tide. See *mean high tide* under TIDE.

ordinary income. See INCOME.

ordinary insurance. See INSURANCE.

ordinary law. See STATUTORY LAW.

ordinary life insurance. See *whole life insurance* under INSURANCE.

ordinary loss. See LOSS.

ordinary meaning. See *plain meaning* under MEANING.

ordinary-meaning rule. See PLAIN-MEANING RULE.

ordinary negligence. See NEGLIGENCE.

ordinary's court. A probate court. • This term is used only in some parts of the United States. — Also termed *court of ordinary*.

ordinary seaman. See SEAMAN.

ordinary shares. See *common stock* under STOCK.

ordinatio forestae (or-di-nay-shee-oh for-es-tee), *n.* See ASSISA DE FORESTA.

ordinatum est (or-də-nay-təm est). [Law Latin] *Hist.* It is ordered. • These were the usual first words of a court order entered in Latin.

ordinis beneficium (or-də-nis ben-ə-fish-ee-əm). [Latin “the benefit of order”] *Civil law.* The privilege of a surety by which the creditor must exhaust the principal debtor’s property before having recourse against the surety. See DISCUSSION.

ordo attachamentorum (or-doh ə-tach-ee-ə-men-tor-əm). [Law Latin] *Hist.* The order of attachments.

ordo judicorum (or-doh joo-di-kor-əm). [Latin] *Eccles. law.* The order of judgments; the rule by which the course of hearing each case was prescribed.

ordonnance (or-də-nənts or or-doh-nahns). [French] **1.** A law, decree, or ordinance. **2.** A compilation of a body of law on a particular subject, esp. prizes and captures at sea.

oredelf (or-delf). *Hist.* The right to dig for mineral ore on one’s own land. — Also spelled *oredelfe*; *ordelf*.

ore tenus (or-ee tee-nəs or ten-əs), *adv. & adj.* [Latin “by word of mouth”] **1.** Orally <pleading carried on ore tenus>. **2.** Made or presented orally <ore tenus evidence>.

ore tenus rule. The presumption that a trial court’s findings of fact are correct and should not be disturbed unless clearly wrong or unjust.

organic act. See *organic statute* under STATUTE.

organic disease. See DISEASE.

organic law. **1.** The body of laws (as in a constitution) that define and establish a government; FUNDAMENTAL LAW. **2.** *Civil law.* Decisional law; CASELAW.

organic statute. See STATUTE.

organization. **1.** A body of persons (such as a union or corporation) formed for a common purpose. **2.** See UNION.

organizational expense. See EXPENSE.

organizational meeting. See MEETING.

organizational picketing. See PICKETING.

organizational strike. See *recognition strike* under STRIKE.

organized crime. **1.** Widespread criminal activities that are coordinated and controlled through a central syndicate. See RACKETEERING. **2.** Persons involved in these criminal activities; a syndicate of criminals who rely on their unlawful activities for income. See SYNDICATE.

organized labor. **1.** Workers who are affiliated by membership in a union. **2.** A union, or unions collectively, considered as a political force.

original acquisition. See ACQUISITION.

original bill. See BILL (2).

original contractor. See *general contractor* under CONTRACTOR.

original conveyance. See *primary conveyance* under CONVEYANCE.

original cost. See *acquisition cost* under COST (1).

original-document rule. See BEST-EVIDENCE RULE.

original estate. See ESTATE.

original evidence. See EVIDENCE.

originalia (ə-rij-ə-nay-lee-ə or -nayl-yə). *Hist.* Records compiled in the Chancery and transmitted to the Remembrancer’s office in the Exchequer. • These records were kept from 1236 to 1837. Cf. RECORDA.

original intent. See INTENT (2).

originalism. *Constitutional law.* The theory that the U.S. Constitution should be interpreted according to the intent of those who drafted and adopted it. Cf. INTERPRETIVISM; NONINTERPRETIVISM.

original issue. See ISSUE (2).

original-issue discount. The amount by which a bond is sold below its par value when it is first issued. — Abbr. OID.

originality. *Copyright.* **1.** The quality or state of being the product of independent creation and having a minimum degree of creativity. • Originality is a requirement for copyright protection. But this is a lesser standard than that of novelty in patent law: to be original, a work does not have to be novel or unique. Cf. NOVELTY. **2.** The degree to which a product claimed for copyright is the result of an author's independent efforts. Cf. CREATIVITY.

“‘Original’ in reference to a copyrighted work means that the particular work ‘owes its origin’ to the ‘author.’ No large measure of novelty is necessary.” *Alfred Bell & Co. v. Catalda Fine Arts, Inc.*, 191 F.2d 99, 102 (2d Cir. 1951) (Frank, J.).

original jurisdiction. See JURISDICTION.

original market. See *primary market* under MARKET.

original-package doctrine. *Constitutional law.* The principle that imported goods are exempt from state taxation as long as they are unsold and remain in the original packaging. • The Supreme Court abolished this doctrine in 1976, holding that states can tax imported goods if the tax is nondiscriminatory. See IMPORT-EXPORT CLAUSE.

original precedent. See PRECEDENT.

original process. See PROCESS.

original promise. See PROMISE.

original title. See TITLE (2).

original writ. See WRIT.

original-writing rule. See BEST-EVIDENCE RULE.

origination clause. (*often cap.*) **1.** The constitutional provision that all bills for increasing taxes and raising revenue must originate in the House of Representatives, not the Senate (U.S. Const. art. I, § 7, cl. 1). • The Senate may, however, amend revenue bills. **2.** A provision in a state constitution requiring that revenue bills originate in the lower house of the state legislature.

origination fee. See FEE (1).

originator. The entity that initiates a funds transfer subject to UCC article 4A. UCC § 4A-104(c).

ornest. *Hist.* See TRIAL BY COMBAT.

ORP. *abbr.* Ordinary, reasonable, and prudent — the standard on which negligence cases are based.

orphan, n. **1.** A child whose parents are dead. **2.** A child with one dead parent and one living parent. — More properly termed *half orphan*. **3.** A child who has been deprived of parental care and has not been legally adopted; a child without a parent or guardian.

orphan drug. See DRUG.

orphan's court. See *probate court* under COURT.

OS. See *ordinary seaman* under SEAMAN.

o.s. *abbr.* OLD STYLE.

OSHA (oh-shə). *abbr.* **1.** OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970. **2.** OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION.

o.s.p. *abbr.* OBIT SINE PROLE.

ostendit vobis (os-ten-dit voh-bis). [Latin] *Hist.* Shows to you. • In old pleading, these words were used by a demandant to begin a count.

ostensible (ah-sten-sə-bəl), *adj.* Open to view; declared or professed; apparent.

ostensible agency. See *agency by estoppel* under AGENCY (1).

ostensible agent. See *apparent agent* under AGENT.

ostensible authority. See *apparent authority* under AUTHORITY (1).

ostensible partner. See *nominal partner* under PARTNER.

ostrich defense. A criminal defendant's claim not to have known of the criminal activities of an associate.

ostrich instruction. See JURY INSTRUCTION.

OTC. *abbr.* OVER-THE-COUNTER.

OTC market. *abbr.* OVER-THE-COUNTER MARKET.

other consideration. See CONSIDERATION.

other income. See INCOME.

other-insurance clause. An insurance-policy provision that attempts to limit coverage if the insured has other coverage for the same loss. ● The three major other-insurance clauses are the pro rata clause, the excess clause, and the escape clause. See ESCAPE CLAUSE; EXCESS CLAUSE; PRO RATA CLAUSE.

OUI. *abbr.* Operating under the influence. See DRIVING UNDER THE INFLUENCE.

our federalism. (*often cap.*) The doctrine holding that a federal court must refrain from hearing a constitutional challenge to state action if federal adjudication would be considered an improper intrusion into the state's right to enforce its own laws in its own courts. See ABSTENTION. Cf. FEDERALISM.

oust, vb. To put out of possession; to deprive of a right or inheritance.

ouster. **1.** The wrongful dispossession or exclusion of someone (esp. a cotenant) from property (esp. real property). **2.** The removal of a public or corporate officer from office. Cf. EJECTMENT.

ouster le main (ow-stər lə mayn). [Law French "remove the hand"] *Hist.* **1.** A delivery of land out of the monarch's hands because the monarch has no right or title to hold it. **2.** A judgment or writ granting such a delivery. **3.** A delivery of land from a guardian to a ward once the ward attains legal age. — Also written *ouster-le-main*.

outbuilding. A detached building (such as a shed or garage) within the grounds of a main building.

outcome-determinative test. *Civil procedure.* A test used to determine whether an issue is substantive for purposes of the *Erie* doctrine by examining the issue's potential effect on the outcome of the litigation. See ERIE DOCTRINE.

outer bar. *English law.* A group of junior barristers who sit outside the dividing bar in the court. ● These barristers rank below the King's Counsel or Queen's Counsel. — Also termed *utter bar*. Cf. INNER BAR.

outer barrister. See BARRISTER.

outfangthief (owt-fang-theef). [fr. Old English *ut* "out" + *fangen* "taken" + *theof* "thief"] *Hist.* The right of a lord of a manor to pursue a thief outside the manor's jurisdiction and to bring the thief back for trial and punishment. — Also spelled *utfangthief*. Cf. INFANGTHIEF.

outlaw, n. **1.** A person who has been deprived of the benefit and protection of the law; a person under a sentence of outlawry. **2.** A lawless person or habitual criminal; esp., a fugitive from the law. **3. Int'l law.** A person, organization, or nation under a ban or restriction because it is considered to be in violation of international law or custom.

outlaw, vb. **1.** To deprive (someone) of the benefit and protection of the law; to declare an outlaw <outlaw the fugitive>. **2.** To make illegal <outlaw fireworks within city limits>. **3.** To remove from legal jurisdiction or enforcement; to deprive of legal force <outlaw a claim under the statute>.

outlawry. **1. Hist.** The act or process of depriving someone of the benefit and protection of the law. **2.** The state or condition of being outlawed; the status of an outlaw. **3.** Disregard or disobedience of the law. See SACER; CONSECRATIO CAPITIS.

outlaw strike. See *wildcat strike* under STRIKE.

out-of-court, adj. Not done or made as part of a judicial proceeding <an out-of-court settlement> <an out-of-court statement that was not under oath>. See EXTRAJUDICIAL.

out-of-court settlement. See SETTLEMENT.

out-of-pocket expense. See EXPENSE.

out-of-pocket loss. See LOSS.

out-of-pocket rule. The principle that a defrauded buyer may recover from the seller as damages the difference between the amount paid for the property and the actual value received. Cf. BENEFIT-OF-THE-BARGAIN RULE (2).

out of the state. See BEYOND SEAS.

output contract. See CONTRACT.

outrage, *n.* See INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

outrageous conduct. See CONDUCT.

outside director. See DIRECTOR.

outside financing. See FINANCING.

outside party. See THIRD PARTY.

outsourcing agreement. An agreement to handle substantially all of a party's business requirements, esp. in the areas of data processing and information management.

outstanding, *adj.* **1.** Unpaid; uncollected <outstanding debts>. **2.** Publicly issued and sold <outstanding shares>.

outstanding capital stock. See *outstanding stock* under STOCK.

outstanding security. See SECURITY.

outstanding stock. See STOCK.

outstanding warrant. See WARRANT (1).

over, *adj.* (Of a property interest) intended to take effect after the failure or termination of a prior estate; preceded by some other possessory interest <a limitation over> <a gift over>.

overage, *n.* **1.** An excess or surplus, esp. of goods or merchandise. **2.** A percentage of retail sales paid to a store's landlord in addition to fixed rent.

overbreadth doctrine. *Constitutional law*. The doctrine holding that if a statute is so broadly written that it deters free expression, then it can be struck down on its face because of its chilling effect — even if it also prohibits acts that may legitimately be forbidden. • The Supreme Court has used this doctrine to invalidate a number of laws, including those that would disallow peaceful picketing or require loyalty oaths. Cf. VAGUENESS DOCTRINE.

overdraft. **1.** A withdrawal of money from a bank in excess of the balance on deposit. **2.** The amount of money so withdrawn. — Abbr. OD; o/d. **3.** A line of credit extended by a bank to a customer (esp. an established or institutional customer) who might overdraw on an account.

overdraw, *vb.* To draw on (an account) in excess of the balance on deposit; to make an overdraft.

overhead, *n.* Business expenses (such as rent, utilities, or support-staff salaries) that cannot be allocated to a particular product or service; fixed or ordinary operating costs. — Also termed *administrative expense*; *office expense*.

overheated economy. See ECONOMY.

overinclusive, *adj.* (Of legislation) extending beyond the class of persons intended to be protected or regulated; burdening more persons than necessary to cure the problem <an overinclusive classification>.

overinsurance. **1.** Insurance (esp. from the purchase of multiple policies) that exceeds the value of the thing insured. **2.** Excessive or needlessly duplicative insurance.

overissue, *n.* An issue of securities beyond the authorized amount of capital or credit.

overlapping jurisdiction. See *concurrent jurisdiction* under JURISDICTION.

overplus. See SURPLUS.

overreaching, *n.* **1.** The act or an instance of taking unfair commercial advantage of another, esp. by fraudulent means. **2.** The act or an instance of defeating one's own purpose by going too far. — **overreach**, *vb.*

overridden veto. See VETO.

override (oh-vər-rid), *vb.* To prevail over; to nullify or set aside <Congress mustered enough votes to override the President's veto>.

override (oh-vər-rid), *n.* **1.** A commission paid to a manager on a sale made by a subordinate. **2.** A commission paid to a real-estate broker who listed a property when, within a reasonable amount of time after the expiration of the listing, the owner sells that property directly to a buyer with whom the broker had negotiated during the term of the listing. **3.** ROYALTY (2).

overriding royalty. See ROYALTY (2).

overrule, *vb.* **1.** To rule against; to reject <the judge overruled all of the defendant's objections>. **2.** (Of a court) to overturn or set aside (a precedent) by expressly deciding that it should no longer be controlling law <in *Brown*

v. Board of Education, the Supreme Court overruled *Plessy v. Ferguson*>. Cf. VACATE (1).

"If a decision is not a recent one, and especially if it seems to be very poor, it should not be relied upon without ascertaining whether it may not have been expressly or impliedly overruled by some subsequent one; that is, whether the court may not have laid down a contrary principle in a later case." Frank Hall Childs, *Where and How to Find the Law* 94 (1922).

"Overruling is an act of superior jurisdiction. A precedent overruled is definitely and formally deprived of all authority. It becomes null and void, like a repealed statute, and a new principle is authoritatively substituted for the old." John Salmond, *Jurisprudence* 189 (Glanville L. Williams ed., 10th ed. 1947).

overseas bill of lading. See BILL OF LADING.

Overseas Private Investment Corporation.

A corporation created by the federal government to finance and insure overseas investments by U.S. companies. • Chartered in 1969, the corporation is a for-profit entity that is not federally funded, but its insurance commitments are backed by the full faith and credit of the federal government. — Abbr. OPIC.

oversubscription. A situation in which there are more subscribers to a new issue of securities than there are securities available for purchase.

overt, adj. Open and observable; not concealed or secret <the conspirators' overt acts>.

overt act. *Criminal law.* **1.** An act that indicates an intent to kill or seriously harm another person and thus gives that person a justification to use self-defense. **2.** An outward act, however innocent in itself, done in furtherance of a conspiracy, treason, or criminal attempt. • An overt act is usu. a required element of these crimes. **3.** See ACTUS REUS. — Also termed *positive act*.

over-the-counter, adj. **1.** Not listed or traded on an organized securities exchange; traded between buyers and sellers who negotiate directly <over-the-counter stocks>. **2.** (Of drugs) sold legally without a doctor's prescription <over-the-counter cough medicine>. — Abbr. OTC.

over-the-counter market. The market for securities that are not traded on an organized exchange. • Over-the-counter (OTC) trading usu. occurs through telephone or computer negotiations between buyers and sellers. Many of the more actively traded OTC stocks are listed on NASDAQ. — Abbr. OTC market.

overtime. **1.** The hours worked by an employee in excess of a standard day or week. • Under the Fair Labor Standards Act, employers must pay extra wages (usu. 1½ times the regular hourly rate) to certain employees (usu. nonsalaried ones) for each hour worked in excess of 40 hours per week. **2.** The extra wages paid for excess hours worked.

overtly, vb. (Of a trial lawyer) to try a lawsuit by expending excessive time, effort, and other resources to explore minutiae, esp. to present more evidence than the fact-trier can assimilate, the result often being that the adversary gains arguing points by disputing the minutiae.

overturn, vb. To overrule or reverse <the court overturned a long-established precedent>.

owelty (oh-əl-tee). **1.** Equality as achieved by a compensatory sum of money given after an exchange of parcels of land having different values or after an unequal partition of real property. **2.** The sum of money so paid.

OWI. *abbr.* Operating while intoxicated. See DRIVING UNDER THE INFLUENCE.

owing, adj. That is yet to be paid; owed; due <a balance of \$5,000 is still owing>.

owling. *Hist.* The smuggling of wool or sheep out of England. • The term usu. refers to nighttime smuggling.

own, vb. To have or possess as property; to have legal title to.

owned-property exclusion. See EXCLUSION (3).

owner. One who has the right to possess, use, and convey something; a proprietor. See OWNERSHIP.

adjoining owner. A person who owns land abutting another's; ABUTTER.

beneficial owner. **1.** One recognized in equity as the owner of something because use and title belong to that person, even though legal title may belong to someone else; esp., one for whom property is held in trust. — Also termed *equitable owner*. **2.** A corporate shareholder who has the power to buy or sell the shares, but who is not registered on the corporation's books as the owner.

equitable owner. See *beneficial owner* (1).

general owner. One who has the primary or residuary title to property; one who has the

ultimate ownership of property. Cf. *special owner*.

legal owner. One recognized by law as the owner of something; esp., one who holds legal title to property for the benefit of another. See TRUSTEE.

limited owner. A tenant for life; the owner of a life estate. See *life estate* under ESTATE.

naked owner. *Civil law.* A person whose property is burdened by a usufruct. See USUFRUCT.

owner of record. See STOCKHOLDER OF RECORD.

owner pro hac vice (proh hahk vee-chay). See *demise charter* under CHARTER (4).

record owner. 1. A property owner in whose name the title appears in the public records. 2. STOCKHOLDER OF RECORD.

sole and unconditional owner. *Insurance.* The owner who has full equitable title to, and exclusive interest in, the insured property.

special owner. One (such as a bailee) with a qualified interest in property. Cf. *general owner*.

owners' association. The basic governing entity for a condominium or planned unit developments. • It is usu. an unincorporated association or a nonprofit corporation.

owners' equity. The aggregate of the owners' financial interests in the assets of a business entity; the capital contributed by the owners plus any retained earnings. — Also termed (in a corporation) *shareholders' equity*; *stockholders' equity*.

"Owner's equity is the residual claim of the owners of the business on its assets after recognition of the liabilities of the business. Owner's equity represents the amounts contributed by the owners to the business, plus the accumulated income of the business since its formation, less any amounts that have been distributed to the owners." Charles H. Meyer, *Accounting and Finance for Lawyers in a Nutshell* 4 (1995).

ownership. The collection of rights allowing one to use and enjoy property, including the right to convey it to others. • Ownership implies the right to possess a thing, regardless of any actual or constructive control. Ownership rights are general, permanent, and inheritable. Cf. POSSESSION; TITLE (1).

"Possession is the *de facto* exercise of a claim; ownership is the *de jure* recognition of one. A thing is owned by me when my claim to it is maintained by the will of the state as expressed in the law; it is possessed by me, when my claim to it is maintained by my own self-assertive will.

Ownership is the guarantee of the law; possession is the guarantee of the facts. It is well to have both forms if possible; and indeed they normally co-exist." John Salmond, *Jurisprudence* 311 (Glanville L. Williams ed., 10th ed. 1947).

"Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional powers of those who use it." *Marsh v. Alabama*, 326 U.S. 501, 506, 66 S.Ct. 276, 278 (1946) (Black, J.).

bare ownership. See *trust ownership*.

beneficial ownership. A beneficiary's interest in trust property.

bonitarian ownership (bahn-ə-tair-ee-in). *Roman law.* A type of equitable ownership recognized by a praetor when the property was conveyed by an informal transfer, or by a formal transfer by one not the true owner.

contingent ownership. Ownership in which title is imperfect but is capable of becoming perfect on the fulfillment of some condition; conditional ownership.

corporeal ownership. The actual ownership of land or chattels.

incorporeal ownership. The ownership of rights in land or chattels.

joint ownership. Ownership shared by two or more persons whose interests, at death, pass to the survivor or survivors by virtue of the right of survivorship.

ownership in common. Ownership shared by two or more persons whose interests, at death, pass to the dead owner's heirs or successors.

qualified ownership. Ownership that is shared, restricted to a particular use, or limited in the extent of its enjoyment.

trust ownership. A trustee's interest in trust property. — Also termed *bare ownership*.

vested ownership. Ownership in which title is perfect; absolute ownership.

owner's policy. *Real estate.* A title-insurance policy covering the owner's title as well as the mortgagee's interest. Cf. MORTGAGEE POLICY.

own-product exclusion. See EXCLUSION (3).

own-work exclusion. See EXCLUSION (3).

oxfiled (oks-fild). *Hist.* A restitution made by a county or hundred for a wrong done by someone within that region.

oxgang (oks-gang). *Hist.* An amount of land equal to what an ox plows in one year, usu. 12 to 15 acres. • An oxgang, equaling one-eighth of a carucate, was used to assess land for tax purposes. — Also termed *oxgate*; *bovata terrae*. Cf. CARUCATE.

oyer (oy-ər or oh-yər). [fr. Old French *oir* “to hear”] *Hist.* **1.** A criminal trial held under a commission of oyer and terminer. See COMMISSION OF OYER AND TERMINER. **2.** The reading in open court of a document (esp. a deed) that is demanded by one party and read by the other. **3. Common-law pleading.** A prayer to the court by a party opposing a profert, asking to have the instrument on which the opponent relies read aloud. • Oyer can be demanded only when a profert has been properly made, but it is disallowed for a private writing under seal.

“A party having a right to demand oyer is yet not obliged, in all cases, to exercise that right; nor is he obliged, in all cases, after demanding it, to notice it in the pleading he afterwards files or delivers. Sometimes,

however, he is obliged to do both, namely, where he has occasion to found his answer upon any matter contained in the deed of which profert is made, and not set forth by his adversary. In these cases the only admissible method of making such matter appear to the court is to demand oyer, and, from the copy given, set forth the whole deed verbatim in his pleading.” Benjamin J. Shipman, *Handbook of Common-Law Pleading* § 289, at 483 (Henry Winthrop Ballantine ed., 3d ed. 1923).

oyer, demand of. See DEMAND OF OYER.

oyer and terminer (oy-ər an[d] tər-mə-nər). [Law French *oyer et terminer* “to hear and determine”] **1.** See COMMISSION OF OYER AND TERMINER. **2.** COURT OF OYER AND TERMINER (2).

oyez (oh-yes or oh-yez or oh-yay). [Law French] Hear ye; the utterance *oyez, oyez, oyez* is usu. used in court by the public crier to call the courtroom to order when a session begins or when a proclamation is about to be made.