

O

o. An abbreviation for “son of” in ancient Irish surnames. From such derives the familiar prefix in names such as O'Hara; O'Mara; and O'Shea.

oath. A calling on God to witness what is averred as truth, accompanied expressly or impliedly with an invocation of God's vengeance or a renunciation of God's favor in the event of falsehood. 39 Am J1st Oath § 2. A solemn appeal to God, to a superior sanction, or to a sacred or revered person, to witness the inviolability of a promise or undertaking. People ex rel. Bryant v Zimmerman, 241 NY 405, 150 NE 497, 43 ALR 909. Any form of attestation by which a person signifies that he is bound in conscience to perform an act or to speak faithfully and truthfully. State ex rel. Braley v Gay, 59 Minn 6, 60 NW 676.

The word has been construed to include "affirmation" in cases where, by law, an affirmation may be substituted for an oath. 39 Am J1st Oath § 2.

oath decisory. (Civil law.) A decisive oath, an oath upon which the cause rested where one of the parties to the action elected to leave the issue to the oath of his adversary.

oath ex officio. An oath made by an accused clergyman whereby he might swear his innocence (or others might do so for him) and thus escape the censure or punishment of the ecclesiastical court.

This practice of "canonical purgation," as it was called, continued until it was abolished by statute 13 Charles II, c. 12. See 3 Bl Comm 101.

oath in litem. (Civil law.) An oath as to the value of the thing in dispute.

oath of abjuration. An oath made by a person upon his voluntary abandonment of his citizenship.

oath of allegiance. An oath, required to be taken in open court by a person seeking naturalization, that he will support the Constitution of the United States; that he entirely and absolutely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of which he was before a citizen or subject; that he will support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and will bear true faith and allegiance to them; and that he will bear arms on behalf of the United States when required by law, or perform noncombatant services in the Armed Forces of the United States when required, or will perform work of national importance under civilian direction when required, depending upon his religious training and belief. 8 USC § 1448(a).

oath of calumny. (Civil law.) An oath of good faith which was required of a plaintiff as a prerequisite of his right to sue.

oath of grand juror. A declaration, after having been duly sworn, that the grand jurors will diligently inquire and true presentment make of all such matters and things as shall be given them in charge; that they will keep secret the state's, their fellow jurors', and their own counsel; and that they will present no man for envy, hatred, or malice; neither will they leave any man unrepresented for love, fear, favor, affection, or hope of reward, but will present things truly, as they come to their knowledge, according to the best of their understanding. Anno: 22 ALR 1357.

oath of juror. A statement under oath by a juror that he will do his duty as a juror, that he will well and truly try the issues joined, and a true verdict render according to the law and the evidence. Demato v People, 49 Colo 147, 111 P 703.

oath of loyalty. See **loyalty oath**.

oath of office. A qualifying oath, in a form prescribed by statute, of a public officer required, as an incident of office, upon assuming the office. 42 Am J1st Pub Of § 7. The qualifying oath of an administrator or executor. 31 Am J2d Ex & Ad § 106.

oath purgatory. The oath made by a defendant in a trial by wager of law.

oath suppletory. An oath which was administered to a party to an action who testified in his own behalf.

The rule of the law courts required two witnesses to supply full proof of a single fact, and hence it was held that the testimony of one witness supplied only half proof. And where one witness had testified to a single fact in a party's behalf, he was-contrary to the general rule-in order to make full proof, permitted to testify in his own behalf, and it was then that the suppletory oath was administered to him. See 3 Bl Comm 368, 370.

oathworthy. Worthy of belief when testifying under oath; credible. oats. An agricultural crop. A grain.

ob. On account of; because of; by reason of; in consideration of.

Ob alterius culpam tenetur, sive servi, sive liberi. One is liable for the faults of others, if they are his servants, or if they are his children. See 1 Bl Comm 431.

ob causam aliquem a re maritima ortam. By reason of some cause or consideration arising out of a maritime matter.

ob continentiam delicti. Because of, or by reason of, connection with the tort or the crime.

ob contingentiam. Because or by reason of connection or relationship.

obedient. Submissive to authority, yielding compliance with commands, orders or injunctions; performing what is required, or abstaining from what is forbidden.

The word might with propriety be used to express the same meaning as the word "amenable," which is defined as liable to answer; responsible; answerable; liable to be called to account. Miller v Commonwealth, 62 Ky (1 Duv) 14, 17.

Obedientia est legis essentia. Obedience is the essence of law.

ob favorem mercatorum. In favor of merchants; by reason of partiality toward merchants.

Ob infamiam non solet juxta legem terrae aliquis per legem apparentem se purgare nisi prius convictus fuerit vel confessus in curia.

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By reason of ill repute it is not customary according to the law of the land for anyone to purge himself by lex apparens, unless he was convicted or confessed in court.

obit. To reach the end in death.

obiter. On the way; in passing; incidentally; cursorily.

See **dicta**.

obiter dicta. Same as **dicta**.

obiter dictum. Singular of **obiter dicta**.

See **dicta**.

Obit sine prole. He died without issue.

obituary. A short resume of the life of a person who has just died, sometimes read at the funeral service, sometimes published in a newspaper.

object. Verb: To make an objection; to protest.

object. Noun: A material thing. Any tangible thing, visible, or capable of discernment by the senses.

As the word is used in an automobile collision insurance policy:—anything tangible and visible; not necessarily an automobile or other vehicle. Anno: 23 ALR2d 400, § 5; 7 Am J2d Auto Ins § 61.

objection. A protest against an act or omission. A statement of ground of opposition, for example, to the establishment of a highway. 25 Am J1st High § 25. A protest against a determination by the court, especially a ruling upon the admissibility of evidence. The ordinary method of raising in the trial court a question which would not otherwise appear upon the record, the matter being brought to the attention of the trial court for his ruling, and, when the ruling is adverse, followed with an exception thereto to be noted in the record. Calling attention in a proceeding before an administrative body to nonobservance or noncompliance with the provisions of the law. 2 Am J2d Admin L § 425.

See **exception; protest**.

objectionable business. See **offensive business**.

objectionable use. Such use of premises as is reprehensible, offensive, and deserving of disapproval. *Theunissen v Huylers, Inc.* 58 App DC 106, 25 F2d 530, 61 ALR 706.

objection to grand jury. An objection to the organization of a grand jury, including the matter of exclusion of persons because of race, color, sex, religious or political beliefs, even technical objections, except as a limitation is placed upon the latter by statute. 24 Am J1st Grand J §§ 26 et seq.

objective examination. A physical examination of a person made by a physician wherein he employs the ordinary use of his senses. *Reeder v Thompson*, 120 Kan 722, 245 P 127.

objective meaning of contract. Not what a promisor has in his mind, but what his promise is understood to mean by a reasonable man in the situation of the promisee. *Lee v State Bank & Trust Co.* (CA2 NY) 54 F2d 518, 85 ALR 216, cert den 285 US 547, 76 L Ed 958, 52 S Ct 395.

objective symptoms. Those symptoms which a physician by the ordinary use of his senses discovers from a physical examination. *Reeder v Thompson*, 120 Kan 722, 245 P 127.

objective test. The test in determining the adequacy of the performance of a building or construction contract. Anno: 44 ALR2d 1120, § 5[b].

objective standard of satisfaction. A matter of only operative fitness, quality, or mechanical utility. 17 Am J2d Contr § 367.

object of statute. The aim or purpose of a statute. For some purposes, the equivalent of subject of a statute. 50 Am J1st Stat § 191.

objects of a power. Those persons belonging to a class who are eligible as appointees of a power.

objects of bounty. See **natural objects of bounty.**

oblata. Offerings; gifts to the crown.

oblatio. (Civil law.) An offer or tender of payment of a debt.

obligacion. An obligation.

Obligacion est on lien de droit. An obligation, is a bond of the law.

obligatio. An obligation.

obligation. In an early and narrow sense, a bond or deed under seal wherein a person binds himself under penalty to do a thing. In the modern and popular sense, that which binds, as an oath, vow, promise, contract, or debt. *Hargroves v Cooke*, 15 Ga 321, 330.

The word is derived from the Latin word "obligatio," tying up; and that from the verb "obligo," to bind or tie up; to engage by the ties of a promise or oath, or form of law; and obligo is compounded of the verb ligo, to tie or bind fast, and the preposition ob, which is prefixed to increase its meaning. *Edwards v Kearzey*, 96 US 595, 24 L Ed 793, 796.

obligation of contract. Simply, the binding effect of a contract. The law or duty which binds the parties to perform their agreement, being coeval with the undertaking to perform and consisting in the means which, at the time of the creation of the contract, the law affords for its enforcement, or, as otherwise stated, in the effective force of the law which applies to, and compels performance of, the contract, or a compensatory equivalent in damages for nonperformance. 16 Am J2d Const L § 435.

obligation of surety on bail bond. The undertaking that the accused shall appear in answer to the indictment, abide the orders and judgment of the court, and not depart without leave of the court. *State v Benedict*, 234 Iowa 1178, 15 NW2d 248.

obligations or liabilities outstanding in the state. A limitation, variously construed, on the effect of a service of process upon a foreign corporation through service upon an agent designated by the corporation or upon a statutory agent. 36 Am J2d For Corp § 484.

obligation under seal. See **specialty.**

obligatory bill. See **bill obligatory.**

oblige. See **noblesse oblige.**

obligee. A promisee. The person to whom an obligation has been incurred. The person to whom a bond is made payable. The person entitled to enforce a guaranty. 24 Am J1st Guar § 30.

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Within the meaning of the Uniform Reciprocal Enforcement of Support Act:—any person to whom a duty of support is owed, including a state or political subdivision. Uniform Reciprocal Enforcement of Support Act § 2(h).

obligor. A promisor. One who has incurred an obligation to another. The person, natural or artificial, liable on a bond. Within the meaning of the Uniform Reciprocal Enforcement of Support Act:—any person owing a duty of support. Uniform Reciprocal Enforcement of Support Act § 2(g).

obliquus. Oblique; aslant; on the side; collateral; indirect: circumstantial.

obliterated monument. A monument marking the corners or boundary of a tract of land which has been obliterated by the action of the weather, farming operations, logging, mining, etc.

obliterate line. A boundary line obliterated by the action of the weather or by agricultural operations, logging, etc.

obliteration. A blotting out of letters, words, or figures on a written instrument. The effacing of a clause in a will by eraser or inking. 57 Am J1st Wills § 502.

The end may be accomplished by any erasure which shall be partial or complete. It may be done by drawing a pen through the words, or by burning or tearing, and it is not essential for obliteration that the words be rendered illegible, provided it is done with intent to cancel or revoke the instrument. Re Glass' Estate, 14 Colo App 377, 60 P 186.

oblivion. Forgetfulness. In an unusual sense, an overlooking of a criminal offense, a pardon or amnesty.

obloquy. Reprehension; blame; censure; reproach. Tonini v Cevasco, 114 Cal 266, 273, 46 P 103.

obreptio. Same as **obreption.**

obreption. The obtaining of anything by false or fraudulent representations; the fraudulent obtaining of escheated property by false representations.

obrogare. (Civil law.) To amend, alter, or repeal a law by a new law.

obrogation. (Civil law.) The amendment, alteration, or repeal of an existing law by the adoption of a new one.

obscene. Offensive to decency or modesty. Expressing or presenting to the mind or view something which delicacy, purity, and decency forbid to be expressed. United States v Bebout (DC Ohio) 28 F 522, 524.

obscene advertising. An advertisement which contains obscene language or obscene pictures.

obscene exhibition. See **obscenity.**

obscene language. Words calculated to corrupt morals or excite libidinous thoughts, irrespective of whether the words themselves are impure. 33 Am J1st Lewd etc. § 4. In reference to use of the mails: offensive to chastity; foul and filthy so as to be offensive to a clear minded person. Anno: 76 L Ed 849;41 Am J1st P O § 116.

obscene matter. See **obscenity.**

obscene picture. A picture which tends to excite lust. 33 Am J1st Lewd etc. § 9.

obscene publication. A book, magazine, pamphlet, etc., containing matter, the tendency of which is to deprave and corrupt those whose minds are open to corrupting influence and into whose hands such a publication may fall. 33 Am J1st Lewd etc. §

10. Any impure or indecent publication tending to corrupt the mind and to subvert the respect for decency and morality. *Timmons v United States* (CA6 Ohio) 85 F 204, 205.

obscene show. See **obscenity**.

obscenity. Something offensive to morality or chastity, indecent or nasty. *Commonwealth v Buckley*, 200 Mass 346, 86 NE 910. That which shocks the ordinary and common sense of men as an indecency. *State v Van Wye*, 136 Mo 227, 37 SW 938. Any matter of a lewd, lascivious, or obscene tendency, which is calculated to corrupt and debauch the mind and morals of those persons into whose hands it may fall. See *Swearingen v United States*, 161 US 446, 40 L Ed 765, 16 S Ct 562.

observe. To see. To take notice of by appropriate conduct; to conform one's action or practice to; to keep; to heed; to obey; to comply with. *Marshall County v Knoll*, 102 Iowa 573, 580, 69 NW 1146.

obsession. Possessed of an idea or a desire which occupies the mind too fully for calm, deliberate, and effective contemplation. Not necessarily insanity or mental affliction relieving from legal responsibility for matrimonial misconduct. Anno: 19 ALR2d 152, 175, §§ 4, 14.

obsignare. (Civil law.) To affix a seal to a will or other document; to sign and seal an instrument.

obsolescence. A condition resulting from unforeseen changes in the art, which make the installation of new apparatus necessary. 43 Am J1st Pub Util § 145. The condition of a thing which has passed out of general use, is outmoded, and out of fashion. *Re Stout*, 151 Or 411, 50 P2d 768, 101 ALR 672. As a matter of deduction in computation of income for taxation, that which renders an asset economically useless, regardless of its physical condition, such as technological improvements, economic changes, and legislative or regulatory changes functional depreciation. *Real Estate-Land Title & Trust Co. v United States*, 309 US 13, 84 L Ed 542, 60 S Ct 371.

Obsolescence is not necessarily confined to particular elements or parts of a plant the whole may become obsolete. It may arise as the result of laws regulating or forbidding the particular use of the property as well as from changes in the act, the shifting of business centers, loss of trade, inadequacy, or other causes. *Burnet v Niagara Brewing Co.* 282 US 648, 75 L Ed 594, 51 S Ct 262.

See **obsolete**.

obsolete. In a condition of obsolescence.

obsolete law. A statute never repealed but no longer enforced.

obstante. Obstructing; opposing; withstanding.

Obsta principiis. Withstand or resist the beginnings.

It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Legislatures are doubtless actuated by the same motives, but the vastness of their business sometimes prevents them, on a first presentation, from noticing objections

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which become developed by time and the practical application of the objectionable law. *Boyd v United States*, 116 US 616, 635, 29 L Ed 746, 752, 6 S Ct 524.

obstetrician. In the modern sense, a physician practicing obstetrics. In an older sense, inclusive of a midwife.

obstetrics. The branch of medical science which has to do with the care of women during pregnancy and parturition. *Stoike v Weseman*, 167 Minn 266, 267, 208 NW 993.

obstinate desertion. A determined, fixed, and persistent desertion of one's spouse. 24 Am J2d Div & S § 99.

obstruction. A bond or other obligation.

obstruct. To interpose obstacles or impediments; to hinder, impede, or in any manner, directly or indirectly, to intrude or prevent. 39 Am J1st Obst J § 10. To make difficult or to present obstacles to the accomplishing of a thing. Anno: 148 ALR 1446. To be or come in the way of, as, the bar in the harbor obstructs the passage of ships; clouds obstruct the light of the sun; to cut off the sight of (an object), as, the trees obstruct the distant hills. *Silva v Waldie*, 42 NM 514, 82 P2d 282.

obstructing easement. An unreasonable interference by the owner of the servient premises with the enjoyment of an easement. 25 Am J2d Ease § 89.

obstructing enlistments. Presenting obstacles to the obtaining of enlistments in the armed forces or simply making the recruiting of men difficult. Anno: 148 ALR 1446.

obstructing highway. Impeding, delaying, or obstructing traffic. 25 Am J1st High § 272. Impeding, embarrassing, or opposing the passage along and over a street or highway, but not necessarily to such an extent as to stop travel. *Chase v Oshkosh*, 81 Wis 313, 51 NW 560. Placing a structure in the street, or depositing waste material, so as to reduce the width of the way. *United States v Republic Steel Corp.* 362 US 482, 4 L Ed 2d 903, 80 S Ct 884, reh den 363 US 858, 4 L Ed 2d 1739, 80 S Ct 1605.

obstructing justice. The criminal offense under the common law, and by the statutes of many jurisdictions, of obstructing the administration and due course of justice. 39 Am J1st Obst J § 1.

See **obstruct.**

obstructing mails. An offense under federal statute in wilfully obstructing or retarding the passage of the mail or its carrier. 18 USC 324.

obstructing navigation. The offense, indictable at common law of obstructing a navigable water way; that is a water way navigable in fact.

Such an offense appears to be punishable as a public nuisance. To render such obstructions a nuisance, it is not necessary that they should actually have interfered with navigation and done it injury; it is sufficient if they rendered such navigation less convenient, less secure, and less expeditious. *State v Narrows Island Club*, 100 NC 477.

obstructing officer. Impeding a public officer in the performance of his duty by direct or indirect means. 39 Am J1st Obst J § 8.

The word includes any passive, indirect, circuitous impediments to the service or execution of process, such as hindering or preventing an officer by not opening a door or removing an obstacle or by concealing or removing property. 39 Am J1st Obst J § 10.

The word does not mean to oppose or impede the process with which the officer is armed, or to defeat its execution, but that the officer himself shall be obstructed. *Davis v State*, 76 Ga 721, 722.

obstruction. A blocking of passage, such as an object on or near a railroad track. An impediment.

See expressions beginning "obstructing."

obstruxit. He obstructed.

Obstupare. To stop up.

Obstupavit et obstruxit. He stopped up and obstructed.

obtaining by false pretense. See **false pretense.**

Obtemperandum est consuetudini rationabili tanquam legi. Obedience is due or owing to a reasonable custom as much as to the law.

obtest. To call to witness.

Obtulit se. He offered himself, he appeared,—a form of the record entry of a person's appearance in court.

ob turpem causam. For a base reason; for an immoral consideration.

obventio. (Civil law.) Rent; revenue; income; yield; profits.

obvious danger. A danger which is observable or discoverable in the exercise of reasonable care which persons of ordinary intelligence may be expected to take for their own safety. *Hardy v Chicago, R. I. & P. Ry. Co.* 139 Iowa 314, 115 NW 8. A risk readily to be perceived either by the eye or by the intellect. *Small v Travelers' Protective Asso.* 118 Ga 900, 45 SE 706.

obvious defects. See **patent defects.**

obvious peril. See **obvious danger.**

obvious risk. See **obvious danger.**

ob vitæ solatium. Toward the comfort of life. *Thurston v Carter*, 112 Me 361, 92 A 295.

o. c. An abbreviation of "ope consilio,"—by the aid of counsel.

occasio. A feudal tribute exacted from tenants by the lord for his necessities.

occasion. An incident. In the strict sense, something which incidentally brings to pass an event, but not an efficient cause of the occurrence. *Pennsylvania Co. v Congdon*, 134 Ind 226, 33 NE 795. In ordinary use, a synonym of "cause." *Williamsburgh City Fire Ins. Co. v Willard* (CA9 Cal) 164 F 404.

See **privileged occasion.**

occasional. For the occasion; not regularly; pertaining to the cause; causal.

occasional contraband. Goods which are not actually contraband but which are treated as contraband by a belligerent.

occision. A killing; a putting to death.

occult. Concealed; hidden; secret. Beyond the understanding of man. Of the mystic arts.

occultatio. Concealment; hiding.

Occultatio thesauri inventi fraudulosa. The concealment of discovered treasure is fraudulent.

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occult crimes. Secret offenses; crimes committed by stealth.

ocupacion. (Spanish.) A temporary taking of property by a competent tribunal or authority without compensation to the owner. The Navemar (DC NY) 24 F Supp 495.

occupancy. Possession in fact. The use of premises. 29A Am J Rev ed Ins § 895. The taking possession of those things which before belonged to nobody. 42 Am J1st Prop § 34. In reference to the rights of an occupying claimant:—such an occupancy as under the rules of the common law would entitle one to acquire a title by adverse possession, that is actual, open, and peaceable occupancy, but not necessarily occupancy as of one's dwelling place. 27 Am J1st Improv § 8.

"Physical occupancy" of property and legal possession of the same are not necessarily identical. A person may be held in law to be in actual possession of property, though at that time he be not physically upon it. State ex rel. Honey Island Land & Timber Co. v King, 110 La 961, 35 So 181.

occupancy agreement. An agreement carrying with it the right to occupy a specific apartment in a co-operative apartment building. 15 Am J2d Con Apt § 21.

occupant. One in enjoyment of the occupancy of premises. One in actual possession, the tenant as distinguished from the landlord who has possession but not occupancy. Parsons v Prudential Real Estate Co. 86 Neb 271, 125 NW 521.

For the purposes of the statutory requirement of notice of a proceeding for the establishment of a highway, the owner of a farm who is in the actual possession and control of it is the "occupant" thereof, although at the time he does not reside on the farm but in a village near by. A tenant who cultivates leased land is also an "occupant," although he does not reside thereon. 25 Am J1st High § 24.

Occupantis fiunt derelicta. Abandoned goods go to the first taker.

occupare. (Civil law.) To occupy; to take possession of; to lay hold of; to seize.

occupatio. (Civil law.) An occupation; a seizure; a taking possession; a business, occupation or calling.

occupation. The enjoyment of real property. Ward v Crane, 118 Cal 676, 50 P 839. The taking and possessing of enemy territory in time of war. 56 Am J1st War §§ 204 et seq. A more or less continuous or habitual engagement in a certain line of employment or industrial or business activity. Anno: 50 ALR 1176; 106 ALR 1502. That which occupies or engages the time or attention; the principal business of one's life. Union Mut. Acci. Asso. v Frohard, 134 Ill 228, 25 NE 642. A profession, vocation, calling, employment, or trade. Stewart v Barber, 182 Misc 91, 43 NYS2d 560. For the purposes of the application of a diminished liability clause of an accident insurance policy:—the insured's principal vocation or pursuit. 29 Am J Rev ed Ins § 769. For the purposes of an exemption statute:—any employment in which the debtor is engaged to procure a living, or at which he habitually earns his living. 31 Am J2d Exemp § 3.

occupational disability clause. A provision in a health or accident insurance policy, or in a life insurance policy containing a disability provision, for the payment of periodic indemnity for total disability preventing the insured from performing any of the duties of his occupation, business, or profession. 29A Am J Rev ed Ins § 1516.

occupational disease. A disease which develops gradually and imperceptibly as a result of engaging in a particular employment and is generally known and understood to be a usual and natural incident or hazard of such employment. 58 Am J1st Workm Comp § 246. A disease caused by or especially incident to a particular employment. *Iwanicki v State Industrial Acci. Com.* 104 Or 650, 205 P 990, 29 ALR 682, 688. Something other than an accidental injury. But none the less a personal injury, the injury being regarded as sustained when the employee becomes unable to work. *Iwanicki v State Industrial Acci. Com.* 104 Or 650, 205 P 990, 29 ALR 682.

occupational prejudice. A prejudice against the occupation of a party, such as that of tending bar. 31 Am J Rev ed Jury § 178.

occupational restriction. A restriction contained in a covenant prohibiting the use of property in the pursuit of any occupation or certain prescribed occupations. 20 Am J2d Cov § 197.

occupation tax. A tax imposed for the purpose of revenue only on persons pursuing a certain occupation, vocation, or profession, such as that of practicing law, as distinguished from the charging of a license fee in the course of the regulation of an occupation, vocation, or profession. *Royall v Virginia*, 116 US 572, 29 L Ed 735, 6 S Ct 510. A tax upon the privilege of selling tangible personal property at retail, a tax sometimes regarded as included within the meaning of the term "sales taxes." 47 Am J1st Sales T § 1.

occupavit. He took possession; a writ which lay to recover land which was lost in time of war.

occupied. Space, time, or even one's mind filled to the exclusion of anything else. Possessed in fact and used. As a warranty or representation in an insurance policy covering a building:—a substantial and practical use of the insured building for the purposes for which it is intended and as contemplated by the policy. 29A Am J Rev ed Ins § 907.

occupy. To fill space; to take one's attention. To hold, to keep for use, or to possess, real estate. *Missionary Soc. v Dalles City* (US) 17 Otto 336, 27 L Ed 545, 2 S Ct 672.

occupying claimant. The terminology for one who seeks recovery for improvements made by him upon premises while he was in actual occupancy thereof in the belief that he had a good title.

Occupying Claimant's Acts. Statutes which provide a recovery by an occupying claimant, since dispossessed by the true owner, for improvements made by him while he was in actual occupancy of the premises in the belief that he had good title. 27 Am J1st Improv § 6.

occur. To happen. *Johnson v Humboldt Ins. Co.* 91 Ill 92.

occurrence. A happening; an event.

The time of the occurrence of an accident within the meaning of an indemnity policy is generally deemed to be the time when the complaining party was actually damaged, and not when the wrongful act was committed. *Remmer v Glens Falls Indem.*

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Co. 140 Cal App 2d 84, 295 P2d 19, 57 ALR2d 1379.

occurrence witness. A witness having personal knowledge of an event from presence at its occurrence, especially a witness who observed an accident in which a personal injury or injuries were sustained. *Krupp v Chicago Transit Authority*, 8 Ill 2d 37, 132 NE2d 532.

ocean. The bounding main; the high sea.

ocean going steamer. A vessel equipped to sail the ocean, even including a large pleasure yacht. 12 Am J2d Boats § 1.

ochlocracy. A government by a mob which has overturned the established order.

octabis. Same as **octave.**

octave. The eighth full tone above a given tone. The eighth day inclusive after a church feast day.

The first return day (the day on which original writs are made returnable) in every term is the first day in that term; as, for instance, the octave of St. Hilary, or the eighth day inclusive after the feast of that saint. Sec 3 Bl Comm 277.

octoroon. The child of a white person and a quadroon; a person of one eighth Negro blood.

octo tales. A writ to summon men who shall supply a deficiency in the jury panel.

ocular refraction. The adaptation and accommodation of the light rays which enter the eye in keeping with optical principles, to secure proper focus and the formation of an accurate image on the retina. *Abelson, Inc. v New York State Board of Optometrists*. 5 NJ 412, 75 A2d 867, 22 ALR2d 929.

An applied arm of optical science, resting upon the work and discoveries of physicists and opticians through the ages, down to modern times. It does not treat the eye, whether in health or disease, but adapts the light waves which enter the eye, in accordance with optical principles, so as to produce focused and single vision with the least abnormal exertion on the part of the eye. Its distinction from medicine and its independence of medicine have been affirmed by the United States Supreme Court in every case in which the question has been brought up for adjudication. *Silver v Lansburgh & Bro.* (DC Dist Col) 27 F Supp 682.

oculist. A physician who specializes in treating abnormalities and diseases of the eye. *Black v Bearden*, 167 Ark 455, 268 SW 27. One who practices medicine and surgery in the treatment of diseases of the eye. Anno: 141 ALR 884.

The practice of an oculist has relation to the practice of medicine and surgery in the treatment of diseases of the eye, and to the measurement of the powers of vision, and the adaptation of lenses for the aid thereof. Anno: 22 ALR2d 941.

odd lot. A transaction in stock negotiated by a broker involving less than one hundred shares.

Oderunt peccare boni, virtutis amore; oderunt peccare mali, formidine poenae. By reason of their love of goodness, righteous men hate to sin; by reason of their fear of punishment, bad men hate to sin.

odhal or odhall. Allodial, -free; not held in subordination to another: opposed to feudal.

odio et atia. See **de odio et atia.**

Odiosa et inhonesta non sunt in lege praesumenda. Odious and dishonest things are not to be presumed in law.

Odiosa non praesumuntur. Odious or hateful things are not presumed.

odious plea. A plea that the plaintiff is an alien enemy. 3 Am J2d Aliens § 191.

odium. Hatred or dislike, applied in the law particularly to hatred or dislike of a party to an action or of his cause of action or defense. *Brow v Levy*, 3 Ind App 464, 468.

odium spoliatoris. See **in odium spoliatoris.**

oeconomicus. An executor of the estate of a testator.

oeconomus. An administrator; an advocate; a defender.

oecumenical. Same as **ecumenical.**

odometer. A device for recording the miles traveled by a vehicle.

odor. A refined word for smell. A nuisance when noxious. 39 Am J1st Nuis § 59.

oepts. Use.

oes. Same its **oepts.**

of. Belonging to. Denoting possession or ownership. *Davidson v Click*, 31 NM 543, 47 ALR 1016, 249 P 100. Sometimes indicating origin, source, descent and the like. *Stone v Riggs*, 43 Okla 209, 142 P 298. As the word appears in a tariff schedule:—indicating an article wholly or primarily made from material designated. 19 USC § 1202, Headnote 9(f). Sometimes the equivalent of "in." *Sisson v Board of Supervisors*, 128 Iowa 442, 104 NW 454.

of a civil nature. See **suit of a civil nature.**

of age. The condition or state of a person who has attained his or her majority.

See **age of majority.**

of counsel. A phrase which indicates that the person named is assisting another lawyer in a cause or the trial of a case. A common designation for associate attorneys to distinguish them from the attorneys of record in a cause.

of course. See **as of course.**

offa execrata. The morsel of execration, the corsned,—a piece of bread which, under the ancient Saxon law, was given to a person accused of crime to be eaten by him.

If it stuck in his throat, he was deemed guilty.

offal. Garbage; waste animal or vegetable matter; any filthy material. 37 Am J1st Mull Corp § 298. That which is permitted to fall away as of no value, for example, the chips in the dressing of a stone

offend. To commit a public offense. To hurt the feelings.

offense. A crime. A felony, misdemeanor, or other infraction subject to prosecution. *Osborne v Owsley (Mo)* 264 SW2d 332, 38 ALR2d 1128. Agression. A hurt to the feelings.

This word in a clause of a contract of employment authorizing the employee's discharge may be given a broader meaning than crime and justify dismissal for conduct for which no one bothered to

prosecute the offender, or something that is no legal crime at all. *Twentieth Century-Fox Film Corp. v Lardner* (CA9 Cal) 216 F2d 844, 51 ALR2d 728.

offense against the United States. See **federal offense.**

offense malum in se. See **mala in se.**

offense malum prohibitum. See **mala prohibita.**

offensive. Giving offense; causing displeasure or annoyance. Wounding the feelings. *People v Whitman* (Co Ct) 157 NYS 1107. Being aggressive.

offensive business. A business which is noxious or dangerous to the neighborhood. 20 Am J2d Cov § 198. A business which is noxious, unsanitary, unsightly, unusually noisy, or constituting a nuisance per se. *Unity Builders Inc. v Scarborough* (La App) 149 So 2d 141. A term of a restrictive covenant to be construed in accordance with the context of the covenant. *Babcock v Laidlaw*, 113 NJ Eq 318, 166 A 632.

offer. A proposal of terms made with the purpose of securing the acceptance thereof by another, thereby completing a contract. 17 Am J2d Contr § 31. A tender of performance.

offer and acceptance. Essentials in the formation of a contract; the means through which the minds of the parties meet. 17 Am J2d Contr § 31. The assent or meeting of the minds of the parties in completing a contract of guaranty. 24 Am J1st Guar § 34.

offered evidence. Evidence presented by a party on the trial of an action.

Such evidence may or may not be received. It is evidence adduced but it does not become evidence introduced unless it is admitted or received by the court. *Tuttle v Story County*, 56 Iowa 316, 317, 9 NW 292.

offer for the record. See **offer of proof.**

offering bribe. See **bribery.**

offering to do equity. A maxim which prescribes a condition of plaintiff's right to relief in equity. 28 Am J Rev ed Inj § 34.

offer of compromise. A concession by a party to a controversy, such as a reduction in claim, made for the purpose of settlement of the controversy. *Daniels v U. S. Rubber Co.* (Tex Civ App) 199 SW2d 533.

offer of evidence. Same as **offer of proof.**

offer of proof. Presenting evidence for admission or for a ruling upon admissibility. A formal offer by a party of proof, showing what testimony he proposes to adduce, and, when necessary, his intention to prove other facts which will render the evidence relevant or competent. Advising the court of the purpose for which apparently irrelevant or incompetent evidence is offered. *Chambers v Minneapolis, St. Paul & S. Ste. M. R. Co.* 37 ND 377, 163 NW 824, 954. The offer of testimony of a witness ruled incompetent by the trial court or of evidence ruled inadmissible by the trial court, such being an offer for the record, sometimes known as an avowal, the purpose being to present a good record on appeal by preserving the error in an adequate form. 53 Am J1st Trial § 99.

offer of tender. The physical act of offering the money in making a tender. 52 Am J1st Tend § 7.

offer to dedicate. The declaration of an owner of real estate of his purpose to dedicate the property to public use, made by him expressly or by act, by deed, or by plat. 23 Am J2d Ded § 18.

offer to guarantee. A step in the making of a contract of guaranty.

An offer to guarantee the obligation of a third party is not a guaranty. The assent of the parties is essential to a guaranty, and for such assent there must be an offer by one party and an acceptance of it by the other. An offer to guarantee is but a step in the negotiations leading up to the contract; the guaranty is the finished product of the negotiations. 24 Am J1st Guar § 34.

offer to restore. See **tender**.

office. A term of vague and variant import, the meaning of which varies necessarily with the context and the circumstances surrounding the use of the term. 42 Am J1st Pub Of § 2. A place wherein business is transacted. That function by virtue whereof a person has an employment in the affairs of another, whether public, private, or quasi-public and the right to such emoluments as accrue from the employment. 42 Am J1st Pub Of § 2. Purpose, for example, the office of a remedy.

office copy. A certified copy made by the officer in custody of the judicial records. State v Board of Public Works, 57 NJL 313, 316, 30 A 581.

office found. A finding of fact by inquest of office or other proceeding equivalent thereto that a certain individual is an alien.

At common law, until office found, an alien is competent to hold land against third persons, and no one has a right to complain in a collateral proceeding, if the sovereign does not enforce its prerogative. Phillips v Moore, 100 US 208, 25 L Ed 603.

office grant. A transfer or conveyance of land to a person entitled thereto by a public officer in certain cases where the owner cannot or will not execute it.

office hours. The period of time when a public or private office is open for the transaction of business.

Office of Alien Property. A division in the Department of Justice of the United States.

office of corporation. See **corporate officers; principal place of business**.

office of credit. Same as **office of honor**.

office of honor. An office which yields no profit. Alexander v Jenkins (Eng) LR 1 QB 797.

office of profit. A lucrative office; an office the incumbent of which is entitled to salary or other compensation. State v De Gress, 53 Tex 387, 400. A public office to which a compensation is attached. 42 Am J1st Pub Of § 23.

officer. A term of vague and variant import, the meaning of which varies necessarily with the context and the circumstances surrounding the use of the term. 42 Am J1st Pub Of § 2. A commissioned officer of the Armed Forces. 36 Am J1st Mil § 51. A policeman. One holding or inseparably connected with an office. Metcalf v Mitchell, 269 US 514, 70 L Ed 384, 46 S Ct 172. A person who holds an office, either public or private. 42 Am J1st Pub Of § 2.

An officer is distinguishable from a person who holds a place of trust or profit. Such places are not offices, and yet they occupy the same general level in dignity and importance. Members of the legislature are not officers. Their places are places of trust

and profit, but they are not offices of trust and profit. *Doyle v Aldermen of Raleigh*, 89 NC 133.

See **corporate officers; municipal officer; public officer.**

officer de facto. See **de facto corporate officer; de facto public officer.**

officer de jure. See **de jure officer.**

officer of the armed services. A commissioned officer. 36 Am J1st Mil § 51.

See **noncommissioned officer.**

officer of the United States. One who holds his office by virtue of appointment by the President, by one of the courts of justice, or by the head of a department authorized by law to make such appointment. 54 Am J1st US § 11.

officer pro tempore. See **pro tempore.**

officers of corporation. See **corporate officers.**

office work. Work in a business office; clerical work.

Officia judicialia non concedantur antequam vacant. Judicial offices are not granted or appointed before they become vacant.

official. In the capacity of an officer, especially a public officer. Formal.

While the word usually means pertaining to a public office, it is sometimes applied to persons holding fiduciary positions, to distinguish their transactions in such relations from their purely private business. *Bissell v Wayne Probate Judge*, 58 Mich 237, 238, 24 NW 886.

official act. An act done by an officer in his official capacity, under color and by virtue of his office.

An act need not be a lawful act that it may be an official one. If this were not so, the sureties on his official bond would never be responsible. *Greenberg v People's use of Balaban*, 225 Ill 174, 80 NE 100.

To constitute official action, it is not necessary that it shall be prescribed by statute nor that it be prescribed by a written rule or regulation. Duties are often established by settled practice. *Whitney v United States* (CA10 Okla) 99 F2d 327.

official ballot. A ballot prescribed by the legislature for use at an election, almost invariably being in a form modeled on what is known as the "Australian ballot system." 26 Am J2d Elect § 204.

official bond. A penal bond conditioned upon the performance of duties of office. A bond required of a public officer, in effect, a contract between the officer and the government, binding the officer to discharge the duties of his office, and binding the sureties to make good the defaults of the officer. 43 Am J1st Pub Of § 394.

official forms. Forms officially prescribed for use, for example, the official forms prescribed by the United States Supreme Court for use in bankruptcy proceedings. 9 Am J2d Bankr § 108.

official intermeddling. A matter of maintenance. Anno: 139 ALR 650.

official misconduct. An act constituting a breach of the good faith and right action impliedly required of all public officers. *Etzler v Brown*, 58 Fla 221, 50 So 416. Any act involving moral turpitude, or any act which is contrary to justice, honesty,

principle, or good morals, if performed by virtue of authority of office. *State v Examining & Trial Board*, 43 Mont 389, 117 P 77. Any unlawful behavior in relation to the duties of his office, willful in its character, of any officer intrusted in any manner with the administration of justice, or the execution of the laws. *Brackenridge v State*, 27 Tex App 513, 11 SW 630.

official newspaper. A newspaper of a city or county in which public acts, resolutions, advertisements, and notices of the city or county are required to be published. *Shelden v Butler County*, 48 Kan 356, 29 P 759.

official notice. Another expression for judicial notice. The equivalent of judicial notice by an administrative agency. 2 Am J2d Admin L § 385.

official opinion. See **opinion**.

official oppression. The wrong of a public officer in exercising his official authority for his own selfish or vindictive reasons to the harm of another. Anno: 83 ALR2d 1008.

official records. Transcripts from books and records of the executive departments of the federal government which, when authenticated according to law, constitute evidence, by virtue of the federal official records statutes, concerning the matters of which they speak, if made by an officer or agent of the government in the course of the discharge by him of his official duty. Anno: 50 ALR2d 1197.

See **court record; public record**.

Official Records Statute. A federal statute providing that books or records of account, or minutes of the proceedings of any department or agency of the United States, are admissible to prove the act, transaction, or occurrence as a memorandum of which the same were made or kept. 28 USC § 1733(a).

Official Register. A publication compiled by the United States Civil Service Commission, showing persons occupying administrative and supervisory positions in the legislative, executive, and judicial branches of the Government of the United States and in the District of Columbia.

Official Reports as Evidence Act. One of the uniform laws. 30 Am J2d Ev § 994.

official rules. Rules governing the practice and procedure before an administrative agency. 2 Am J2d Admin L § 346.

official seal. The seal affixed to a document by a public officer. *Kirksey v Bates* (Ala) 7 Port 529. The instrumentality for affixing a seal that goes with a public office as part of the paraphernalia of office.

Such a seal must contain enough to show the official character of the officer and must be capable of making a distinct and uniform impression upon the paper upon which it is used, or on some tenacious substance such as wax attached thereto, capable of receiving an impression. A seal in the form of a scrawl of the pen does not fill the requirements of an official seal. 47 Am J1st Seals § 7.

See **great seal; seal of court**.

official trustee. An official trustee in bankruptcy under a former practice, now prohibited, of recognizing a particular corporation in the federal district as entitled to appointment as trustee in bankruptcy in all cases arising in the district requiring a trustee. 9 Am J2d Bankr § 621.

official use. An active use; that is, a use under which the feoffee to uses was required to perform active duties with reference to the property conveyed to him.

official visitors. See **visitors.**

Officia magistratus non debent esse venalia. The offices of magistrates ought not to be the subjects of sale.

officiariis non faciendis vel amovendis. A writ which lay to stay the installation or removal of an officer of a corporation.

offeina fraudis. The workshop of fraud.

offeina gentium. The workshop of nations.

officina justitiae. The workshop of justice, a term applied to the English Court of Chancery. *Yates v People* (NY) 6 Johns 337, 363.

officio. See **ex officio**; **functus officio.**

officio coronatoris. See **de officio coronatoris.**

officious will. A will wherein the testator leaves his property to his family.

Officit conatus si effectus sequatur. An attempt works an injury if the result follows.

officium. An office.

Officium nemini debet esse damnosum. An office ought not to be a detriment to a person.

offset. A balancing or compensating factor. A printing process.

See **setoff**; **without offset.**

offset well. An oil well dug for the specific purpose of preventing drainage of oil to adjoining property. 24 Am J1st Gas & Oil § 43.

offspring. Children or issue. Anno: 23 ALR2d 842845. Sometimes a word of limitation in grant or devise. *Allen v Markle*, 36 Pa 117.

offstreet parking. A parking lot. Parking places off the street provided for the purpose of relieving traffic congestion. 26 Am J2d Em D § 48.

off-the-road production. The production of materials used in highway maintenance. *Thomas v Hempt Bros.* 345 US 19, 97 L Ed 751, 73 S Ct 568.

of new. Anew; over again.

of right. A matter of legal right.

See **as of course.**

Of two possible constructions, adopt the one which will save and not destroy. A canon of construction. *Anniston Mfg. Co. v Davis*, 301 US 337, 81 L Ed 1143, 57 S Ct 816.

ohm. The unit of electrical resistance; the resistance to a force of one volt in a current of one ampere. Peoria Waterworks Co. v Peoria R. Co. (CC Ill) 181 F 990.

oikeimania. A morbid state of a person's domestic affections, as an unreasonable dislike of his wife or child, without cause or provocation, turning love into hatred. Ekin v McCracken (Pa) 11 Phila 534, 540.

oil. A mineral. Scott v Laws, 185 Ky 440, 215 SW 81, 13 ALR 369.

See **crude oil**.

oil and gas lease. A grant of the sole and exclusive right to develop the land described in the lease for oil and gas or a demise for a designated term of years for the purpose of such development, subject to the conditions of a payment of royalty in the event of production, of the commencement of drilling operations on or before a specified date, and of the performance within a prescribed time of a certain amount of development work. 24 Am J1st Gas & O § 34.

oil and gas license. A distributor's license required because of the dangerous character of the product. 24 Am J1st Gas & O § 129. A license required for the storage or keeping of oil, gasoline, or other petroleum product. 24 Am J1st Gas & O § 154.

oil filings. Oil locations,—locations made on public lands of the United States and filed in the government land office pursuant to acts of Congress by persons in good faith claiming the land as oil land. Anthony Wilkinson Live Stock Co. v McIlquham, 14 Wyo 209, 83 P 364.

oil lease. See **oil and gas lease**.

oil license. See **oil and gas license**.

oil locations. Same as **oil filings**.

oil refinery. A plant wherein crude oil is refined by splitting it up into a number of commercial products by a process of fractional distillation. 24 Am J1st Gas & O § 123.

oil royalty. See **royalty**.

oil royalty pool. See **royalty pool**.

oil well. A well bored in the crust of the earth and the components thereof to a deposit of crude oil. A structure within the meaning of a lien law. 24 Am J1st Gas & O § 114. Not a mine. 36 Am J1st Min & M § 2.

oil well drilling. See **footage drilling; rotary drilling; turn-key drilling**.

oir. Same as **oyer**.

O. K. All right; correct. 1 Am J2d Abbr § 7. An abbreviation frequently used in the commercial world signifying the signer's approval of the instrument on which he indorses it.

The origin of the term "O.K." is obscure. While there are various explanations of the origin, none is well-grounded. It has, however, a well-defined meaning in common and commercial usage. Anything said to be "O.K." is understood to be all right or correct. Lithographical Printing Co. v Chase, 149 Mass 459, 21 NE 765; Morganton Mfg. Co. v Ohio River & C. R. Co. 121 NC 514, 28 SE 474.

OK bill of lading. A bill of lading bearing the written or stamped letters "OK," indicating that the goods were received by the carrier in good condition. *Morganton Mfg. Co. v Ohio & Charleston Ry. Co.* 121 NC 514, 28 SE 474.

old age. Advanced age; senility. Not mental incompetency in itself. *Lindsey v Lindsey*, 50 Ill 79; *Westerbeck v Cannon*, 5 Wash 2d 106, 104 P2d 918.

Old-Age and Survivors' Insurance. The system whereby employees and employers are taxed to provide for the payment of benefits to workers and their wives upon their reaching a stated age or suffering disability, popularly known as social security. 48 Am J1st Soc Sec § 9.

Old-Age and Survivors' Insurance Act. Federal statutes constituting a part of the Federal Social Security Act, providing a system of social security for employees. 26 USC §§ 1400 et seq.

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old-age assistance. A provision made by state statute, complimentary to, and operating in conjunction with, the Federal Social Security Act, for benefits to persons in needy or indigent circumstances or without means of support, who have reached a specified age. 48 Am J1st Soc Sec §§ 39 et seq. In the broad sense, any aid granted by the public or by private persons to the elderly for support, maintenance, or medical care.

old-age exemption. A homestead exemption provided by statute for an aged person, even for an aged person who is not the head of a family. 26 Am J1st Home § 15.

Old Bailey. The name which was given to what was formerly the principal criminal court of London.

old line company. A life insurance company operating on a fixed-premium basis, as distinguished from a mutual benefit society or company issuing policies on an assessment basis, its policies having a cash surrender value after the first year.

See **old time policy.**

old line policy. A policy of life insurance in which the amount to be paid by the insured is fixed, the premiums to be paid are unalterable, and the liability incurred by the insurance company is also fixed, definite, and unchangeable. *Clark v Metropolitan Life Ins. Co.*, 126 Me 7, 9, 135 A 357, 358.

Old Natura Brevium. A book or account compiled in the reign of Edward the Third, describing the writs in common use at that time.

old school. Having a conservative quality.

old school physician. One licensed to practice and practicing medicine according to the system approved by and taught in the leading medical schools. 41 Am J1st Phys & S § 85.

old style calendar. The calendar which was in use in England and America prior to the year 1752, when the "new style" or Gregorian calendar was adopted.

oleomargarine. A substance used as butter, made of vegetable oil and other ingredients, and fortified with vitamins. 35 Am J2d Food § 41.

oleo oil. A food; a substance used in the preparation of oleomargarine. 35 Am J2d Food § 1.

Oleron. See **Laws of Oleron.**

oligarchy. A government which is administered by a few persons.

olograph. A holographic will.

olographic will. Same as **holographic will.**

om. Same as **omme.**

ome bueno. (Spanish.) A good or responsible man.

omissa vel male apprehiata. Omissions or mistakes in understanding.

omissio. An omission.

Omissio eorum quae tacite insunt nihil operatur. The omission of those things which are tacitly implied is of no importance.

omission. A leaving out. A failure to act. The failure to do something which ought to be done; not doing something required.
See **crime of omission.**

omissis omnibus aliis negotiis. Putting aside all other business affairs.

omissus. See **casus omissus.**

omits to provide. A familiar phrase in statutes respecting the rights of pretermitted children.

As the expression is used in a statute providing that if a testator "omits to provide" in his will for his child, the child will take as if the testator had died intestate, it means simply an omission to make a provision for the child in the will, and has no reference to the pecuniary value of such provision, the object of the statute being merely to prevent the child from being overlooked. *Allison v Allison*, 101 Va 537, 44 SE 904.

omitted property. Property which has escaped taxation. *Independent Pipe Line Co. v State Board of Equalization*, 168 Okla 432, 33 P2d 797. Property of a decedent omitted in the assessment of inheritance tax. *State v Brooks*, 183 Minn 251, 236 NW 316. Lands omitted in the original assessment for a local improvement. *St. Louis & K. C. Land Co. v Kansas City*, 241 US 419, 60 L Ed 1072, 36 S Ct 647.

omme. A man; anyone.

Omne actum ab intentione agentis est iudicandum. Every act is to be judged by the intention of the doer.

Omne crimen ebrietas, et incendit et detegit. Drunkenness both aggravates and lays bare every crime. See 4 Bl Comm 25.

Omne jus aut consensus fecit, aut necessitas constituit, aut firmavit consuetudo. (Civil law.) Consent created, necessity established, or custom confirmed every right.

Omne magis dignum trahit ad se minus dignum, quamvis minus dignum sit antiquius. Every worthier thing draws to itself the less worthy, although the less worthy be the more ancient.

Omne magis dignum trahit ad se minus dignum sit antiquius. Every worthier thing draws to itself the less worthy, although it be older.

Omne magnum exemplum habet aliquid ex iniquo, quod publica utilitate compensatur. Every great example has something of unfairness, which is balanced by public advantage.

Omne majus continet in se minus. Every greater right or thing holds within itself the less.

Omne majus dignum continet in se minus dignum. Every more worthy thing contains the less worthy within itself.

Omne majus minus in se complectitur. Every greater thing embraces the less within itself.

Omne principale trahit ad se accessorium. Every

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principal thing draws the accessory to itself. *Parsons v Welles*, 17 Mass 425.

Omne quod inaedificatur solo cedit. Everything which is built into the soil goes with it. See *Broom's Legal Maxims* 401.

Omne sacramentum debet esse de certa scientia. Every sworn statement ought to be of certain knowledge.

Omnes actiones in mundo infra certa tempora habent limitationem. All actions in the world have limitation within certain periods of time.

Omnes homines aut liberi sunt aut servi. All men are either freemen or slaves.

Omnes licentiam habere his quite pro se indulta sunt, renunciare. (Civil law). All are free to renounce those things which have been allowed for their benefit. See *Broom's Legal Maxims* 699.

Omnes prudentes, ilia admittere solent quae probantur its qui in arte suit bene versati sunt. All prudent persons are accustomed to accept those things which have been approved by those who are well versed in their own art.

omnes res suas liberas et quietas haberet. That he should retain all his property free and undisturbed. See 1 *Bl Comm* 291.

Omnes sorores sunt quasi unus haeres de una haereditate. All sisters are, as it were, one heir of one inheritance.

Omne testamentum morte consummatum est. Every will or testament is consummated or completed by death.

Omnia delicta in aperto leviora sunt. All offenses committed openly are less serious.

Omnia peccata sunt paria. All crimes are alike.

omnia performavit. He has performed in all things. A defendant's plea in an action for breach of covenant. *Bailey v Rogers*, 1 Me 186, 189.

Omnia praesumuntur contra spoliatores. All things are presumed against a suppressor of testimony. *Western & Atlantic Railroad Co. v Morrison*, 102 Ga 319, 29 SE 104.

Omnia praesumuntur legitime facta donee probetur in contrarium. All things are presumed to have been done lawfully until the contrary is proved. People ex rel. Copcutt v Yonkers, 140 NY 1, 35 NE 481.

Omnia praesumuntur rite et solemniter acta donee probetur in contrarium. All things are presumed to have been done regularly and with due formality until the contrary is proved. Robideaux v Herbert, 118 La 1089, 43 So 887

omnia praesumuntur rite et solemniter esse acta. All things are presumed to have been done regularly until the contrary is proved. 29 Am J2d Ev § 170.

Omnia praesumuntur rite et solemniter esse acta. All things are presumed to have been done correctly and with due formality.

Omnia praesumuntur rite et solemniter esse acta donee probetur in contrarium. All things are presumed to have been done correctly and with due formality until the contrary is proved. See Broom's Legal Maxims 944.

Omnia praesumuntur rite, legitime, solemniter esse acta, donee probetur in contrarium. All things are presumed to have been done correctly, lawfully and with due formality, until the contrary is proved.

Omnia praesumuntur solemniter esse acta. All things are presumed to have been done with due formality.

Omnia quae jure contrahuntur, contrario jure pereunt. (Civil law.) All contracts which are entered into under a law, become void under a contrary law.

Omnia quae sunt uxoris sunt ipsius viri. All things which belong to the wife are the property of the husband.

Omnia rite acta praesumuntur. All things are presumed to have been regularly done. Fidelity & Casualty Co. v Eickhoff, 63 Minn 170, 65 NW 351.

Omnia rite esse acta praesumuntur. All things are presumed to have been done in due form. See Broom's Legal Maxims 944 n.

Omnia rite praesumuntur. All things are presumed in favor of regularity.

omnibus. A coach or other large vehicle equipped for the carrying of many passengers, propelled in modern times by motor, in an earlier day by horses. (Latin.) Everything; all.

See **in omnibus.**

Omnibus ad quos praesentes literae pervenerint, salutem. To all to whom the present letters may come, greeting.

omnibus bill. A legislative bill covering various and miscellaneous subjects. A bill purporting to amend many sections of a code. Parkinson v State, 14 Md 184.

omnibus clause. A clause in an automobile liability insurance policy, providing that the term "insured" includes the named insured and also any other person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the

named insured or with his permission or consent. 7 Am J2d Auto Ins § 109.

omnibus count. A count of a declaration or complaint which combines in one all the money counts. Griffin v Murdock, 88 Me 254, 257.

omnibus legislation. See **omnibus bill.**

omnibus motion. A motion consisting of several motions in combination, including in some instances demands for relief of a different nature, depending on different facts and circumstances wholly unrelated. 37 Am J1st Motions § 6.

Omnibus qui reipublicae praesunt etiam mando, ut omnibus aequos se prebeant iudices, perinde ac in judiciali libro scriptum habetur; nee ququam formident quin jus commune audacter libereque dicant. To all those who govern the republic, I charge them to prove themselves to be fair judges as it is written in the Dome Book and boldly and freely to declare the common law. See 1 Bl Comm 65.

omni exceptione majores. Above or superior to all criticism or exception.

Omnis actio est loquela. Every action is a complaint.

Omnis conclusio boni et veri iudicii sequitur ex bonis et veris praemissis et dictis juratorum. Every conclusion of a good and true judgment follows from good and true premises and the verdicts of jurors.

Omnis consensus tollit errorem. Every consent removes error; error is cured by consent.

Omnis definitio in jure civili periculosa est, parum est enim ut non subverti possit. (Civil law.) Every definition in the civil law is dangerous, because there is little that cannot be subverted.

Omnis definitio in jure periculosa. Every definition in the law is dangerous. Brady v Bartlett, 56 Cal 350, 365. (But a good law dictionary is nevertheless a most valuable asset in a law library.)

Omnis definitio in jure periculosa est; parum est enim ut non subverti posset. Every definition in the law is dangerous, because there is little that cannot be subverted.

Omnis definitio in lege periculosa. Every definition in the law is dangerous.

Omnis exceptio est ipsa quoque regula. Every exception is itself also a rule.

Omnis indemnatus pro innoxio legibus habetur. Every uncondemned person is regarded by the law as innocent.

Omnis innovatio plus novitate perturbat quam utilitate prodest. Every innovation causes more confusion by reason of its novelty than it benefits by its usefulness. Barden v Atlantic Coast Line Railway Co. 152 NC 318, 67 SE 971.

Omnis interpretatio si fieri potest ita fienda est in instrumentis, ut omnes contrarietates amoveantur. Every interpretation of instruments should be so made, if it can be so made, that all contradictions may be removed.

Omnis interpretatio vel declarat, vel extendit, vel restringit. Every interpretation either declares, extends or restrains.

Omnis nova constitutio futuris formam imponere debet, non praeteritis. Every new regulation ought to prescribe a form for the future acts, not for the past.

Omnis persona est homo, sed non vicissim. Every person is a man, but not vice versa.

Omnis privatio praesupponit habitum. Every deprivation presupposes a prior enjoyment or possession.

Omnis querela et omnis actio injuriarum limitata est infra certa tempora. Every complaint and every action for injuries is limited within certain times.

Omnis rati habitio retrotrahitur, et mandato priori equiparatur. Every ratification relates back, and is equivalent to a prior command. *Fleckner v Bank of United States* (US) 8 Wheat 338, 363, 5 L Ed 631, 637.

Omnis regula suas patitur exceptiones. Every rule is subject to its own exceptions.

omnium. The aggregate.

omnium bonorum. Of all the goods.

Omnium contributione sarciatur quod pro omnibus datum est. That which is given in behalf of all is restored by the contribution of all.

Omnium rerum quarum usus est, potest esse abusus, virtute solo excepta. There can be abuse of all things of which there is use, virtue alone excepted.

on. In contact with the surface or upper part of a thing and supported by it. *Rester v Moody & Stewart*, 172 La 510, 134 So 690. Often used for "in," as on a train.

More definite in the description of real estate than "at," although sometimes meaning "in the vicinity of," as where the description refers to some geographic feature. 23 Am J2d Deeds § 243.

on acceptance. A condition in a draft making the instrument nonnegotiable. 11 Am J2d B & N § 141.

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on account. Received on one's credit; to be charged.

A purchase of stock "on the account" imports a sale of stock to be delivered at a future time. *Clews v Jamieson*, 182 US 461, 45 L Ed 1183, 21 S Ct 845.

on account of. A common phrase in an order for the payment of money; not an indication of a particular fund for payment. *First Nat. Bank v Lightner*, 74 Kan 736, 88 P 59. A form of restrictive indorsement. 11 Am J2d B & N § 362.

on account of whom it may concern. An insurance term which is used to include all persons having an insurable interest in the property insured for whose benefit the policy is intended. *Newsom v Douglas* (Md) 7 Harr & J 417.

on a lay. A term characterizing the letting of a vessel to the master for operation on shares. 48 Am J1st Ship § 335.

on all fours. Precisely in point.

A case to be on all fours must be identical. *Lessee of Sweitzer v Meese* (Pa) 6 Binn 500, 506.

on a motor vehicle. See **in a motor vehicle.**

onanism. Masturbation.

on a passage. A phrase used in marine insurance policies in prescribing the duration of the risk. At sea.

A vessel which is in port where she has put in to obtain the necessary clearance, water, and crew for her voyage is not "on a passage" within the meaning of the term as applied to a time policy continuing the risk if the vessel is "on a passage" at the end of the term. 29 Am J Rev ed Ins § 331.

on approval. See **sale on approval.**

on a public conveyance. See **in or on a public conveyance.**

on arrival. A term of instruction to collecting bank for presentation, giving the bank a reasonable time to await arrival of goods. 10 Am J2d Bks § 713.

See **sale on arrival.**

on call. On demand; when demanded; at any time called for. *Bowman v McChesney*, 63 Va (22 Gratt) 609, 612.

on call note. A note payable on demand. 12 Am J2d B & N § 1048.

once a highway, always a highway. An ancient maxim, the strength of which is weakened in modern times by exceptions and qualifications permitting the termination of even a public highway. 25 Am J1st High § 111.

once a mortgage, always a mortgage. A maxim often asserted in the application of the principle that if an instrument is a mortgage at its inception, it remains so with all the incidents thereof. 36 Am J1st Mtg § 3.

Once an Englishman always an Englishman. A phrase which sums up the early common-law doctrine of perpetual and unchangeable allegiance to the country of one's birth. Anno: 15 ALR2d 553 §§ 2-15.

once a week for four successive weeks. A familiar requirement for publication of a notice, having reference to publication so timed that not more than a seven-day interval shall occur between any two successive publications. 30A Am J Rev ed Jud S § 55.

once in jeopardy. Essentially the same as the defense of prior jeopardy, although a distinction is recognized by some authority.

A plea setting up a former jeopardy of the defendant who is now charged with the same offense. The justice of sustaining a plea of former acquittal or conviction is unquestioned and unquestionable, but a plea of "once in jeopardy" stands on narrower, more technical, and less substantial ground. It alleges only that there might have been a conviction or an acquittal if the judge trying the cause had not made a mistake in law which prevented a verdict. *Commonwealth v Fitzpatrick*, 121 Pa 109, 15 A 466.

See **prior jeopardy.**

on commission. The status of a salesman compensated by commissions rather than by salary. The status of goods placed in the hands of an agent for sale by him, his compensation to be in the form of a commission based upon a fixed percentage of the price received on sale.

on condition. See **condition.**

on demand. On an actual call or demand for payment. *Crofoot v Thatcher*, 19 Utah 212, 57 P 171.

See **demand paper; payable on demand.**

on demand after date. An expression in a promissory note indicating a demand instrument. 11 Am J2d B & N § 286.

See **demand paper.**

on duty. Actually engaged in work or services undertaken for another or charged with a present responsibility for the performance of such work or services should occasion for performance arise. *United States v Denver & Rio Grande Railroad Co.* (DC NM) 197 F 629, 631. Any person in the armed services not on leave or on furlough.

one bite rule. An old doctrine that every dog is entitled to one bite, such being enunciated as a basis for a rule that the owner of a vicious dog is not liable for an injury caused by the dog unless he knew or should have known of its dangerous propensities, which knowledge would not arise until after the dog had made at least one attack upon a person. 4 Am J2d Ani § 95.

one dollar. A recital of a nominal sum as consideration.

A sufficient statement of the consideration for a promise to answer for the debt of another, although the dollar is not in fact paid, if there is other good and valuable consideration for the promise. 49 Am J1st Stat of F § 373.

one dollar and other consideration. A common form of recital of consideration for a deed. 23 Am J2d Deeds § 65.

one dwelling. A phrase in a restrictive covenant subject to construction as against plurality of occupancy, or, according to some authority, as against plurality of houses. *Koett v Tate*, 248 Ky 135, 58 SW2d 374.

one-family house. A phrase exclusive of multiple dwellings. *Virgin v Garret*, 233 Ala 34, 169 So 711.

one free bite. Another term for the so-called one bite rule.

one half. See **half.**

one-man car. A streetcar without a conductor, the motorman at the front end performing the duties of a conductor as well as the duties of motorman. *Sullivan v Shreveport*, 251 US 169, 170, 64 L Ed 205, 208, 40 S Ct 102.

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one-man corporation. A corporation, the stock of which is owned by one man or at least kept in close control by one man.

one man-one vote rule. A rule of legislative apportionment based on the principle of equality of representation lying at the foundation of representative government and requiring that no voter shall exercise, in the selection of the legislature, a greater voting power than other voters. *Reynolds v Sims*, 377 US 533, 12 L Ed 2d 506, 84 S Ct 1362.

oneness of husband and wife. The unity of husband and wife as it prevailed at common law, the entire legal existence of the wife being completely merged or incorporated in that of the husband, and as it prevails to a limited extent even in modern times under Married Woman's Enabling Acts. 26 Am J1st H & W § 3.

one-price policy. The doctrine opposed to discrimination between customers in reference to prices charged for goods or services. *Shaw's Inc. v WilsonJones Co.* (DC Pa) 26 F Supp 713.

onerando pro rata portione. See **de onerando pro rata portione.**

onerando pro rata portionis. A writ for the relief of a joint tenant or tenant in common who had been compelled to pay more than his pro rata share of the rent.

onerari non. Should not be burdened or charged,—a name given to a plea in an action of debt denying that the defendant ought to be charged.

oneratio. The load or cargo of a ship.

oneris ferendi. Of the burden of support,—an easement by which an adjoining neighbor was entitled to have his structure supported.

one residence. One dwelling.

Although the courts are in substantial agreement that a restriction in a covenant to "residence" purposes, standing alone, does not prohibit multiple dwellings, this unanimity disappears when the modifying term "one" is inserted before the word "residence." Anno: 14 ALR2d 1409.

one residence only. A phrase in a restrictive covenant, meaning that only one person or one person and his family shall reside on the land. Macy v Wormald (Ky) 329 SW2d 212; Gerstell v Knight, 345 Pa 83, 26 A2d 329.

onerous. Burdensome; not without consideration.

onerous cause. A good and legal consideration.

onerous contract. A contract supported by a valid consideration.

onerous deed. A deed which was executed by the grantor for a valuable consideration.

onerous gift. A gift which imposes some obligation upon the donee.

onerous title. A term used in Spanish-American land law signifying a title which was granted upon conditions which were onerous or burdensome to the grantee.

one third new for old. The familiar rule of marine insurance that in case of the partial loss of a vessel, there shall be deducted from the costs of repairs, chargeable to the insurer one third of the new materials replacing the old, on the theory that the new materials render the vessel that much more valuable than it was before the loss. 29A Am J Rev ed Ins § 1567.

one-way street. A street, the travel on which is restricted by ordinance or other regulation to vehicles moving in one direction. 25 Am J1st High § 216.

one-way ticket. The ticket of a passenger calling for transportation to destination only, not to destination and return.

One who institutes suit against another must be prepared to show a prior or superior equity in himself. A maxim of equity. 27 Am J2d Eq § 145.

One who invites another to ride is not bound to furnish a sound vehicle or a safe horse. Cleary v Eckart, 191 Wis 114, 210 NW 267, 51 ALR 576.

one-year clause. The clause in a statute of frauds respecting an agreement not to be performed within a year. 49 Am J1st Stat of F § 23.

on his behalf. For him and as authorized by him. State ex rel. La Follette v Kohler, 200 Wis 518, 228 NW 895, 69 ALR 348.

on information and belief. See **upon information and belief.**

only. Solely. In a colloquial sense, except for that.

on offer. The state or condition of being for sale.

onomastic. Signed or subscribed in a handwriting other than that which appears in the body of the instrument.

on option. The status of property for the purchase of which an option has been granted. A term used by dealers in commercial paper, meaning that the purchaser has the right to return what he bought, or some of it, at any time within the option limit, to the broker, and get back from the broker the purchase price. Eames v H. B. Claflin Co. (CA2 NY) 239 F 631.

on or about. An allegation of time which lacks precision. A sufficient delegation of time in an indictment where precise time is not a material ingredient of the offense, although not where time is of the essence. 27 Am J1st Indict § 71.

An allegation that the arson charged occurred "on or about" a stated date is sufficient in respect of an allegation of the time of the offense. State v McDonald, 16 SD 78, 91 NW 447.

An allegation that the injury which caused death was inflicted "on or about" a specified time is sufficient as an allegation of time of the homicidal act in an indictment for homicide. 26 Am J1st Homi § 268.

Such phrase, as used in a contract of sale which calls for delivery "on or about" a specified date, admits only of a reasonable departure from the time specified. Arons v Cummings, 107 Me 19, 78 A 98.

on or about the person. A phrase familiar in statements of the offense of carrying a concealed weapon.

As used in a statute making it an offense to carry weapons concealed "on or about the person," the courts have interpreted the expression in two ways. Some courts have held that the words "on" and "about" are not synonymous, but have quite different meanings; the word "on" meaning attached to, and the word "about" meaning in close proximity to, or in easy reach of. However, other courts have held that the two words as used in the phrase are interchangeable, no added significance being given

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to the use of the word "about." Anno: 50 ALR 1534.

on or before. A designation of time for performance of an agreement, giving to the promisor the right to perform at any time before the day specified. 52 Am J1st Time § 26.

on or in or about. A familiar phrase in workmen's compensation statutes constituting an elastic term, involving as a whole the idea of physical proximity in reference to a particular area constituting a place of work. 58 Am J1st Workm Comp § 86.

on or upon the death. A phrase in the limitation of a remainder having reference ordinarily to the right of possession and enjoyment of the property and not preventing the immediate vesting of the remainder. 28 Am J2d Est § 257.

on peut bien recevoir loy d'autrui, mais il est impossible par nature de se donner loy. One may well receive laws from another, but it is impossible in the nature of things for one to make laws for himself. Kawanakoa v Polyblank, 205 US 349, 353, 51 L Ed 834, 836, 27 S Ct 526.

onroerende and vast staat. (Holland Dutch.) Land or real estate. *Spraker v Van Alstyne* (NY) 18 Wend 200, 208.

on sale. Being for sale. On hand and available for delivery when sold. *Connecticut Paper Products v New York Paper Co.* (DC Md) 39 F Supp 127.

on sight. Same as **at sight**.

onstand. The payment of rent by an outgoing tenant to an incoming tenant for use and occupation during the harvesting of the outgoing tenant's crop.

The term has also been applied to the right of a workman, who has been employed to install an apparatus on the premises of another, to return thereto for the purpose of testing the sufficiency of the installation. *Indermaur v Dames* (Eng) LR 1 CP 274.

on the account. See **on account**.

on the body. See **in and on the body**.

on the death. A phrase in the limitation of a remainder having reference ordinarily to the right of possession and enjoyment of the property and not preventing the immediate vesting of the remainder. 28 Am J2d Est § 257.

on the front. At the front.

As used in a statute requiring automobiles during certain hours to display at least two lighted lamps "on the front," the phrase does not necessarily mean the very foremost part of the vehicle, but means such a point in front of the driver as will make the light visible in the direction in which the car is proceeding. *State v Reed*, 162 Iowa 572, 144 NW 310.

on the merits. See **judgment on the merits; merits of case**.

on the relation of. See **relator**.

on-the-spot broadcast. A broadcast directly from the event to the listener, not one from a tape or record previously made.

on trial. Literally, in the course of a trial before court and jury or the court without a jury. In one sense, listed for trial, as where the case appears on the trial docket or calendar.

The term as used in a statute providing that, whenever any criminal case shall be "on trial" at the end of any term, such term shall be continued until such case is finished, has been held to have its literal meaning, and requires that the case must be actually on trial before the court and jury at the end of the term. *Commonwealth v MacLellan*, 121 Mass 31.

See **sale on trial**.

onus. An English word of Latin origin. Burden. Also, burden of proof. In the *Will of Lawrence Convey*, 52 Iowa 197, 198.

onus probandi. The burden of proof.

ope consilii. By or with the aid of counsel.

ope et consilio. By or with aid and counsel.

open. Adjective: Characterizing that which is not secret or concealed. 33 Am J1st Lewd etc. § 2. Not closed, as an open gate. Verb: To make a breach or way in that which was closed. To make the opening statement in the trial of a case.

open account. An account the balance on which has not been ascertained; one which has not been closed, settled, or stated, and in which the inclusion of further dealings between the parties is contemplated. Anno: 1 ALR 1060 s. 39 ALR 369, 57 ALR 201. A transaction some of the terms of which have not been agreed upon, such as the price to be paid, or the time for payment. Anno: 1 ALR 1060, s. 39 ALR 369, 57 ALR 201.

open and continuous account. See **continuous account; running account.**

open and current account. An account based upon running or concurrent dealings between the parties, which has not been closed, settled, or stated, and in which the inclusion of further dealings between the parties is contemplated. Plunkett-Jarrell Grocery Co. v Terry, 222 Ark 784, 263 SW2d 229, 44 ALR2d 917.

See **current account; open account.**

open and gross lewdness. See **open lewdness.**

open and mutual account. See **mutual account; open account.**

open and notorious. Acts upon the land of another which are not in secret but of such a character as to be well calculated to notify the owner of the use made by such acts. 56 Am J1st Wat § 326.

open and notorious adultery. An offense predicated, not upon private immoral indulgence, but upon the publicity attendant upon the breach of the moral standard in such extent as to debase and demoralize society and degrade the institution of marriage. 2 Am J2d Adult § 9.

open and notorious insolvency. See **open insolvency.**

open and notorious possession. Possession evidenced by such acts and conduct as are sufficient to put a man of ordinary prudence on notice of the fact that the land in question is held by the claimant as his own. 3 Am J2d Adv P § 47. Possession of such openness as that the owner's knowledge of it and of the extent of it may be presumed. Watrous v Morrison, 33 Fla 261, 278.

open and visible easement. An apparent and obvious easement, one susceptible of ascertainment on a reasonable inspection of the premises by a person

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ordinarily conversant with the subject, such as a pathway or road. 25 Am J2d Ease § 9.

open bulk. Goods in the mass; exposed to view; not tied or sealed up. Re Sanders (CC NC) 52 F 802.

open competitive examination. An examination to determine the merits of applicants for a civil service position, open to applicants without reference to whether or not they are already in the service.

open concubinage. A concubinage that is plain and aboveboard, without secret, reserve, or disguise; not merely one that is notorious. Gauff v Johnson, 161 La 975, 977, 109 So 782.

open contract. A contract for the sale of land which contains no conditions relieving the vendor from producing evidence of title.

open corporation. A corporation the stock of which is widely held, the ownership of the shares not being confined to one man, a family, or persons in close association. A corporation in which all of the citizens or corporators have a vote in the election of the officers of the corporation. See *McKim v Odom* (Md) 3 Bland Ch 407, 416, footnote.

open court. A court in session. A public session of the court, as distinguished from a judge of the court in his chambers. *Conover v Bird*, 56 NJL 228, 230, 28 A 428. The constitutional guaranty that the courts shall always be open to all alike. 16 Am J2d Const L § 382.

See **public trial**.

open current account. See **open and current account**.

open danger. See **obvious danger**.

open doors. Hospitality. A name given to process which authorizes the officer to break doors if necessary to effect the service of the process.

See **opening door**.

open-end investment trust. An investment trust the capital structure of which is open to change during the life of the trust by the issuance of new shares and the retirement of existing shares.

open-end settlement. A settlement of a claim for workmen's compensation calling for payments to the injured employee but not fixing the period during which such payments are to continue, properly to be construed as fixing liability during the period that disability continues. *Healey's Case*, 124 Me 54, 126 A 21.

open fee. A common-law fee which, by reason of the lack of an heir, reverted, on the death of the person last seised, to the lord. See 2 Bl Comm 245.

open hearing. A hearing or investigation by an administrative agency which is open to the public. 2 Am J2d Admin L §§ 229, 258. An essential of a fair hearing before an administrative agency exercising judicial, quasi-judicial, or adjudicatory powers. 2 Am J2d Admin L § 412.

See **public trial**.

opening. A beginning. The participle of open.

opening a credit. Making an arrangement with a bank for a loan or with a store for a charge account. Coupled with prompt payment of the loan or regular payments upon the charge account, a good method of establishing a credit. To accept or pay the draft of a correspondent who has not furnished the drawee with funds to meet the draft.

opening a foreclosure. The effect of bringing action upon the mortgage debt after foreclosure in giving the mortgage a new right to redeem. Anno: 18 English Ruling Cases 173.

See **opening judgment**.

opening and closing. The right of the party holding the affirmative of the issue joined in the pleadings and who would be defeated if no evidence were given on either side, unless the trial court in its discretion, for some special reason, otherwise directs. 53 Am J1st Trial § 69.

opening bids. The act of opening the bids received following advertisement for bids in the letting of a contract, and upon the termination of the period for receiving bids as specified in the advertisement, for the purpose of determining the most favorable bid.

The phrase frequently occurs in the English books, and means that if after the biddings at a chancery sale are closed, anyone else comes in and offers a much higher price, the biddings may be opened and the additional offer accepted. It means no more than a suspension of the sale and a continuance of the property in the market. See *Andrews v Scotton* (Md) 2 Bland Ch 629, 644.

opening case. Making the opening statement. A further trial after decision for the introduction of new evidence or additional argument.

See **opening and closing; opening judgment.**

opening commission. An entering by the commissioners or commissioner upon the duties to be performed by them or him under a commission.

opening court. The formalities observed in the opening of a session of court.

opening default. Setting aside a default upon cause shown therefor by the defendant to permit him to appear and plead within a period of time fixed by the court.

opening door. A metaphorical expression for the situation in which a party becomes entitled to introduce evidence otherwise inadmissible by reason of the tender or introduction of similar or related evidence by his opponent. 53 Am J1st Tr § 97.

opening highway. The act whereby a highway is legally established. 25 Am J1st High § 19. To put in condition for use, or to place at the service or use of the public, a way which theretofore had a merely legal or paper existence, not having been used. 25 Am J1st High § 51. Removing obstructions. *State v Hudson County Avenue Comrs.* 37 NJL 12, 14. Clearing the way of snow. Sometimes inclusive of filling and grading. 25 Am J1st High § 67.

opening judgment. Bringing a judgment into view for the purpose of considering whether it should be corrected, modified, or vacated. 30A Am J Rev ed Judgm §§ 629, 630. The suspension of a judgment and of proceedings thereon. 30A Am J Rev ed Judgm § 728.

See **vacation of judgment.**

opening polls. The formal commencement of an election, at a time fixed by statute, when the polling place is opened for the reception of voters and the casting of ballots. 26 Am J2d Elect § 227.

opening record. See **searching record.**

opening rule. The changing back of a rule absolute to a rule nisi.

open insolvency. The insolvency of a person beyond his power to keep secret.

The term "open and notorious insolvency," as applied to the maker of a note, in connection with

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the rule that all the property of the maker, subject to the payment of debts, must be exhausted, before recourse can be had to the assignor, implies something more than when the term is used in common parlance. It implies, not the want of sufficient

property to pay all of one's debts, but the absence of all property, within the reach of the law applicable to the payment of any debt. *Hardesty v Kinworthy* (Ind) 8 Blackf 304, 305.

open law. Trial by battle or trial by ordeal or by wager of law.

opening statement. A statement to the jury, or to the court in a trial without a jury, outlining the facts intended to be proved. *State v Sibert*, 113 W Va 717, 169 SE 410. A prefatory statement made in advance of the introduction of evidence, setting forth the nature of the controversy and its salient peculiarities, intended to indicate to court and jury the issues of fact involved. 53 Am J1st Trial § 454.

open lands. Unappropriated public lands open to entry as homesteads. 42 Am J1st Pub L § 19.

open letter. A letter addressed to a particular person but published so that its contents shall become known to the public.

open lewdness. At common law, acts of lewdness committed in public. Under statute, any lewdness not in secret, whether it be in the presence of one or several persons. 33 Am J1st Lewd etc. § 2.

The phrase "open and gross lewdness" is not equivalent to the phrase "gross lewdness in an open place." The word "open" has no reference to place at all, nor to number of people. It is used simply to define a quality of the act of lewdness. It is open lewdness as opposed to secret lewdness. It defines the same act, regardless whether it is committed in the presence of one or of many. The offense may be committed by the intentional act of exposing one's person indecently in the presence of one person, to whom it is offensive, as well as in the presence of many persons. It could not change the quality of the act that it was committed in the presence of a child of tender years,—too innocent to be offended by it. *State v Juneau*, 88 Wis 180, 59 NW 580.

See **gross lewdness**.

open mine. A mine dug or excavated so that the ore shows in the face of the mine. A mine in operation.

A mine lawfully leased to be opened is an "open mine" within the meaning of the rule that a tenant may, without being guilty of waste, continue to work mines or quarries that were open when the tenancy commenced, except as the contrary may appear by the terms or provisions of the lease or other instrument creating the estate. 56 Am J1st Waste § 25.

open mortgage clause. Same as simple loss-payable clause.

open policy. A policy of insurance covering property in which the value of the property insured is not fixed, but is left to be determined definitely in case of loss. 29A Am J Rev ed Ins § 1586. A term sometimes applied to a running policy. 29 Am J Rev ed

open possession. Clearly defined and notorious possession, 25 Am J2d Eject § 43.

See **open and notorious possession**.

open primary. A primary election at which members of one political party are permitted to vote at the primary for candidates of a different political party, in other words, a primary in which a voter may "cross over" to a party other than his own and participate in the primary of that party. 25 Am J2d Elect § 148.

open running account. An account based upon a connected series of transactions, without break or interruption. *Riffith v Portlock*, 233 Iowa 492, 7 NW2d 199.

See **open account; running account**.

open season. The period prescribed by law or regulation during which fish or game, or certain species of fish or game, may be hunted and taken.

open shop. A place of employment in which union and nonunion men are employed without discrimination. 31 Am J Rev ed Lab § 95. A plan or policy of employers of labor the basic requirement of which is that there should be no discrimination for or against an employee on account of his affiliation or nonaffiliation with a labor union, except that at least one nonunion man in each craft should be employed on each particular job as an evidence of good faith. *Industrial Assn. of San Francisco v United States*, 268 US 64, 75, 69 L Ed 849, 852, 45 S Ct 403.

See **permit system**.

open theft. A larceny wherein the thief is caught red-handed.

open trial. See **public trial**.

open trust. An active trust, which may in some instances be a precatory trust. Anno: 49 ALR 64.

open venire. An order for the summoning of additional jurors in which the persons to be summoned are not indicated, their selection being left to the sheriff or other officer entrusted with the venire. 31 Am J Rev ed Jury § 91.

open, visible, and substantial change of possession. A change in the character of possession indicated by such outward, open, actual, and visible signs as can be seen by and known to the public or persons dealing with the property. *Second Nat. Bank v Gilbert*, 174 Ill 485, 51 NE 584.

open will. A term of the civil law for nuncupative will. *Castro v Castro*, 6 Cal 158, 160.

opera. A musical drama, consisting of airs, choruses, recitations, etc., usually enriched with magnificent scenery and costumes, representing the play of emotions, often acts prompted by passion. *Bell v Mahn*, 121 Pa 225, 15 A 523.

opera house. A theater, especially a theater wherein operas are performed. *Egan v San Francisco*, 165 Cal 576, 133 P 294; *St. Louis Amusement Co. v St. Louis County*, 347 Mo 456, 147 SW2d 667; *Bell use of Commonwealth v Mahn*, 121 Pa 225, 15 A 523.

operarii. Plural of **operarius**.

operarius. A feudal tenant who held his land by manual labor for the lord of the manor.

operate. To perform surgery. To control the movement of a machine or instrumentality. To direct or superintend. *Bosse v Marye*, 80 Cal App 109, 118. To function.

As applied to a streetcar, the word is held not to be limited to a state of motion produced by the mechanism of the car, but includes at least ordinary stops upon the highway, and such stops are to be regarded as fairly incidental to its operation. Anno: 11 ALR 1228.

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operating against the enemy. Operating in the field of hostilities, in the area where the enemy is to be found.

Troops in instruction camps across the ocean from the field of war are not "operating against the enemy" within the meaning of a statute giving officers serving with troops "operating against the enemy," when assigned to command above their rank, the pay appropriate to the command exercised. *United States v Ferris*, 265 US 165, 68 L Ed 161, 44 S Ct 487.

operating aircraft. Using an aircraft, including the navigation of aircraft, or causing or authorizing the operation of an aircraft, whether with or without the right of legal control. 49 USC § 1301(25).

As to what constitutes "operating aircraft" within the meaning of an exception of risk in a life insurance policy, see Anno: 47 ALR2d 1021.

operating automobile. See **operating motor vehicle.**

operating car. See **operating motor vehicle.**

operating charges. Costs of production, a matter of knowledge which can be acquired by observation on the part of persons dealing with the producing company. *Lytle, Campbell & Co. v Somers, Fitler & Todd Co.* 276 Pa 409, 120 A 409, 27 ALR 41.

operating expenses of carrier. All items of cost or expense incident to the actual handling and movement of traffic.

operating expenses of public utility. The cost of operation of the plant, general expenses, and cost of maintaining the property in such condition that its operating efficiency at the end is at least as great as it was at the beginning of the year. 43 Am J1st Pub Util § 141.

operating loss. See **net operating loss.**

operating motor vehicle. In common parlance, driving an automobile or other motor vehicle. Regulating and controlling the actual movements of the car, that is, having charge of it as a driver. 7 Am J2d Auto Ins § 42. Exercising control over the vehicle, although not at the time in the driver's seat. Anno: 51 ALR2d 928, § 5[a]; 7 Am J2d Auto Ins § 42. Any manipulation of the mechanical or electrical equipment of a motor vehicle, which would, alone or in sequence, set in motion the motive power. 7 Am J2d Auto § 256. Not limited to a state of motion produced by the mechanism of the vehicle, but including at least ordinary stops upon the highway, such stops being fairly incidental to operation. *Commonwealth v Henry*, 229 Mass 19, 118 NE 224.

A truck parked across a road for the purpose of unloading is in operation within the meaning of a statute in respect of lights. *Hardware Mut. Casualty Co. v Union Transfer & Storage Co.* 205 Ky 651, 266 SW 362.

A statutory provision that the "use and operation" by a nonresident of a motor vehicle within the state shall be deemed an appointment by him of the secretary of state as his attorney to receive service of process in any action growing out of such use is not confined in its operation to nonresidents personally operating motor vehicles within the state, but applies also to nonresidents, including foreign corporations and the individual members of nonresident partnerships, operating motor vehicles in the state through agents or employees who are also nonresidents. *Jones v Pebler*, 371 Ill 309, 20 NE2d 592, 125 ALR 451.

As to what constitutes "operation" within statute making owner of motor vehicle liable for negligence in its operation. See Anno: 13 ALR2d 378.

operating motor vehicle while intoxicated. Driving while intoxicated. Controlling the operation of the vehicle in any respect, such as starting the motor, while intoxicated. 7 Am J2d Auto § 256.

Some of the cases arising under statute prohibiting the operation of a motor vehicle while in an intoxicated condition hold that in order to constitute an operation, it is necessary for the vehicle to be in motion. Anno: 47 ALR2d 577, § 4[d].

operating receivership. A receivership in which the receiver operates a business, railroad, public utility, or manufacturing plant. 45 Am J1st Rec § 3.

operatio. A single day's labor performed by an operarius for the lord of the manor.

operatio murorum. See **murorum operatio.**

operation of law. Through law, not by contract or otherwise by the act of a person.

operation of railroad. The movement of trains, including all acts necessary to permit movement, such as the loading and unloading of cars, the organizing of trains, and the handling of the locomotives and cars which make up a train. *Arizona Eastern R.R. Co. v J. A. Matthews*, 20 Ariz 282, 180 P 159, 7 ALR 1149; *United States F. Ins. Co. v Northern P. R. Co.* 30 Wash 2d 722, 193 P2d 868, 2 ALR2d 1065.

operative. Adjective: In working condition; in operation. Noun: One who operates machinery, as in a factory. *Ward v Krinsky*, 259 US 503, 527, 66 L Ed 1033, 1043, 42 S Ct 529.

operative property. Any property which may be reasonably necessary for use, in the operation and conduct of the particular kind or kinds of business in which such property is employed. *Southern California Tel. Co. v Hopkins* (CA9 Cal) 13 F2d 814.

operative trust. An active trust. A trust which maintains the legal estate in the trustee, to enable him to perform the duties devolved on him by the donor, and gives the cestui que trust only a right in equity to enforce the performance of the trust. 54 Am J1st Trusts § 13.

operative words. The words in an instrument which give it the character of a particular instrument, such as a deed, mortgage, release, etc. *Agnew v Dorr* (Pa) 5 Whart 131.

operator for hire. Any person who owns, controls, operates or manages any motor vehicle for hire for the transportation of persons or property on any public highway, or any person who engages in the business of leasing motor vehicles for a compensation for the transportation of persons or property upon the public highways. *Louisville Taxicab & Transfer Co. v Blanton*, 305 Ky 179, 202 SW2d 433, 175 ALR 1329 (statutory definition.)

operator of automobile. See **operating motor vehicle.**

operator's license. A license, issued by the Atomic Energy Commission to qualified individuals, for the manipulation of controls of production or facilities for the utilization of atomic energy. 42 USC § 2137. A license to operate a motor vehicle, required as a condition of the right to drive such a vehicle upon the public highway. 7 Am J2d Auto § 93.

operis novi nuntiatio. (Civil law.) Same as **novi operis nunciatio.**

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ophthalmologist. A physician practicing the branch of medicine known as ophthalmology. Anno: 22 ALR 1177; 41 Am J1st Phys & S § 28.

See **ophthalmology.**

ophthalmology. The branch of medical science concerned with the eye. *Harabedian v Superior Court of Los Angeles County*, 195 Cal App 2d 26, 15 Cal Rptr 420, 89 ALR2d 994. The practice of medicine and surgery in the treatment of diseases of the eye, and in the measurement of the powers of vision, and the adaptation of lenses for the aid thereof. Anno: 22 ALR2d 941.

ophthalmoscope. An instrument used for the exploration of the interior of the eye. *Atchison, Topeka & Santa Fe Railway Co. v Palmore*, 68 Kan 545, 75 P 509.

opiate. A narcotic drug containing opium or a derivative of opium. Any substance which tends to sooth. A drug administered to alleviate pain and quiet the sensibilities of the patient. *Muller v St. Louis Hospital Asso.* 5 Mo App 390, 393.

Opinio est duplex, scilicet, opinio vulgaris orta inter graves et discretios, et quae vultum veritatis, habet; et opinio tantum orta inter leves et vulgares homines absque specie veritatis. Opinion is twofold, that is to say, common opinion springing from among serious and discreet persons, and which has the appearance of truth; and opinion arising among light-minded and ordinary men without the semblance of truth.

opinion. An inference or conclusion of fact which a person has drawn from facts which he has observed. *Lipscomb v State*, 75 Miss 559, 23 So 210. A belief rather than a representation of fact. 23 Am J2d Fraud § 45. As disqualification of juror, a prejudgment of the case. 31 Am J Rev ed Jury § 172.

opinion evidence. The testimony of a witness, given or offered in the trial of an action, that the witness is of the opinion that some fact pertinent to the case exists or does not exist, offered as proof of the existence or nonexistence of that fact. 31 Am J2d Ev § 764.

See **expert testimony; expert witness.**

opinion of administrative agency. A statement in writing by an administrative agency of the reasons which support its decision. 2 Am J2d Admin L § 511.

opinion of appellate court. See **opinion of court.**

opinion of court. A statement given by the court for its decision, usually presented in writing and published in a court report. 20 Am J2d Cts § 7. A statement in writing by an appellate court of the reasons for its decision or judgment. 5 Am J2d A & E § 901.

An opinion accompanying a decision is an opinion of the court only when it has been approved by the court making the decision, that is, where the court consists of more than one judge, by at least the majority required for a valid decision. 20 Am J2d Cts § 71.

The opinion of the court represents merely the reasons for its judgment, while the decision of the court is the adjudication. 20 Am J2d Cts § 70.

It is the "decision" rather than the "opinion" which is the subject of appellate review. *Robertson v Vandergrift*, 119 W Va 219, 193 SE 62.

opinion of the attorney general. An opinion prepared by the attorney general by way of advising the executive and administrative heads of the state government upon questions of law touching their official duties. 7 Am J2d Atty Gen § 8. The opinion of the Attorney General of the United States upon a question of law, required by the President or the head of any of the executive departments of the Federal Government. 5 USC §§ 303, 304.

Opinio quae favet testamento est tenenda. An opinion which favors a will is to be upheld.

opium. A narcotic. 25 Am J2d Drugs § 2. A drug used as an ingredient of certain medicines, also used to an extent, especially in the far east, as an intoxicant. *State v Lee*. 137 Mo 143. 147.

Opium Act. See **Harrison Narcotic Act.**

opium joint. A place to which opium addicts resort for the purpose of obtaining the drug and partaking thereof.

oportet. It is necessary, fitting, or proper; it must be; it ought to be.

Oportet quod certae personae, terrae et certi status comprehendantur in declaratione usuum. It is necessary that certain persons, lands, and certain estates should be included in a declaration of uses.

Oportet quod certa res deducatur in donationem. It is necessary that a thing certain be brought into the gift.

Oportet quod certa res deducatur in iudicium. It is necessary that a thing certain be brought to judgment.

Oportet quod certa sit res quae venditur. It is necessary that anything which is sold should be a thing certain.

oppidum. A town; a fortified town.

Oppignerare. (Civil law.) To pledge; to pawn; to give in pledge.

opponent. An adversary. A party on the other side of the litigation; an opposing party or his counsel.

opportunity to be heard. See **day in court.**

opportunity to redeem. See **right of redemption.**

opposing officer. See **obstructing officer.**

opposing papers. Affidavits offered in resistance to a motion. 37 Am J1st Motions § 15.

Opposita juxta se posita magis elucescunt. Things which are opposed are illumined more clearly when placed next to one another.

opposite party. An adversary in litigation.

Under the statutory rule that when a suit is prosecuted by the heirs, assigns, devisees, legatees or personal representatives of a decedent, the opposite party, if he testifies on his own behalf, cannot testify to matters which, if true, must have been equally within the knowledge of the decedent, the term

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"opposite party" means the party in interest, the real party, and does not mean a defendant who is a mere nominal party such as an executor, who has no personal interest in the controversy. Penny v Croul, 87 Mich 15, 49 NW 311.

oppression. Bearing down on another or others in an oppressive manner. The exercise of unlawful power or other means, in depriving an individual of his liberty or property against his will. United States v Deaver (DC NC) 14 F 595, 597.

See **oppressive.**

oppressive. Cruel, severe, unduly dominating and exacting, exercising authority excessively. United States v Deaver (DCNC) 14 F 595, 597.

oppressive child labor. A condition of employment of children under a specified age in certain occupations, as proscribed by statute. 29 USC § 203(1).

oppressive legislation. Burdensome legislation against which, apart from constitutional provisions, the only protection is by an appeal to the people or their legislative representatives. 16 Am J2d Const L § 160.

oppressive litigation. Litigation for the purpose of harassing, annoying, and vexing an opponent, rather than for the adjudication of rights, being invoked, not for the attainment of justice, but to further or satisfy a malicious motive. *Bridgeport Hydraulic Co. v Pearson*, 139 Conn 186, 91 A2d 778.

oppressive use of process. Harassment by process with the malicious intent of injury or harassment. 1 Am J2d Abuse P § 9.

opprobrium. Infamy; reproach.

ops. Abbreviation of opinions.

optical illusion. Belief in a thing as seen when actually it is not there to be seen.

optician. A person who makes or sells optical instruments, especially eyeglasses. 41 Am J1st Phys & S § 28. One who fills prescriptions of the oculist or optometrist, much in the same manner as the druggist carries out the direction and prescription of the physician. Anno: 22 ALR2d 941.

optic nerve. The nerve running between the brain and the eye. 58 Am J1st Workm Comp § 287.

optics. The science which treats of the nature and properties of light and vision. *Abelson Inc. v New York State Board of Optometrists*, 5 NJ 412, 75 A2d 867, 22 ALR2d 929.

Optima enim est legis interpretatio consuetudo. For custom is the best interpreter of the law. See Broom's Legal Maxims 931.

Optima est lex quae minimum relinquit arbitrio iudicis. That law is best which leaves the least to the decision of the judge. See Broom's Legal Maxims 84.

Optima est lex quae minimum relinquit arbitrio iudicis; optimus iudex qui minimum sibi. That law is best which leaves the least to the decision of the judge; that judge is best who takes the least upon himself. See Broom's Legal Maxims 84.

Optimam esse legem, quae minimum relinquit arbitrio iudicis; in quod certitudo ejus praestat. That law is best which leaves the least to the decision of the judge; this is because the certainty of it is manifest.

Optima statuti interpretatrix est ipsum statutum. The best interpreter of a statute is the statute itself.

Optima statuti interpretatrix omnibus particulis ejusdem inspectis ipsum statutum. The best interpreter of a statute, looking into all of its particulars or parts, is the statute itself.

Optimus interpretatio rerum usus. Usage is the best interpreter of things. *Destrehan v Louisiana Cypress Lumber Co.* 45 La Ann 920.

Optimus interpretandi modus est sic leges interpretare ut leges legibus accordant. The best manner of interpreting the laws is so to interpret the laws that the laws will accord with one another.

Optimus iudex, qui minimum sibi. The best judge is the one who takes the least upon himself. See Broom's Legal Maxims 84.

Optimus legum interpretatio consuetudo. The best interpreter of the laws is custom or usage.

option. An agreement by which one binds himself to perform a certain act, usually to transfer property, for a stipulated price within a designated time, leaving it to the discretion of the person to whom the option is given to accept upon the terms specified. 17 Am J2d Contr § 32. A continuing offer to sell at a price stipulated. *Hirlinger v Hirlinger* (Mo App) 267 SW2d 46, 44 ALR2d 1207. A stipulation not to revoke for a specified or reasonable time the offer therein made. *Warner Bros. Pictures v Brodel*, 31 Cal 2d 766, 192 P2d 949, 3 ALR2d 691. A future contract in which one of the parties has the right to insist on compliance with the terms of the contract, or to cancel the contract, at his election. A unilateral contract where given upon a contemporaneous consideration other than a promise. 17 Am J2d Contr § 5. A simple method of speculating in the rise or fall of the market price of commodities or stocks, no actual transaction by sale or purchase being contemplated. 24 Am J1st Gaming § 70. In the entertainment and professional athletic fields, an offer to perform as an actor, musician, etc., or as a baseball player, football player, etc. at a stipulated compensation within a designated time, leaving it to the person to whom the option is given to accept upon the terms specified. 17 Am J2d Contr § 32. The privilege which an archbishop had of nominating his bishop's clerk. See 1 Bl Comm 381.

See **stock option; stock-option plan.**

optional. Left to choice; discretionary.

optional agreement. An option, the essential feature of which always is that the person to whom it is granted is in position to choose whether or not he shall purchase on its terms. *Johnson v Clark*, 174 Cal 582, 163 P 1004.

See **option.**

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optional bond. A bond which may be called for payment before maturity. 43 Am J1st Pub Sec § 8.

optional standard deduction. See **standard deduction.**

optional statutes. Workmen's compensation statutes open to acceptance or rejection by employee or employer. 58 Am J1st Workm Comp §§ 39 et seq.

optional writ. A common-law writ, designated as a praecipe, wherein the defendant was commanded to do a certain thing or, in the alternative, to show cause why he had not done it and should not be compelled to do it. See 3 Bl Comm 274.

optionee. The holder of an option. *Phoenix Iron & Steel Co. v Wilkoff Co.* (CA6 Ohio) 253 F 165, 1 ALR 1497, 1502.

option election. See **local option election.**

option of equivalent value. See **seller's option.**

option of forfeiture. A right or privilege of the lessor, under the provisions of the lease, upon breach of covenant by the lessee. 32 Am J1st L & T § 849.

option to purchase. A contract by which the owner of property agrees with another person that the latter shall have a right to buy the property at a fixed price within a certain time. 17 Am J2d Contr § 32; 46 Am J1st Sales § 56. The familiar provision in a lease, conferring upon the lessee the option to purchase the demised premises, it being supported, so far as consideration is concerned, by the payment of the reserved rent, so that it cannot be withdrawn by the lessor during the period specified for its continuance, and may be enforced specifically. 32 Am J1st L & T § 299.

option to purchase real property. A contract by which an owner of real estate agrees with another person that the latter shall have the privilege of buying the property at a specified price within a specified time, or within a reasonable time in the future, and imposes no obligation to purchase upon the person to whom it is given. 55 Am J1st V & P§27.

option to rebuild, repair, or replace. The option of an insurer of property, provided by the policy issued by it, to replace, repair, or rebuild the property in the event of its destruction in whole or in part, in lieu of the satisfaction of insured's claim by a payment in money. 29A Am J Rev ed Ins § 1699.

option to renew. A right granted a lessee by the terms of the lease.

option to terminate. A provision in a lease giving the right or privilege to both parties, or one of them, to terminate the lease either at will or on the happening of some contingency, such as the destruction of or injury to the premises, or the decision of the landlord to sell, alter, or improve the property. Anno: 27 ALR 845, 35 ALR 519, s.116 ALR 931.

optometrist. One who practices optometry. One who exercises a degree of mechanical skill and experience in fitting glasses to the eye. Anno: 141 ALR 884.

optometry. The employment of any means other than drugs for the measurement of the power of vision and the adaptation of lenses for the aid thereof. *McNaughton v Johnson*, 242 US 344, 61 L Ed 352, 37 S Ct 178; *Sage-Allen Co. v Wheeler*, 119 Conn 667, 179 A 195, 98 ALR 897. Including, subject to same limitation as to means, diagnosis of any optical defect, deficiency, or deformity of the human eye, or visual or muscular anomaly of the visual system, but not including treatment of diseases of the eye. Anno: 141 ALR 890. More narrowly, the measurement of the range of vision. Anno: 141 ALR 883. Not the practice of medicine, being an applied arm of optical science resting upon the work and discoveries of physicists and opticians through the ages down to modern times. *Silver v Lansburgh & Bro.* 72 App DC 77, 111 F2d 518, 128 ALR 582; *Abelson, Inc. v New York State Board of Optometrists*, 5 NJ 412, 75 A2d 867, 22 ALR2d 929.

optulit. Same as **obtulit**.

opus. Work; labor; benefit; advantage. A written work or composition.

opus locatum. Work let out to another.

opus magnificentium. Same as **opus manificium**.

opus manificium. Work performed with the hands; manual labor.

opus novum. Same as **new work**.

o, r. An abbreviation of **owner's risk**.

or. A conjunction normally in the disjunctive. A conjunction properly used with "either" in stating a proposition in the alternative. *State ex rel. Crow v St. Louis*, 174 Mo 125, 73 SW 623. Usually a word of substitution in a will. *Re Boyle's Estate*, 121 Colo 599, 221 P2d 357, 36 ALR2d 1106. In a deed, implying a disjunctive or alternative. 23 Am J2d Deeds § 218. The disjunctive form but to be interpreted in a copulative sense when necessary to the spirit and intent of the instrument in which it appears. 17 Am J2d Contr § 283. Subject to construction as "and" where the obvious intention appearing from the entire context of the instrument so requires. *Davis v Vermillion*, 173 Kan 508, 249 P2d 625. Subject to construction as "and" in a statute or municipal ordinance where such is in keeping with the intent of the statute or ordinance as such appears from the entire context. 37 Am J1st Mun Corp § 187; 50 Am J1st Stat § 282.

See **and/or**.

oraculum. A Roman emperor's decision.

oral. By word of mouth; verbal; spoken, as opposed to written.

See expressions beginning "oral" which follow; also expressions beginning "**parol.**"

oral chattel mortgage. A transaction which, while oral, contains all the essential elements of a written mortgage. 15 Am J2d Chat Mtg § 39.

oral contract. Same as **parol contract**.

oral defamation. Defamation by spoken words; slander.

oral demurrer. Same as **demurrer ore tenus**.

oral license. A license in real property conferred without a writing. 25 Am J2d Ease § 123.

oral trust. A trust in personal property, created and proved by parol. 54 Am J1st Trusts § 44.

oral will. A nuncupative will. The informal will of a soldier or sailor. 57 Am J1st Wills § 220.

See **nuncupative will**.

orator. A person who prays; a petitioner; a party who files or presents a petition to a court of justice; the complainant in an equity suit. A person skilled in the art of public speech.

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oratrix. Feminine of orator.

or bearer. Words of negotiability. 1 I Am J2d B & N § 105.

orchard. A tract of land, sometimes large, sometimes small devoted to the growing of trees which produce fruit or nuts good for food.

To constitute an orchard within the meaning of provisions in an eminent domain statute exempting orchards from condemnation, the number of fruit trees, within certain limits appears immaterial, but a few scattered or neglected and decayed trees are not considered an orchard. 26 Am J2d Em D § 109.

orchestra. A group of musicians who play together. The main floor of a theater.

orchestration. The arrangement of music for an orchestra. Anno: 19 ALR 970.

orcinus libertus. (Roman law.) A slave who was freed by a provision in the will of his deceased owner.

ordain. To constitute, to establish, to pass an ordinance. *Kepner v Commonwealth*, 40 Pa 124, 129.

See **ordination**.

ordeal. The most ancient species of trial for criminal offenses, founded upon the belief of the ancients that if a man were innocent, God would save him from death or injury when he was subjected to an ordeal. See 4 Bl Comm 342. See also *Hurtado v California*, 110 US 516, 529, 28 L Ed 232, 236, 4 S Ct 111.

See **cold-water ordeal; fire ordeal; hot-water ordeal; iron ordeal; trial by water.**

ordenamiento. (Spanish.) An order issued by the crown; a royal order.

order. A command or direction. A list of goods or merchandise to be supplied by a dealer. A direction in writing by one person to another person for the payment of money to a third person. 11 Am J2d B & N § 139. The determination of an administrative body or agency. 2 Am J2d Admin L §§ 473 et seq.

See **order of court.**

order bill of lading. Same as **negotiable bill of lading.**

order for distribution. An order by the court having jurisdiction over the administration of a decedent's estate directing the administrator or executor to distribute the assets of the estate, such order normally being made after all claims of creditors of the estate have been determined for allowance or rejection, so that the amount of money or assets in kind available for distribution to those entitled to share in the estate is known.

order for publication. An order of court authorizing the service of process in a particular case by publication. 42 Am J1st Process § 94.

order nisi. An order of court which is to become absolute and effective unless cause is shown why it should not become so, or unless some condition specified by the court shall not have been complied with or performed.

order nunc pro tunc. See **nunc pro tunc order.**

order of calls. The order of precedence which has been established as between different calls for the location of boundaries of land. 12 Am J2d Bound § 65.

order of continuance. An order of court continuing a case. 17 Am J2d Contin § I

order of court. Broadly defined, the judgment or conclusion of a court on any motion or proceeding by which affirmative relief is granted or denied. 37 Am J1st Motions § 23. Precisely, a direction of a court or judge made in writing and not included in a judgment. *State v Lindeman*, 64 ND 518, 254 NW 276, 93 ALR 1442.

order of dismissal. An order of court required on an involuntary dismissal. 24 Am J2d Dism § 71. An order sometimes required for a voluntary dismissal. 24 Am J2d Dism § 50.

order of filiation. An order of a competent court determining the paternity of a bastard child.

order of interpleader. An order in favor of the complainant in interpleader, directing that complainant pay the fund or property into court and be dismissed with his costs, and further that the defendants interplead and settle the controversy between themselves. 30 Am J Rev ed Interpl § 26.

order of reference. An order of court appointing a referee to hear or to hear and determine a matter pending before the court. *Gerity v Seeger & Guernsey Co.* 163 NY 119, 120.

order of repleader. See **repleader.**

Order of St. George. See **garter; knights of the garter.**

Order of the Bath. See **knights of the bath.**

Order of the Garter. See **garter; knights of the garter.**

Order of the Coif. An honorary fraternity of lawyers, membership being attained on the basis of exceptional work and standing as a student in a college of law.

order paper. A direction by one person to another person for the payment of money to a third person. 11 Am J2d B & N § 139.

order sua sponte. See **sua sponte.**

order taking. The taking of an order for goods to be furnished, as distinguished from a sale of the goods. A matter considered in determining whether a corporation is within the purview of statutes relative to foreign corporations transacting business in the state. 23 Am J1st For Corp § 381.

order to show cause. An order or rule of court made ex parte, citing an adverse party to appear before the court and show cause, if he can, why a certain thing shall not be done. 37 Am J1st Motions § 38. An alternative to notice of motion in bringing a motion on for hearing. A form of process. *Hayward v Long*, 178 SC 351, 183 SE 145, 114 ALR 1130.

ordinance. The act of the legislative body of a municipal corporation. A local law of a municipal corporation, of a general and permanent nature. 37 Am J1st Mun Corp § 142. A bylaw of a municipal corporation. 37 Am J1st Mun Corp § 142. A rule established for and in a municipal corporation by authority. *State ex rel. Maxey v Swindell*, 146 Ind 527, 45 NE 700. In a broader sense, a rule established by authority. *State v Swindell*, 146 Ind 527, 45 NE 700; *Kepner v Commonwealth*, 40 Pa 124, 130.

See **Northwest Ordinance of 1787.**

ordinandi lex. Adjective law,—the law regulating procedure in the courts.

Ordinarius ita dicitur quia habet ordinariam jurisdictionem, in jure proprio, et non propter deputa-

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tionem. An ordinary is so called because he has ordinary jurisdiction in his own right, and not by deputation or delegation.

ordinary. Adjective: Usual; normal; common. *Hine v Wooding*, 37 Conn 123, 126. Noun: An older term for a public house where food and lodging are furnished to the traveler at fixed rates, open to whoever may apply for accommodation, and having a bar. *Talbott v Southern Seminary*, 131 Va 576, 109 SE 440, 19 ALR 534. An officer with limited judicial powers, particularly a master or commissioner in equity.

A civil-law term applicable to any judge who had authority to take cognizance of causes in his own right, and not by deputation. In England, the ordinary was a judge of the ecclesiastical court. The goods of intestates were given to the ordinary by the crown. The title "ordinary" is also given to certain district judges in South Carolina. *Hays v Harley*, 8 SCL (I Mills Const) 267, 268.

ordinary action. A civil action carried on by ordinary proceedings. 1 Am J2d Actions § 3.

ordinary and concise language. A phrase embodied in many modern codes to specify the manner in which pleadings shall be prepared and meaning simply that the pleading must be reasonably definite and certain, and not prolix. *Harlan v Bernie*, 22 Ark 217.

ordinary and necessary expense. A deduction in computation of taxable income where incurred as a common and accepted practice in the taxpayer's field of business, where it is appropriate and helpful in maintaining the taxpayer's business, and where it is not in violation of statute or public policy. *Welch v Helvering*, 290 US 111, 78 L Ed 212, 54 S Ct 8; *Lilly v Commissioner*, 343 US 90, 96 L Ed 769, 72 S Ct 497, 27 ALR2d 492; *National Brass Works, Inc. v Commissioner (CA9)* 182 F2d 526, 20 ALR2d 590.

See **necessary expense**.

ordinary bailment. A bailment for the sole benefit of the bailor, for the sole benefit of the bailee, or for the mutual benefit of both parties. 8 Am J2d Bailm § 6.

ordinary bailee. See **ordinary bailment**.

ordinary calling. A pursuit in business, trade, or employment which occupies at least a part of one's time with a degree of regularity. *Elks v State*, 5 Ga App 615, 617.

ordinary care. A standard for the determination of negligence; the degree of diligence which one must observe in the performance of his common-law duty to use care to prevent injury to others. A relative standard; due care according to the circumstances of the case. 38 Am J1st Negl § 29. That degree of care that a man of ordinary prudence would exercise under the same or similar circumstances with reference to his own property. *Smith v Maher*, 84 Okla 49, 202 P 321, 23 ALR 270. In reference to pedestrians: such care as persons of ordinary prudence and care, in driving and managing automobiles in the streets of a city, are accustomed to exercise and observe for the protection of persons traveling in the streets. *Cincinnati Traction Co. v Harrison*, 24 Ohio CCNS 1, 44 Ohio CC 435. As required of an officer or director of a corporation:—such care as a man of common prudence would take of his own affairs; more realistically, such care as a prudent man should exercise in like circumstances, not necessarily the care which such a person would show in the conduct of his own affairs of a similar kind. 19 Am J2d Corp § 1277. As required of a bailee:—such care as ordinarily prudent men, as a class, would exercise in caring for their own property under like circumstances, or, as it is sometimes expressed, when applied to bailees who make a business of keeping property for hire, that degree of care and diligence which may reasonably be expected from ordinarily prudent persons under similar circumstances, or that which capable and reasonably prudent persons engaged in the same business, and experienced and faithful in the particular department are accustomed to exercise when in the discharge of their duties. 8 Am J2d Bailm § 207.

ordinary conveyance. A voluntary deed as distinguished from a divesting of title by judgment of a court or a transfer directed by the court.

ordinary course of business. See **in the ordinary course of business**.

ordinary course of trade. See **in the ordinary course of business**.

ordinary diligence. That degree of care, attention, or exertion which, under the circumstances, a man of ordinary prudence and discretion would use in reference to the particular thing were it his own property, or in doing the particular thing were it his own concern. *Anne*: 15 ALR2d 856, § 13; 10 Am J2d Banks § 479.

ordinary dividend. A regular dividend paid by a corporation, as distinguished from an extra dividend or a stock dividend. 19 Am J2d Corp § 810.

ordinary flood. A flood the occurrence of which is reasonably to be anticipated, considering past experience in the weather and the topographical situation. Anno: 23 ALR2d 757. A flood in a series of floods occurring at intervals which are regular or irregular, frequent or infrequent. Cairo, Vincennes & Chicago R. Co. v Brevoort (CC Ind) 62 F 129.

ordinary flow. The usual volume of water in a watercourse at any given season.

The waters of a river flowing annually therein before, during and after the regularly occurring accretions, caused by melting snows, in the volume thereof constitute the usual and ordinary flow of the river, and are in no sense "storm" or "flood" or "vagrant" or "enemy" waters, as these terms are understood in law. *Herminghaus v Southern Cal. Edison Co.* 200 Cal 81, 252 P 607.

ordinary high-watermark. The line of the medium high tide between the spring and the neap tides. The average high-watermark. 12 Am 12d Bound § 13. The line along the banks of a river to which the water rises in the seasons of ordinary high water, or the line at which the presence of water is continued for such length of time as to mark upon the soil and vegetation a distinct character. *Pacific Milling & Elevator Co. v Portland*, 65 Or 349, 133 P 72.

ordinary income. Income from regularly recurring sources, such as earnings from work, interest, and dividends, as distinguished from a bonanza, winnings in a horse race, the prize won in a contest, or a capital gain realized on a sale of property. *Sloane v Commissioner* (CA6) 188 F2d 254, 29 ALR2d 580.

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ordinary low-watermark. The average low-watermark at low tide. *East Boston Co. v Commonwealth*, 203 Mass 68, 89 NE 236.

ordinary luggage. Luggage which is personal to the passenger, and carried for his use or convenience, not something, such as merchandise, carried in pursuit of a trade or business. *Yazoo & Mississippi Valley Railroad Co. v Blackmar*, 85 Miss 7, 37 So 500; *Oakes v Northern Pacific Railroad Co.* 20 Or 392, 26 P 230.

ordinary negligence. The failure to exercise such care as the great mass of mankind ordinarily exercises under the same or similar circumstances. 38 Am J1st Negl § 46. The want of exercise of ordinary care.

See **ordinary care.**

ordinary occupation. See **ordinary calling.**

ordinary partnership. Any partnership other than a commercial partnership or a limited partnership. 42 Am J1st Partn § 11.

ordinary proceedings. The regular and usual method of carrying on a suit by due course at common law. 1 Am J2d Actions § 3.

ordinary prudent man. See **the ordinary prudent man.**

ordinary rainfall. Such rainfall as is not unprecedented and extraordinary. Cairo, Vincennes & Chicago R. Co. v Brevoort (CC Ind) 62 F 129.

ordinary repairs. Painting, papering or decorating, repairing plumbing fixtures or replacing plumbing, repairing the heating plant, etc. 33 Am J1st Life Est § 453.

ordinary risks of employment. Those perils, hazards, and dangers as are ordinarily and normally incident to or a part of the employment in question and of which the employee has knowledge, actual or implied, or of which it may be said that he is presumed to know. 35 Am J1st M & S § 299. Those dangers in the work which exist after the employer has done everything that he is bound to do for the purpose of securing the safety of the employee. *Boatman v Miles*, 27 Wyo 481, 199 P 933, 26 ALR 864.

ordinary skill. That degree of skill which men engaged in a particular work or art usually employed, not that skill which belongs to a few men of extraordinary endowment and capacity. *Baltimore Baseball Club & Exhibition Co. v Tickett*, 78 Md 375, 28 A 279.

ordinary travel. See **ordinary use of highway.**

ordinary use of highway. Use by motor vehicles, such having almost completely supplanted horse-drawn vehicles. 25 Am J2d High § 430.

In the absence of a specific regulation to the contrary, a bicycle is a vehicle of such nature that it properly may be used upon the highways and streets. 7 Am J2d Auto § 7.

ordinary wear and tear. See **wear and tear.**

ordination. The religious ceremony, celebration, and service at which a person is made a priest or minister of the Gospel.

ordinatione contra servientes. A writ which lay for a master against his servant who left his service in violation of a statute or ordinance.

ordinatum est. It is ordered.

ordine. See **ex ordine.**

Ordine placitandi servato, servatur et jus. By observing the order of pleading, the law is also observed. See *Broom's Legal Maxims* 188.

ordinis beneficium. (Civil law.) The benefit or privilege of order,—the right of a surety to have all of the creditor's remedies first exhausted against the principal, before resort might be had to him, the surety.

ordinum fugitivi. Members of ancient English orders who renounced their adherence.

ordo attachamentorum. The order of attachments.

ordonnance. A compilation of international law on the, subject of "prize."

ore. A natural combination of minerals; a natural compound of a mineral and some other substance, such as oxygen, sulphur, or arsenic, called its mineralizer, by which its usual properties are disguised or lost. *Marvel v Merritt*, 116 US 11, 29 L Ed 550, 6 S Ct 207.

oredelfe. The right to claim ore found in one's land.

Oregon boot. A heavy weight clasped about the ankle of a prisoner to prevent his escape.

ore-leave. The right to dig and take ore from a mine. See *Ege v Kille*, 84 Pa 333, 340.

ore tenus. By word of mouth; oral; orally.

orfgild. A compensation for, or a restoration of, property taken away, and applied particularly to cattle.

organic act. An act providing and establishing a government, for example the Act of 1878, providing a permanent form of government for the District of Columbia. 24 Am J2d D C § 4.

organic law. Constitutional law or, at least, law which carries a high degree of authority. *St. Louis v Dorr*, 145 Mo 466, 41 SW 1094, 46 SW 976. The basic law of a state or of a society, such as a mutual benefit society. 36 Am J2d Trat O § 9.

organization. A corporation, government or governmental subdivision or agency, business trust, estate trust, partnership or association, two or more persons having a joint or common interest or any other legal or commercial entity. UCC § 1201(28). Planning, arranging, and developing, as in organizing a corporation or a labor union. A term of practical politics; the leadership of a political party in a town, city, county, or state and those of the party, committeemen and others, who support the leadership.

organization costs. See **preconstruction costs; promotion expenses.**

organization of corporation. The process of forming and arranging into suitable disposition the parts of the body to be created and of defining the objects of such body. A process stopping short of the conferring of a franchise to be a corporation or charter. *Hughes Co. v Farmers' Union Produce Co.* 110 Neb 736, 194 NW 872, 37 ALR 1314, 1318. A process completed when the first meeting has been called, the act of incorporation accepted, officers elected, and bylaws providing for future meetings adopted. *Roosevelt v Hamblin*, 199 Mass 127, 85 NE 98.

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organization tax. A term applied loosely to an incorporation fee. 18 Am J2d Corp § 41.

organization of board. The calling and holding of a meeting of a board or commission for the election of officers. *Waterman v Chicago & Iowa Railroad Co.* 139 111 658, 29 NE 689.

organized. See **organization.**

organized bar. See **bar association; integrated bar; state bar.**

organized labor. Union labor; the aggregate of labor unions and the members thereof.

organized territory. A territory of the United States having any form of autonomous government characterized by system. 49 Am J1st States § 4.

or his heirs. Words of limitation in the devise of a remainder, not preventing the creation of an indefeasible vested remainder. 28 Am J2d Est § 300.

oriel window. A bay window.

original. Adjective: Pertaining to the beginning or origin. Noun: The first or primitive form of a thing. An eccentric person. An instrument from which a copy or copies have been made.

See **duplicate**; **duplicate original**.

original asking price. The price at which a landowner lists his property for sale with a real estate broker. 12 Am J2d Brok § 111.

original bill. A bill in equity that begins an independent suit unconnected with any other previous or pending suit in the same court. 27 Am J2d Eq § 179.

original bill in the nature of a supplemental bill. A bill filed in a suit in equity when new parties, with new interests, arising from events which have transpired since the institution of the suit, are to be brought before the court. *Whiting v Bank of United States* (US) 13 Pet 6, 10 L Ed 33; *Bowie v Minter*, 2 Ala 406, 411.

original charter. The charter by which the first grant of the land was made by the superior to the vassal.

original construction of railroad. That construction of bridges, grades, culverts, rails, ties, docks, etc., that is prerequisite to the opening of the line for use in the operation of trains. *Cleveland, Canton & Southern Railroad Co. v Knickerbocker Trust Co.* (CC Ohio) 86 F 73, 76.

original contractor. Same as **principal contractor**.

original conveyances. A primary conveyance; that is, a conveyance by means of which the benefit or estate is created or first arises.

Such conveyances comprise the following: Feoffments, gifts, grants, leases, exchanges, and partitions. See 2 Bl Comm 309.

original cost. The amount expended in construction of a building or plant, as distinguished from present value or cost of reproduction. *National Waterworks Co. v Kansas City* (CA8 Mo) 62 F 853.

original cost theory. A theory of valuation of public utility property for rate-making purposes, based upon the idea that the utility is entitled to a return only on the actual sacrifice of funds made in creating the plant for service to the public. 43 Am J1st Pub Util § 105.

original damages. Damages arising from an injury to real estate of such nature that one recovery is all that is permitted by law, there being no basis for recovery from time to time as damages accrue. *McHenry v Parkersburg*, 66 W Va 533, 66 NE 750.

original deed. See **original conveyance**.

original entry. See **book of account**; **book of original entry**.

original evidence. Primary evidence, as distinguished from secondary evidence.

original jurisdiction. The jurisdiction conferred on or inherent in a court in the first instance. 20 Am J2d Cis § 98. The jurisdiction of a trial court, as distinguished from the jurisdiction exercised by an appellate court or a court with supervisory powers. 20 Am J2d Cts §§ 28, 98.

original negligence. A term pertinent to the last clear chance, referring to the negligence of the plaintiff in placing himself in the position of peril. 7 Am J2d Auto § 379.

See **primary negligence**.

original package. That package which, according to custom respecting the particular articles shipped, is usually delivered by the vendor to the carrier for transportation and delivered as a unit to the consignee. The package, as a unit, which is delivered by the shipper to the carrier at the initial place of shipment in the exact condition in which shipped. 15 Am J2d Com § 45. The unbroken package in the original form in which used by a shipper of intoxicating liquors for shipment and delivery into dry territory, provided the receptacle used is one ordinarily used by honest dealers in the same business and is recognized commercially as a usable receptacle. 30 Am J Rev ed Intox L § 40. A well-recognized method of selling patent or proprietary medicines. 25 Am J2d Drugs § 63. A restriction upon the right to purchase or sell narcotics under the Federal Narcotic Act. 26 USC § 4704(a). The denial of the power to impose a state or local tax upon goods imported from a foreign country while they remain the property of the importer, in his warehouse, in the original form or package in which they were imported. Brown v Maryland (US) 12 Wheat 419, 6 L Ed 678.

In the area of state taxation of goods transported from another state, the doctrine has been definitely rejected. *Sonneborn Bros. v Cureton*, 262 US 506, 67 L Ed 1095, 43 S Ct 643. Nor has the doctrine been a barrier to state regulation apart from taxation. 15 Am J2d Com § 44.

Original Packages Act. Another name for the Wilson Act of 1890, a federal statute respecting the transportation of intoxicating liquors from one state to another.

See **Wilson Act**.

original patent. Same as **basic patent**.

original plat. The first plat made of a town or village, as distinguished from a plat of the town or village in which additions made to the incorporated area are included.

original proceeding. See **principal action**.

original process. The process by which a suit or action is commenced. *Hotchkiss' Appeal from Probate*, 32 Conn 353, 355.

original promise. A promise not within the statute of frauds as a promise to answer for the debt of another, because it is made to subserve or promote an interest or purpose of the promisor and upon a consideration beneficial to him. 49 Am J1st Stat of F § 61. A promise, made at the time of or before the creation of the debt, in consideration of which

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the credit is given. *Goldsmith v Erwin* (CA4 NC) 183 F2d 432, 20 ALR2d 240.

original undertaking. See **original promise**.

original vein. The discovered vein of mineral relied upon in the location and perfection of a lode claim. 36 Am J1st Mines & M § 83.

original work. Work which an author has created by his own skill, labor, and judgment. Anno: 23 ALR2d 264, § 4.

original writ. The beginning or foundation of a common-law action. "It is a mandatory letter from the king in parchment, sealed with his great seal, and directed to the sheriff of the county wherein the injury is committed or supposed so to be, requiring him

to command the wrongdoer or party accused, either to do justice to the complainant or else to appear in court and answer the accusation against him." See 3 Bl Comm 273.

In the United States, original writs, properly so-called, never existed, and while they have been abolished in England, their history and original functions are vital and instructive.

See **original process**.

originate. To give an origin or beginning to; to bring into existence; to take first existence; to have origin or beginning; to begin or exist or act. *Dunbar v Spratt-Snyder Co.* 208 Iowa 226 NW 22, 63 ALR 1016.

Origine propria nominem posse voluntate sua eximi manifestum est. It is manifest that no one can by his own will or wish free himself from his own origin. See *Broom's Legal Maxims* 77.

originis. See **forum originis**.

Origo rei inspici debet. The origin of a thing ought to be regarded.

or in trust for. A form of restrictive endorsement of a bill or note. 11 Am J2d B & N § 362.

or lease. An oil lease obligating a lessee to drill a well within a certain time or pay delay rentals. 24 Am J1st Gas & O § 60.

ornamental fixtures. Articles removable by a tenant, although affixed to the premises, because brought on the premises by him and because of their nature as articles pertaining to his own pleasure, domestic comfort, and convenience. *Raymond v Strickland*, 124 Ga 504, 52 SE 619.

ornamental tree. A tree planted or kept for the beauty it adds to the premises.

or order. Words of negotiability. 11 Am J2d B & N § 105.

or other valuable effects. A term of art used in statutes prescribing the elements of the crime of false pretenses for extending the application of the statute in reference to the things obtained by the accused. 32 Am J2d False Pret § 42.

orphan. A minor child who has lost one or both of his or her parents. *Heiss v Murphey*, 40 Wis 276, 291.

orphanage part. The distributive share in his estate to which the children of an intestate are entitled by the custom of London.

By this custom their share is not fully vested in them until the age of twenty-one, before which they cannot dispose of it by will. If they die under that age, whether single or married, their share survives to the other children. But after the age of twenty-one, it is free from any orphanage custom and if they then die intestate it falls under the statute of distributions. See 2 Bl Comm 519.

orphanotrophi. (Civil law.) Persons who had the charge or management of orphan asylums.

orphans' court. A probate court, 20 Am J2d Cts § 32, the name being suggested by the jurisdiction exercised in matters involving the care of orphans and their property.

orthopedic appliance. An appliance to be worn or used in the relief of a disease, injury, or deformity of bones and joints.

oscillation. Vibration.

osculation. Close contact; kissing.

or to the use of. A form of restrictive endorsement of a negotiable instrument. 11 Am J2d B & N § 362.

O. S. Abbreviation of old style, particularly in reference to the calendar. Abbreviation of old series, also of ordinary seaman.

ostendit vobis. It shows to you.

ostensible agency. An agency created by a course of conduct, for example, the agency of a wife to make purchases on the credit of the husband, arising from his acquiescence on many occasions in her thus binding him. 26 Am J1st H & W § 237. An agency existing when the principal intentionally, or by want of ordinary care, causes or allows a third person to believe another to be his agent. *Armstrong v Barceloux*, 34 Cal App 433, 167 P 895.

ostensible authority. Apparent authority, for example, such authority as an insurance company permits its agent to exercise, or which it holds him out to the public as possessing. 29 Am J Rev ed Ins § 146. Such authority as a principal, either intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess. *Henry Cowell Lime & Cement Co. v Santa Cruz Nat. Bank*, 82 Cal App 519, 255 P 881.

ostensible partner. One made known to the world as a member of a partnership and who in reality is a partner. *Dins v Lonsdale*, 49 Ind 521, 529. One who, although not a partner by contract or agreement with the other member or members of the firm, is charged with liability as a partner because he has held himself out, or permitted himself to be held out, as being a member of the firm. 40 Am J1st Partn § 71.

ostensible partnership. See **ostensible partner**.

ostensurus. To show.

ostentum. Same as **monster**.

osteoarthritis. A type of arthritis; susceptible to aggravation by personal injury. *Hanover Fire Ins. Co. v Sides* (CA5 La) 320 F2d 437.

osteomyelitis. A disease of the bone. *Merritt, Chapman & Scott Corp. v Fredin* (CA9 Wash) 307 F2d 370.

osteopath. One who treats human ailments by osteopathy. A physician where licensed by the State Medical Board. State ex rel. *Kester v North*, 136 Ohio St 523, 17 Ohio Ops 159, 26 NE2d 1020. A physician within the meaning of a statute providing for the registration of births and deaths. *Keiningham v Blake*, 135 Md 320, 109 A 65, 8 ALR 1066.

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osteopathy. A system of treatment of parts and tissues of the body by manipulations with the hands. *State v Hopkins*, 54 Mont 52, 166 P 304. A system of treatment of human ailments based on the theory that diseases are chiefly due to the deranged mechanism of bones, nerves, blood vessels, and other tissues, and can be remedied by manipulation. 41 Am J1st Phys & S § 2.

osteoporosis. A disabling disease characterized by fragility of bones. *Nelson v Twin City Motor Bus Co.* 239 Minn 276, 58 NW2d 561.

oster. Same as **ouster**.

ostercus. Also called "austurcus," –a goshawk used by falconers in hunting fowl; the modern chicken hawk.

ostium ecclesiae. The door of the church, the place where marriages were anciently solemnized.

Oswald's law. The law by which compulsory celibacy was introduced into the priesthood in the tenth century.

other action pending. See **plea of another action pending.**

other country. See **foreign country.**

other hard incombustible material. Materials of the same kind as those specifically named. *Odessa v Halbrook* (Tex Civ App) 103 SW2d 223.

other insurance. Insurance on the same risk for the benefit of the same person.

See **contribution between insurers; double insurance; excess insurance.**

other insurance clause. The condition of an insurance policy against the existence or procuring of other insurance upon the same risk insured, without the consent of the insurer. 29A Am J Rev ed Ins § 954. A clause, common in fire insurance policies, the meaning of which is that if the assured has any other policy or insurance upon the property, by assignment or otherwise, by which the interest intended to be insured, is already either wholly or partially protected, he shall disclose that fact and have it indorsed on the policy, or the insurance shall be void. *Aetna Fire Ins. Co. v Tyler* (NY) 16 Wend 385.

othesworthe. Same as **oathworthy.**

oultre. See **en oultre.**

oultre le mere. Beyond seas.

oust. To effect an ouster.

ouster. A forced dispossession of real estate. A disseisin. The wrongful dispossession or exclusion from real property of a person entitled to the possession thereof. 25 Am J2d Eject § 47. The eviction of a foreign corporation from the state, prohibiting it from doing business. 36 Am J2d For Corp § 439.

See **eviction.**

ouster by abatement. Such an ouster as takes place where a person dies seised of an estate of inheritance, and before the heir or devisee enters, a stranger who has no right enters and gets possession of the freehold. *Brown v Burdick*, 25 Ohio St 260, 268.

ouster in pais. A dispossession or disseisin of a person in possession of land effected otherwise than by means of resort to legal proceedings.

ouster judgment. A judgment against the defendant in ejectment. 25 Am J2d Eject § 122. A judgment in forcible entry and detainer calling for the restitution of the premises to the plaintiff. 35 Am J2d Fore E & D § 53. A judgment in an election contest rendered against the contestee in possession of the office. 26 Am J2d Elect § 357.

ouster le main. To remove the hand of the guardian. To cause a ward's lands to be delivered or released to him from the hands of the guardian upon the ward's attaining his majority. See 2 Bl Comm 68.

ousterlemain. Same as **ouster le main.**

See **livery.**

ouster le mer. Beyond seas.

ouster of jurisdiction. Events occurring after the commencement of an action and the acquisition of jurisdiction causing a loss of jurisdiction. 20 Am J2d Cts §§ 147 et seq.

out. Away from, as out of store. Vernacular for a means of avoidance, as a condition under which one otherwise obligated is permitted to withdraw from the engagement. *Cray, McFawn & Co. v Hegarty, Conroy & Co.* (DC NY) 27 F Supp 93.

outage. An inspection charge of two dollars per hogshead, fixed by a Maryland statute passed in 1872, to be paid by shippers of tobacco on tobacco shipped out of the state. *Turner v Maryland* (US) 17 Otto 38, 44, 27 L Ed 370, 373, 2 S Ct 44.

out and out conversion. The rule that real estate intended by partners to constitute a part of the firm property, or treated by them as belonging to the firm, is regarded in equity as converted into personalty for all purposes, as well for the purpose of the adjustment of the partnership debts and the claims of the partners between themselves as for the purpose of determining the succession as between the personal representative of a deceased partner and the heirs at law. 40 Am J1st Partn § 111.

outboard. A motorboat having the motor fastened on the outside at the stern of the craft. A powerboat. *United States v Olson* (DC Ky) 41 F Supp 433.

outbreak of war. The commencement of hostilities between two nations, with or without a declaration of war. 56 Am J1st War § 8.

outbuilding. A building on the same premises, usually made use of in connection with the dwelling house.

See **outhouse.**

outcome-determinative test. The rule that a federal court exercising jurisdiction solely because of the citizenship of the parties should apply a state law, although such is deemed a matter of "procedure" in one sense, where refusal to follow it will bring about a result impossible of attainment in a state court. *Guaranty Trust Co. v York*, 362 US 99, 89 L Ed 2079, 65 S Ct 1464, 160 ALR 1231.

outcrop. The exposure of a mineral vein above the surface of the earth or the point at which the vein comes the closest to the surface. Anno: 1 ALR 422.

outcry. The cry of a person imperiled by an assault, especially a female threatened by a sexual assault. 6 Am J2d Asslt & B § 156. The sound of an auctioneer's voice as he speaks or chants in offering an article for sale and invokes bidding.

outdoor advertising. Advertising appearing upon billboards and other structures in places observable

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by the public generally.

outer bar. The junior barristers or counsel, who sit outside the bar in an English court and in some other courts of the Commonwealth.

outer barrister. A barrister who pleads outside the bar; that is, otherwise than as sergeant or king's or queen's counsel.

Outer Continental Shelf. All submerged lands lying seaward and outside of the area of lands beneath navigable waters, and of which the subsoil and sea bed appertain to the United States and are subject to its jurisdiction and control. 43 USC § 1331(a).

Outer Continental Shelf Lands Act. A federal statute declaring and implementing the policy of the United States in reference to the subsoil and sea bed of the Outer Continental Shelf. 43 USC §§ 1313 et seq.

outer door. A door for ingress or egress to or from premises, as distinguished from a door leading from one portion of premises to another part of the same premises.

As to what constitutes an "outer door" within the rule which prohibits an officer from forcing or breaking the outer door for the purpose of serving process, see 42 Am J1st Proc § 42.

outer house. The name given to the lower branch of the Scotch court of sessions.

outfangthef. A thief who was captured outside the manor; a tenant who was arrested for larceny within a manor.

outfit. Equipment for work or activity, such as for plumbers, carpenters, or campers. Equipment for an expedition. The clothing, arms, and accouterments of a soldier. 36 Am J1st Mil § 16. A military unit, especially a division of the Army. An allowance made by the government to its foreign ministers and ambassadors.

See **ship and outfit.**

outhouse. A building, such as a barn, shed, or garage upon the same premises, and having a connection with the use of the dwelling house. A building adjacent to a dwelling house and subservient thereto, but distinct from the mansion itself. 5 Am J2d Arson § 20. An outside toilet or privy.

outhouse where people resort. A phrase appearing in statutes for the suppression of gambling, meaning any house on the premises standing apart from the house used as a dwelling house or place of business. 24 Am J1st Gaming § 29.

outland. That part of a manor which was occupied by a tenant.

outlaw. In the modern sense of the term, a notorious criminal, especially when a fugitive from the law. At common law, one made defendant in an outlawry proceeding or judicially declared to be an outlaw in a regular proceeding brought for the purpose of such declaration. *Dale County v Gunter*, 46 Ala 118, 140.

An outlaw is one who is put out of the law; that is, deprived of its benefits and protection. In earlier times he was called a friendless man; one who could not, by law, have a friend. An outlaw was said *caput genere lupinum*, by which it was meant, that any one might knock him on the head as a wolf, in case he would not surrender himself peaceably when taken. He forfeited everything he had, whether it was in right or possession. All obligations and contracts were dissolved. But in modern times the word has a much less stringent meaning, importing, however, the forfeiture of property and civil rights. *Drew v Drew*, 37 Me 389, 391.

outlawed. In the earlier common law, the judicial determination and declaration that a named person was an outlaw. In the modern parlance of the layman and to some extent of the profession, barred by the statute of limitations. *Drew v Drew*, 37 Me 389, 391.

outlawry. A common-law doctrine, long since abolished or come into disuse in the United States, whereunder the property of one convicted of a crime was forfeited to the crown or state, he being placed, as it were, outside the law. *United States v Hall*, 198 F2d 726, 34 ALR2d 1088. A proceeding at common law under which by judgment a man was placed out of the

protection of the law. A judgment declaring the defendant in such proceeding to be an outlaw. See 3 Bl Comm 284. See also *Republica v Doan* (US) 1 Dall 86, 1 L Ed 47.

See **outlaw**.

outlay. An expense.

outlet. A way of escape for waters from a lake or a pond. 56 Am J1st Wat § 63. A place or means of disposal of particular articles of merchandise.

out of court. Not in or before the court; as, a settlement out of court. Having suffered nonsuit or dismissal.

out of employment. Not working. In a distinct sense, arising from employment. *Gage v Connecticut General Life Ins. Co.* (Mo App) 273 SW2d 761, 47 ALR2d 1234.

out-of-kilter. A colloquial expression for out of order, not in condition for use, as a machine with broken working parts. *Lonnecker v Borris*, 360 Mo 529, 229 SW2d 524, 18 ALR2d 968.

out of my estate. A phrase in a clause of a will directing payment of an estate or succession tax, having reference to the residuary estate, that being sufficient, or the general estate of the testator. Anno: 37 ALR2d 111.

out of pocket. Spent; disbursed.

out-of-pocket expense. Expense which one is compelled to incur and pay.

out-of-pocket-loss rule. A rule of damages for fraud in misrepresentation of value, quality, or condition of property, that the defrauded party is entitled not to the benefit of the bargain, but only to the amount that he is "out-of-pocket" by reason of the fraud, which is the difference between the real value of the misrepresented property and the amount that he paid therefor. 37 Am J2d Fraud § 355; 55 Am J1st V & P § 573.

out of term. Between terms of court; at a time when no session of the court was held.

out of the state. Absent from the state. 34 Am J1st Lim Ac § 215.

out of time. Not on time; overdue; as a ship which has not arrived at the time expected. Appearing in the wrong generation; not in accord with modern customs, habits, and practices.

outparter. A cattle thief

out patient. A person who calls for medical treatment at a hospital, without becoming a room or ward patient.

outpeny. The customary payment made

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in the early period of the common law by a tenant upon the termination of the tenancy.

output. The production of a factory or plant for any given time. Anno: 1 ALR 1393.

outrage. An aggravated wrong. A bold or wanton injury to person or property; wanton mischief; gross injury. *Mosnat v Snyder*, 105 Iowa 500, 504, 75 NW 356. A rape.

outrage and indignity. A wrong capable of causing mental anguish in addition to bodily suffering. *McKinley v Chicago & Northwestern Railroad Co.* 44 Iowa 314.

outrageous battery. Malicious acts akin to mayhem. *Clyde v Parillo*, 25 NJ Misc 492, 55 A2d 810.

oultre. Outside; beyond.

autrefois acquit. Same as **autrefois acquit**.

oultre mere. Beyond the sea. Lands beyond the sea.

outrider. A deputy sheriff who summoned persons at a distance to attend the county court; a highwayman. A rider on horseback who accompanies a carriage or coach. outright gift. An absolute gift.

outroper. A licensed auctioneer.

outside activities. Private employment or business pursued by a public officer or public employee. 43 Am J1st Pub Of § 265.

outside elevator. An elevator maintained in connection with the use of a building, but outside the building, such as an elevator reached through an opening in the sidewalk.

outside hazard. A hazard to a traveler on the highway, located on the margin, that is, outside the traveled portion. 25 Am J1st High § 528.

outstanding accounts. Unpaid accounts, both good and bad. 1 Am J2d Acctg § 2. Sometimes construed in accordance with custom as including accounts remaining after the bad accounts have been charged to profit and loss. *McCulsky v Klosterman*, 20 Or 108, 25 P 366.

outstanding and open account. An unpaid account not adjusted or reduced to a written obligation. 1 Am J2d Acctg § 2.

outstanding crop. A growing crop in the field, without reference to the state of growth. *Sullins v State*, 53 Ala 474, 476.

outstanding interest. The interest of a third party not directly involved in the transaction. So, an interest in mortgaged property other than that of mortgagor and mortgagee. 36 Am J1st Mtg § 199. An interest in property seized under execution other than that of the judgment debtor. 30 Am J2d Exec §§ 443 et seq. A claim of title in himself by a person who asserts such claim adversely to the ostensible owner of the land.

outstanding in the state. See **obligations or liabilities outstanding in the state**.

outstanding note. A note which is still a liability. *Spring v Hill*, 6 Cal 17.

outstandings. Debts outstanding against an applicant for credit insurance. 29A Am J Rev ed Ins § 1005. Uncollected debts; uncollected revenues. *McCulsky v Klosterman*, 20 Or 108, 25 P 366.

outstanding stock. Shares of corporate stock held as obligations of the corporation, as distinguished from treasury stock. *Borg v International Silver Co.* (CA2 NY) 11 F2d 147.

outstanding term. A lease for a term of years entitled to protection against grantees, heirs, and devisees of the lessor.

outstanding title. See **outstanding interest.**

outstroke mining. See **mining by outstroke.**

outsucken multures. Payments which were made by a tenant for having his grain ground at a mill at which his tenure did not bind him to have it ground.

outvote. To win an election. To cast more votes than are cast in an comparable precinct, district, or political subdivision.

outworker. Same as **homeworker.**

ouverte. Same as **overt.**

ovel. Equal. Same as **owel.**

ovelty. Same as **owelty.**

over. See **bind over; pleading over; remedy over.**

overboard. Out of the vessel and into the water.

overbreak. An engineering term signifying that portion of the material removed by a blast which was outside and beyond the slopes indicated by the slope stakes. *Porter v State*, 141 Wash 51, 250 P 449.

overcertification. The act of an officer or agent of a bank in certifying a check when the amount called for does not actually stand to the credit of the drawer on the books of the bank. 10 Am J2d Banks § 229.

overcharge. An excessive charge. A charge of more than is permitted by law. *Woodhouse v Rio Grande Railway Co.* 67 Tex 416, 418. A charge made by a carrier for transportation services in excess of those applicable thereto under the tariffs lawfully on file with the Interstate Commerce Commission. 49 USC §§ 16(3) (g), 304(a) (5), 1006(a) (5).

The term "overcharge" as used by the Interstate Commerce Commission covers only cases where carriers have demanded and received a rate in excess of the published rate; it is not used in referring to cases where the published rate has been collected but is alleged, on one ground or another, to be an excessive rate. *Miller v Davis*, 213 Iowa 1091, 240 NW 743.

overcrowding. The act of a carrier in putting too many passengers in a conveyance.

overcyhsed. Same as **overcyted.**

overcyted. Found guilty; convicted.

overdraft. An overdrawing by a bank depositor. A payment by a bank from its funds of a check or draft drawn upon it by a depositor who does not have sufficient funds on deposit to pay the check or draft. *American Surety Co. v First Nat. Bank* (DC W Va) 50 F Supp 180.

An overdraft arises when, by check, draft, or order, a customer of the bank draws from that bank more money than is standing to his credit in his account with the bank. *State v Jackson*, 21 SD 494, 113 NW 880. The amount of an overdraft is not necessarily the sum drawn, but is the amount drawn less the amount to which the drawer, at the time, is entitled to a credit balance upon his ac-

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count. *Armstrong v Chemical Nat. Bank* (CC NY) 41 F 234.

overdraw. See **overdraft**.

overdue. Past due. Having run beyond maturity.

Sometimes the term "overdue" is used in reference to a right of action against a drawer or indorser of a bill of exchange. In that connection a bill is not "overdue" until presented to the payee for payment, and payment refused. Sometimes the term is used in considering whether an indorser has been released by a failure of the holder to present the bill for payment, and to give the indorser notice of its dishonor within a reasonable time. The term is also applied to a bill which has come into the hands of an indorser, so long after its issue as to charge him with notice of its dishonor, and thus subject it in his hands to the defenses which the drawer had against it in the hands of the assignor. *La Due v First Nat. Bank of Kasson*, 31 Minn 33, 38.

See **maturity**.

overdue paper. An obligation for the payment of money not paid at maturity as fixed by the terms of the instrument or as extended by agreement of the parties.

overflow. To flow over; to flow over the bounds, over the brim; to cover with or as with water or other fluid; to spread over; to inundate: as, when one wrongfully diverts surface water and causes it to overflow another's land, causing damage. *Miller v Letzerich*, 121 Tex 248, 49 SW2d 404, 85 ALR 451.

overflowed lands. Lands which are covered by nonnavigable waters or are subject to such periodical or frequent overflows of water, salt or fresh (not including lands between high and low water marks of navigable streams or bodies of water, nor lands covered and uncovered by the ordinary daily ebb and flow of normal tides of navigable waters), as to require drainage or levees or embankments to keep out the water, and thereby render the lands suitable for successful cultivation. *State of Florida ex rel. Ellis v Gerbing*, 56 Fla 603, 47 So 353.

See **submerged lands**.

overflowing waters. See **flood waters**.

overhang. That part of a railroad car or streetcar which extends beyond the rails upon which the car is running. 14 Am J2d Car § 979.

overhanging roof. A roof extending over an adjoining property. Sometimes legalized as a continuous easement. *Bubser v Ranguette*, 269 Mich 388, 257 NW 845.

overhanging sign. A sign placed in such position that it overhangs the sidewalk or street. 3 Am J2d Advertg § 9.

overhanging structure. A structure with projections, particularly projections extending over an adjoining property. overhaul. To repair completely; to recondition.

overhauling. Overtaking. Examining completely to determine needed repairs.

See **reconditioning**.

overhead. Wages and salaries, rent, telephone service, cost of office supplies, etc. 13 Am J2d Bldg Contr § 20. For the purpose of fixing the rates of a public utility, expenses for services of a nonproductive nature. *Lytle, Campbell & Co. v Somers, Fittler, & Todd Co.* 276 Pa 409, 120 A 409, 27 ALR 41, 43.

See **operating expenses of a public utility.**

overhead crossing. A highway elevated and crossing over a railroad track, thereby avoiding a grade crossing. One railroad elevated and crossing above another railroad. 44 Am J1st RR § 286. A highway elevated and crossing over another highway, common in modern highway systems.

overhead door. A door having hinged sections, engaged at the top with an overhead track to permit it to be pushed up and extended at some height in the building in opening it to permit ingress or egress; used extensively in garages, both public and private, and other places of business or work where vehicles are frequently driven in and out.

overhead expenses. Same as **overhead.**

overhead handrail. A handrail anchored in the top of a bus, upon which a standing passenger may seize in an emergency to prevent being thrown by a sudden movement or stopping of the bus. *Fisher v Whitaker (Ky)* 260 SW2d 651.

overhead rack. A rack on the side of a railroad car, bus, or airplane being located above the seated passengers, for wearing apparel and small articles of luggage. 14 Am J2d Car § 1034.

overhead through rate. Same as **through rate.**

overhead use. See **supersurface use.**

overinsurance. The existence of insurance upon the same risk in violation of the condition of the policy concerning other insurance unknown to the insurer or obtained without the consent of the insurer. 29A Am J Rev ed Ins § 954. A condition leading to fraud or carelessness on the part of the insured, there being less reason for him to desire the preservation of the property. 29A Am J Rev ed Ins § 954.

See **excess insurance.**

overissue. An issue of stock by a corporation in excess of the amount prescribed or limited by its charter. 18 Am J2d Corp § 230. An issue of bonds by a corporation in excess of the limit placed upon the amount of bonded indebtedness by the charter. 19 Am J2d Corp § 1061.

overloading. Crowding a passenger car or bus. Exceeding the license limit on the number of passengers, or the licensed weight, to be carried by an aircraft. *Ziser v Colonial Western Airways, Inc.* 10 NJ Misc 1118, 162 A 591. Violation of statute or regulation limiting the number of domestic animals to be carried in a single stock car in railroad transportation. Making an excessive charge for operating expenses or the maintenance of contingency reserves in calculating the amount of the premium to be charged for insurance.

overlord. A feudal superior; a master.

overpayment. A payment in excess of the amount of the obligation.

As the word is used in the Federal Revenue Act of 1932, Section 621(d), it is broad enough to include payments erroneously or illegally assessed as well as payments excessive in amount. *D. Gottlieb & Co. v Harrison (DC Ill)* 27 F Supp 424.

overplus. That which remains; a balance left over. An excess of acreage in a survey of public land. 12 Am J2d Bound § 62.

overreaching. Fraudulent conduct in taking unfair advantage.

overreaching clause. A clause in an indenture creating powers which refers for some powers to an extrinsic instrument, noting that such powers may

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be in excess of, that is, overreach the powers created by the indenture.

overriding royalty. A royalty, payable under an oil lease, consisting of a designated fraction or percentage of the working interest or of the total production. 24 Am J1st Gas & O § 87. Such fractional interest in the production of oil and gas as is created from the lessee's estate, whether by reservation when the original lessee transfers his interest by a sublease, or by grant when the original lessee conveys a fractional share to a third person. *La Laguna Ranch Co. v Dodge*, 18 Cal 2d 132, 114 P2d 351, 135 ALR 546.

overriding veto. The enactment of a statute or ordinance, after a veto of the measure by the executive, by the passage of the measure by a stated percentage, fixed by constitution or statute, of the votes of the legislative body. 37 Am J1st Mun Corp § 148; 50 Am J1st Stat § 112.

overrule. To refuse to grant; to deny, as where the court denies an objection by counsel; to set at naught; to annul.

overruling precedent. The nullification of a prior decision as a precedent by a constitutionally valid statute or the rendition of a decision by the same court or by a higher ranking court which establishes a different rule on the point of law involved. 20 Am J2d Cts § 231.

oversamessa. A fine imposed for a contempt of court or for permitting an escape.

over sea. Beyond the sea. Outside the jurisdiction.

overseas bill of lading. The form of a bill of lading provided by UCC § 2-323.

The provisions of the Uniform Commercial Code relating to bill of lading in overseas trade will not have frequent application, because bills of lading covering export are governed by the Federal Bills of Lading Act and federal regulations, while the negotiability of bills covered by exports is generally determined by the law of the foreign country in which the bill was issued.

overseers of highways. Officers charged with the duty of laying out and maintaining highways within their districts.

overseers of the poor. Local officials to whom is delegated the ministerial work in regard to the relief of the poor. 41 Am J1st Poor L § 15.

oversell. To sell a greater quantity than one can deliver.

oversize baggage. Baggage exceeding the dimensions given in the tariff filed by a carrier with the Interstate Commerce Commission. *NAACP v Richmond Greyhound Lines, Inc.* 246 NC 547, 99 SE2d 756, 68 ALR2d 1341.

oversman. An umpire chosen by arbitrators to settle a controversy upon the failure of the arbitrators to agree on a settlement.

overt. Open. *Johnson v State*, 125 Tenn 420, 143 SW 1134. Open to view. Admitting to direct evidence. *Ashcraft v United States Fidelity & Guaranty Co.* (Ky) 255 SW2d 485, 37 ALR2d 1078.

overt act. An act carrying an intent into effect. An open act; a physical act, as distinguished from an act of the mind; an act done pursuant to a formed intent, design, plan, or conspiracy. An act demonstrating a purpose and committed without attempt at concealment. In criminal assault:—a demonstration consisting of an attempt or offer to do injury to the person of another, 6 Am J2d Asslt & B § 22, exciting fear of immediate personal harm or disgrace. *Merritt v Commonwealth*, 164 Va 653, 180 SE 395. In homicide:—an open act, indicating a present purpose to do immediate great bodily harm. *Johnson v State*, 125 Tenn 265, 143 SW 1134. For the purposes of a conspiracy:—an act performed for the purpose of carrying out the conspiracy, a step toward its execution, and a manifestation that the conspiracy is at work. 16 Am J2d Consp § 11.

Although intent sometimes may make criminal an otherwise innocent act, the law is not concerned with mere guilty intention, unconnected with any overt act or outward manifestation. *People v Belcastro*, 356 Ill 144, 190 NE 301, 92 ALR 1223.

overtaking and passing. A manipulation of a motor vehicle whereby, upon coming up behind another vehicle, the former is turned into another lane of traffic, preferably a lane to the inside of the other vehicle, and additional motive power applied to enable the one vehicle to go by the other and return to its original lane of traffic. 8 Am J2d Auto §§ 778 et seq. A rule of navigation which places upon the overtaking vessel the responsibility of avoiding collision with the overtaken vessel. 48 Am J1st Ship § 259.

See **passing on the right**.

overtaking vessel. A vessel approaching another vessel from astern which continues to be an overtaking vessel until she has passed clear of the vessel overtaken. *The Lackawanna* (CA2 NY) 119 F2d 666.

See **overtaking and passing**.

overt. Same as **overt**.

over-the-counter market. A market in securities other than that existing in transactions through established stock exchanges. *Fratt v Robinson* (CA9 Wash) 203 F2d 627, 37 ALR2d 636. A market established by transactions directly between brokers and brokerage offices.

overtillage. Bad or inefficient husbandry in farming ground to the point of exhaustion of the soil. 56 Am J1st Waste § 17.

overtime. Work performed over and above the period of the regular working day. Work in addition to the regular hours for which compensation is calculated under the contract of employment. 35 Am J1st M & S § 66. Work after regular hours; sometimes work after hours fixed by contract at less than the statutory maximum hours; sometimes hours worked outside of a specified clock pattern without regard to whether previous work has been done, for example, Sunday or holiday labor. 31 Am J Rev ed Lab § 611.

overtime premium. Extra pay for overtime work. 31 Am J Rev ed Lab § 611.

overturning. Upsetting. As the word appears in a policy of automobile insurance:—loss of equilibrium and overbalancing to the extent of placing the vehicle beyond the power of those in charge to stop its movement. 7 Am J2d Auto Ins § 62.

A loaded truck the wheels of which sank in a soft shoulder, tipping the truck sufficiently to spill a considerable portion of the load, was held "overturned" within the meaning of a policy insuring against loss by overturning. *Moore v Western Assur. Co.* 186 SC 260, 195 SE 558.

oves. Sheep.

ovesque. With.

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ovis. (Latin.) Sheep.

owe. To be legally indebted. Succession of Guidry, 40 La Ann 671, 673, 4 So 893. To be under a political, moral, or social obligation.

owel. Equal.

owele. Equal. Same as **owel**.

owel main. See **en owel main**.

owelty. Equality. A sum paid or secured, in the case of an actual partition of land in which the portions set off are not of equal value, by him who receives the more valuable portion to him who receives the lesser in value, for the purpose of equalizing the shares in value. Waller v George, 322 Mo 573, 16 SW2d 63.

owing. Due. United States v State Bank (US) 6 Pet 29, 8 L Ed 308.
See **owe**.

owler. A person who is guilty of owling.

owling. A crime which was so called from its being usually carried on in the night, and which consisted of transporting wool or sheep out of England.

The offense existed at common law, but was also made a statutory offense in the reign of Edward the Third. See 4 Bl Comm 154. Being out very late at night for pleasure, often for dissipation.

own. To be the owner of anything. State ex rel. Cole v District Court, 79 Mont 11, 254 P 863. To acknowledge; to admit.

own cousin. Same as **first cousin**.

owner. One who has complete dominion over particular property. 42 Am J1st Prop § 37. The person in whom the legal or equitable title rests. Anno: 2 ALR 779, s.95 ALR 1086. In common understanding, the person who, in case of the destruction of property, must sustain the loss. 42 Am J1st Prop § 37.

As to the meaning of "owner" as used in statutes relating to the assessment and collection of taxes, see Anno: 2 ALR 792.

As to the meaning of the word "owner" as used in statutes penalizing unlawful cutting of timber, see Anno: 2 ALR 799.

As to the meaning of the term "owner" as used in statutes declaring who may redeem from sale under execution, see Anno: 2 ALR 794.

As to meaning of "owner" as used in real property statutes, see Anno: 2 ALR 778.

As to the meaning of the term "owner" as used in statutes relating to trespass or forcible entry and detainer, see Anno: 2 ALR 798.

See **landowner**.

owner identification sign. A requirement of statutes intended to prevent or limit the control of retail liquor dealers by distillers, wholesalers, and importers, the retail dealer being under duty to maintain a posted sign in his establishment showing the owner or owners thereof.

owner in fee. See **fee simple**.

owner of automobile. Not a technical term for the purposes of a registration statute; not confined to a sole owner or a person having an absolute right in the vehicle, and sometimes inclusive of a part owner or a conditional purchaser. 7 Am J2d Auto § 83.

A statute imposing liability on the "owner" of a car for damages resulting from its negligent operation by another extends to plural owners of a single automobile, so as to fasten liability on all of them. *Sexton v Lauman*, 244 Iowa 570, 57 NW2d 200, 37 ALR2d 353.

owner of land. See **landowner**.

owner of record. Same as **record owner**.

ownership. The rights of an owner. Title to property. Dominion over property. The right of possession and control of property, including the right to protect and defend such possession against the intrusion or trespass of others. 42 Am J1st Prop § 40. The right to dispose of a thing as one pleases, provided the rights of others are not thereby infringed or some law violated. See *Higgins Oil & Fuel Co. v Guaranty Oil Co.* 145 La 233, 82 So 206, 5 ALR 411, 414.

See **owner; title**.

ownership-in-place theory. The principle followed in a number of jurisdictions that oil and gas in place belong to the owner of the land and that he can convey and encumber them the same as any other mineral estate, subject, of course, to the possibility of their escape and resultant loss of title. 24 Am J1st Gas & O § 4.

owner's risk. A term employed by common carriers in bills of lading and shipping receipts to signify that the carrier does not assume responsibility for the safety of the goods. *Morrison v Phillips & Colby Constr. Co.* 44 Wis 405.

own motion. A disposition made in a pending case by the court, without application made therefor by either party, as where a case is continued without application made therefor, because the judge is needed immediately for the trial of a case of first importance in another division of the court.

own self. See **self**.

own up. Slang for admitting or confessing.

ox. Any animal within the class known as cattle, but particularly one of a type used in some parts of the world, formerly in this country, as a draft animal. A refined word for bull. Slang for a big boy or man.

oxen. Plural of **ox**.

oxfield. A restitution made by a hundred for an injury which was committed therein.

oxgang. The maximum quantity of land which was tillable by one ox; a quantity reckoned at between thirteen to fifteen acres.

ox-land. Same as **oxgang**.

oyer. To hear. The right to hear an instrument read. A hearing at common law on a bail bond. 8 Am J2d Bail § 154.

oyer and terminer. A special or extraordinary commission which the king sometimes issued upon urgent occasions to try those criminal cases which stood in need of immediate prosecution. See 3 Bl Comm 270.

oyez. Hear ye.

oyster. A marine mollusk, relished as food by most people. Figuratively, a source of benefit or advantage.
See **shellfish**.

oystery. An oyster bed privately cultivated for the production of oysters commercially. A particular kind of fishing, included in a right of fishery. Moulton v Libbey, 37 Me 472.