

ant, and the tenant holds the mesne by the same service that the mesne holds over the lord above him. Tomlins.

OWING. Unpaid. A debt, for example, is owing while it is unpaid, and whether it be due or not. Coquard v. Bank of Kansas City, 12 Mo.App. 261; Musselman v. Wise, 84 Ind. 248; Jones v. Thompson, 1 El. Bl. & El. 64; Succession of Guidry, 40 La. Ann. 671, 4 So. 893.

OWLERS. In English law. Persons who carried wool, etc., to the sea-side by night, in order that it might be shipped off contrary to law. Jacob.

OWLING. In English law. The offense of transporting wool or sheep out of the kingdom; so called from its being usually carried on in the night. 4 Bl. Comm. 154.

OWN. To have a good legal title; to hold as property; to have a legal or rightful title to; to have; to possess. Shepherd v. Maine Cent. R. Co., 112 Me. 350, 92 A. 189; McKennon v. Warnick, 115 Or. 163, 236 P. 1051, 1052; Miller-Link Lumber Co. v. Stephenson, Tex. Civ. App., 265 S.W. 215, 220; Melvin v. Scowley, 213 Ala. 414, 104 So. 817, 820. The term does not necessarily signify absolute ownership in fee. Rydeen v. Clearwater County, 139 Minn. 329, 166 N.W. 334, 335; Makemson v. Dillon, 24 N.M. 302, 171 P. 673, 676; Bush v. State, 128 Ark. 448, 194 S.W. 857. It is not synonymous with "acquire." State v. District Court of Third Judicial Dist. in and for Granite County, 79 Mont. 1, 254 P. 863, 865.

OWNED BY. Although these words may be used synonymously with "belonging to" or "forming part of"; Gilpatric v. City of Hartford, 98 Conn. 471, 120 A. 317, 319; in a stricter sense they denote an absolute and unqualified title, whereas the words "belonging to" do not import that the whole title to property or thing is meant, for a thing may belong to one who has less than an unqualified and absolute title; Baltimore Dry Docks & Ship Building Co. v. New York & P. R. S. S. Co., C.C.A.Md., 262 F. 485, 488.

OWNER. The person in whom is vested the ownership, dominion, or title of property; proprietor. Garver v. Hawkeye Ins. Co., 69 Iowa 202, 28 N.W. 555; McGowan v. Morgan, 145 N.Y.S. 787, 160 App. Div. 588; Cayce Land Co. v. Southern Ry. Co., 111 S.C. 115, 96 S.E. 725, 727; Staples v. Adams, Payne & Gleaves, C.C.A.Va., 215 F. 322, 325. He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right. Miller-Link Lumber Co. v. Stephenson, Tex. Civ. App., 265 S.W. 215, 220; Newborn v. Peart, 121 Misc. Rep. 221, 200 N.Y.S. 890, 892; Hare v. Young, 26 Idaho, 682, 146 P. 104, 106; Johnson v. Crookshanks, 21 Or. 339, 28 P. 78.

The word is not infrequently used to describe one who has dominion or control over a thing, the title to which is in another. Robinson v. State, 7 Ala. App. 172, 62 So. 303, 306. Thus, it may denote the buyer under a conditional sale agreement; Lennon v. L. A. W. Acceptance

Corporation of Rhode Island, 48 R.I. 363, 138 A. 215, 217; a lessee; E. Corey & Co. v. H. P. Cummings Const. Co., 118 Me. 34, 105 A. 405, 407; Texas Bank & Trust Co. of Beaumont v. Smith, 108 Tex. 265, 192 S.W. 533, 534, 2 A.L.R. 771; Hacken v. Isenberg, 288 Ill. 589, 124 N.E. 306, 308; Grattan v. Trego, C.C.A.Kan., 225 F. 705, 708; a pledgee; American Nat. Bank of Tucumcari v. Tarpley, 31 N.M. 667, 250 P. 18, 20; Baxter v. Moore, 56 Ind. App. 472, 105 N.E. 588, 589; and a person for whose benefit a ship is operated on a particular voyage, and who directs and controls it, its officers and crew; Potter v. American Union Line, 185 N.Y.S. 842, 843, 114 Misc. Rep. 101 (see, also, Petition of E. I. Du Pont de Nemours & Co., D.C.N.Y., 18 F.2d 782, 784).

The term is, however, a nomen generalissimum, and its meaning is to be gathered from the connection in which it is used, and from the subject-matter to which it is applied. Warren v. Lower Salt Creek Drainage Dist. of Logan County, 316 Ill. 345, 147 N.E. 248, 249. The primary meaning of the word as applied to land is one who owns the fee and who has the right to dispose of the property, but the term also includes one having a possessory right to land or the person occupying or cultivating it. Dunbar v. Texas Irr. Co., Tex. Civ. App., 195 S.W. 614, 616; McCarthy v. Hansel, 4 Ohio App. 425; Thompson v. Thompson, 79 Or. 513, 155 P. 1190, 1191; McLevis v. St. Paul Fire & Marine Ins. Co., 165 Minn. 468, 206 N.W. 940, 942; Great Northern Ry. Co. v. Oakley, 135 Wash. 279, 237 P. 990, 992; In re Opinion of the Justices, 234 Mass. 597, 127 N.E. 525, 529. Sometimes it includes a lessee; Tobin v. Gartiez, 44 Nev. 179, 191 P. 1063, 1064; but not always; Smith v. Improvement Dist. No. 14 of Texarkana, 108 Ark. 141, 156 S.W. 455, 456, 44 L.R.A., N.S., 696. A mortgagee may be deemed an "owner"; Lindholm v. Hamilton, 159 Minn. 81, 198 N.W. 289, 290; Blaine County Bank v. Noble, 55 Okl. 361, 155 P. 532, 534; Burrill Nat. Bank v. Edminister, 119 Me. 367, 111 A. 423, 424; Merriman v. City of New York, 227 N.Y. 279, 125 N.E. 500, 502; but under different statutes or circumstances, an opposite result may be reached; Huebner v. Lashley, 239 Mich. 50, 214 N.W. 107, 108. The term may likewise, on occasion, include mortgagors; Hendricks v. Town of Julesburg, 55 Colo. 59, 132 P. 61, 63; Smith v. Craver, 89 Wash. 243, 154 P. 156, 158; Borough of Princeton v. State Board of Taxes and Assessments, 96 N.J. L. 334, 115 A. 342, 344.

In theft and burglary cases, the "owner" is the person in possession, having care, control, and management at the time. Cantrell v. State, 105 Tex. Cr. R. 560, 289 S.W. 406, 407; Allen v. State, 94 Tex. Cr. R. 646, 252 S.W. 505; Carson v. State, 30 Okl. Cr. 438, 236 P. 627, 628.

In embezzlement, the principal to whom an agent looks for authority, under whose control he acts, and from whom he receives compensation and takes direction, is the owner within the meaning of statute. Coney v. State, 100 Tex. Cr. R. 380, 272 S.W. 197, 199.

Equitable owner. One who is recognized in equity as the owner of property, because the real and beneficial use and title belong to him, although the bare legal title is vested in another, e. g., a trustee for his benefit. One who has a present title in land which will ripen into legal ownership

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upon the performance of conditions subsequent. *Hawkins v. Stiles*, Tex.Civ.App., 158 S.W. 1011, 1021. There may therefore be two "owners" in respect of the same property, one the nominal or legal owner, the other the beneficial or equitable owner. In *re Fulham's Estate*, 96 Vt. 308, 119 A. 433, 437.

General owner. He who has the primary or residuary title to it; as distinguished from a *special* owner, who has a special interest in the same thing, amounting to a qualified ownership, such, for example, as a bailee's lien. *Farmers' & Mechanics' Nat. Bank v. Logan*, 74 N.Y. 581. One who has both the right of property and of possession.

General and beneficial owner. The person whose interest is primarily one of possession and enjoyment in contemplation of an ultimate absolute ownership;—not the person whose interest is primarily in the enforcement of a collateral pecuniary claim, and does not contemplate the use or enjoyment of the property as such. *Ex parte State*, 206 Ala. 575, 90 So. 896.

Joint owners. Two or more persons who jointly own and hold title to property, *e. g.*, joint tenants, and also partners and tenants in common. In *re Huggins' Estate*, 96 N.J.Eq. 275, 125 A. 27, 30. In its most comprehensive sense, the term embraces all cases where the property in question is owned by two or more persons regardless of the special nature of their relationship or how it came into being. *Halferty v. Karr*, 188 Mo.App. 241, 175 S.W. 146, 147.

An estate by entirety is a "joint ownership" of a husband and wife as at common law notwithstanding legislative enactments touching joint tenancy. *Cullum v. Rice*, 236 Mo.App. 1113, 162 S.W.2d 342, 344.

Legal owner. One who is recognized and held responsible by the law as the owner of property. In a more particular sense, one in whom the legal title to real estate is vested, but who holds it in trust for the benefit of another, the latter being called the "equitable" owner.

Part owners. Joint owners; co-owners; those who have shares of ownership in the same thing, particularly a vessel.

Real owners. Those who must be joined in actions of *scire facias sur mortgage* under Pennsylvania statutes are the present owners of the title under which the mortgagor claimed when he executed the mortgages, and do not include persons claiming by titles antagonistic to the mortgagor. *Orient Building & Loan Ass'n v. Gould*, 239 Pa. 335, 86 A. 863.

Record owner. This term, particularly used in statutes requiring notice of tax delinquency or sale, means the owner of record, not the owner described in the tax roll; *Okanogan Power & Irrigation Co. v. Quackenbush*, 107 Wash. 651, 182 P. 618, 619, 5 A.L.R. 966; the owner of the title at time of notice; *Hunt v. State*, 110 Tex. 204, 217 S.W. 1034, 1035.

Reputed owner. One who has to all appearances the title to, and possession of, property; one who,

from all appearances, or from supposition, is the owner of a thing. *Lowell Hardware Co. v. May*, 59 Colo. 475, 149 P. 831, 832. He who has the general credit or reputation of being the owner or proprietor of goods. *Santa Cruz Rock Pav. Co. v. Lyons*, 5 Cal.Unrep.Cas. 260, 43 P. 601.

This phrase is chiefly used in English bankruptcy practice, where the bankrupt is styled the "reputed owner" of goods lawfully in his possession, though the real owner may be another person. The word "reputed" has a much weaker sense than its derivation would appear to warrant; importing merely a supposition or opinion derived or made up from outward appearances, and often unsupported by fact. The term "reputed owner" is frequently employed in this sense. 2 Steph.Comm. 206.

Riparian owner. See Riparian.

Sole and unconditional owner. An expression commonly used in fire insurance policies, in which the word "sole" means that no one else has any interest in the property as owner, and "unconditional" means that the quality of the estate is not limited or affected by any condition. *Globe & Rutgers Fire Ins. Co. v. Creekmore*, 69 Okl. 238, 171 P. 874, 876; *Hartford Fire Ins. Co. v. McCain*, 141 Miss. 394, 106 So. 529. To be "unconditional and sole," the interest or ownership of the insured must be completely vested, not contingent or conditional, nor in common or jointly with others, but of such nature that the insured must alone sustain the entire loss if the property is destroyed; and this is so whether the title is legal or equitable. *Socicero v. National Union Fire Ins. Co. of Pittsburgh, Pa.*, 90 Fla. 820, 106 So. 879; *Livingstone v. Boston Ins. Co.*, 255 Pa. 1, 99 A. 212, 213.

It is sufficient to satisfy the requirements of "sole and unconditional ownership" that the insured is the sole equitable owner and has the full equitable title. *Turner v. Home Ins. Co.*, 195 Mo.App. 138, 189 S.W. 626, 628; *Alliance Ins. Co. v. Enders, C.C.A.Idaho*, 293 F. 485, 489. It is enough that the insured is equitably entitled to immediate and absolute legal ownership. *Exchange Underwriters' Agency of Royal Exchange Assur. of London, England, v. Bates*, 195 Ala. 161, 69 So. 956, 960. The term contemplates beneficial and practical proprietorship and not necessarily technical title. *Royal Ins. Co. v. Drury*, 150 Md. 211, 132 A. 635, 640, 43 A.L.R. 582. See *Giles v. Citizens' Ins. Co. of Missouri*, 32 Ga.App. 207, 122 S.E. 890, 891.

Special owner. One who has a special interest in an article of property, amounting to a qualified ownership of it, such, for example, as a bailee's lien; as distinguished from the *general* owner, who has the primary or residuary title to the same thing. *Frazier v. State*, 18 Tex.App. 441. Some person holding property with the consent of, and as representative of, the actual owner. *Mathieu v. Roberts*, 31 N.M. 469, 247 P. 1066, 1068.

OWNER'S RISK. An expression employed by carriers with the object of relieving them from responsibility. See [1906] T. S. 973 (So. Afr.); *Heiskell v. Furness, Withy & Co.*, C.C.A.N.Y., 4 F.2d 977, 978.

OWNERSHIP. Collection of rights to use and enjoy property, including right to transmit it to others. *Trustees of Phillips Exeter Academy v. Exeter*, 92 N.H. 473, 33 A.2d 665, 673. The complete dominion, title, or proprietary right in a thing or

claim. The entirety of the powers of use and disposal allowed by law. See Property.

The right of one or more persons to possess and use a thing to the exclusion of others. Civ. Code Cal. § 654. The right by which a thing belongs to some one in particular, to the exclusion of all other persons. Civ. Code La. art. 488. The exclusive right of possession, enjoyment, and disposal; *Thompson v. Kreutzer*, 112 Miss. 165, 72 So. 891; involving as an essential attribute the right to control, handle, and dispose; *Hardinge v. Empire Zinc Co.*, 17 Ariz. 75, 148 P. 306, 310.

Ownership is divided into *perfect* and *imperfect*. Ownership is perfect when it is perpetual, and when the thing is unincumbered with any real right towards any other person than the owner. On the contrary, ownership is imperfect when it is to terminate at a certain time or on a condition, or if the thing which is the object of it, being an immovable, is charged with any real right towards a third person; as a usufruct, use, or servitude. When an immovable is subject to a usufruct, the owner of it is said to possess the naked ownership. Civ. Code La. art. 490; *Maestri v. Board of Assessors*, 110 La. 517, 34 So. 658.

In criminal law. In connection with burglary, "ownership" means any possession which is rightful as against the burglar. *Seaba v. State*, 33 Okl. Cr. 59, 242 P. 779, 780; *State v. Bige*, 195 Iowa, 1342, 193 N.W. 17, 21. It is synonymous with occupancy. *State v. Harrison*, Mo. Sup., 285 S.W. 83, 87; *Carneal v. State*, 86 Tex. Cr. R. 274, 216 S.W. 626. When considered as an element of larceny, "ownership" means the same as "possession." *People v. Edwards*, 72 Cal. App. 102, 236 P. 944, 950.

Exclusive ownership. See Exclusive Ownership.

OXFILD. A restitution anciently made by a hundred or county for any wrong done by one that was within the same. *Lamb. Arch.* 125.

OXGANG. In old English law. As much land as an ox could till. *Co. Litt.* 5a. A measure of land of uncertain quantity. In the north of

England a division of a carucate. According to some, fifteen acres. *Co. Litt.* 69a; *Crompton, Jurisd.* 220. According to Balfour, the Scotch *oxengang*, or *oxgate*, contained twelve acres; but this does not correspond with ancient charters. *Bell, Dict. Ploughgate*. *Skene and Spelman* say thirteen acres. *Cowell*; 1 *Poll. & Maitl.* 347.

See *Librata Terrae*.

OYER. In Old Practice. Hearing; the hearing a deed read, which a party sued on a bond, etc., might pray or demand, and it was then read to him by the other party; the entry on the record being, "*et ei legitur in hæc verba*," (and it is read to him in these words). *Steph. Pl.* 67, 68; 3 *Bl. Comm.* 299; 3 *Salk.* 119.

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

OYER AND TERMINER. A half French phrase applied in England to the assizes, which are so called from the commission of *oyer and terminer* directed to the judges, empowering them to "inquire, hear, and determine" all treasons, felonies, and misdemeanors. This commission is now issued regularly, but was formerly used only on particular occasions, as upon sudden outrage or insurrection in any place. In the United States, the higher criminal courts are called "courts of oyer and terminer." *Burrill*.

OYER DE RECORD. A petition made in court that the judges, for better proof's sake, will hear or look upon any record. *Cowell*.

OYEZ. Hear ye. A word used in courts by the public crier to command attention when a proclamation is about to be made. Usually pronounced "O yes." 4 *Bl. Comm.* 340, n.