

Census

by

Sam Aurelius Milam III
c/o 4984 Peach Mountain Drive
Gainesville, Georgia 30507

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caveat lector

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The requirement for a census is contained within the U.S. Constitution.

....The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law [sic]¹ direct....

—*Constitution for the United States of America*
Article 1, Section 2, clause 3

Pursuant to Article 1, Section 2, clause 3, the Congress has an obligation to conduct a census and to direct how it is to be conducted. However, an obligation of the Congress is not necessarily an obligation for anyone else. Before the U.S. government can legitimately compel any individual to participate in the census, the U.S. Constitution must delegate to the U.S. government the power to do so. Otherwise, such power doesn't exist. Powers not specifically delegated are generally prohibited.

The powers not delegated to the United States by the constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

—*Constitution for the United States of America*
Tenth Amendment

Since the census is a Congressional responsibility, it can be conducted only to the extent that the Congress has jurisdiction. One such jurisdiction is defined in Article 1, Section 8, Clause 17.

[The Congress shall have power] to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings....

—*Constitution for the United States of America*
Article 1, Section 8, clause 17

Since the Congress has the power to enact legislation “in all cases whatsoever” in those territories and since the jurisdiction is based on territory, it's reasonable to suppose that individuals within the territory can be compelled to answer census questions regardless of any other status that they might or might not have.

The Congress is also given legislative jurisdiction over property and territory of the United States.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States;....

—*Constitution for the United States of America*
—Article 4, Section 3, clause 2

However, this delegation of power allows only for rules and regulations respecting the territory or property. There isn't any delegation of power to regulate individuals in the territory or upon the property. Therefore, the mere presence of an individual on territory or property owned by the United States, unless it's territory un-

¹ See the items *sic* and *Law vs. Legislation* in the glossary.

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der the jurisdiction established by Article 1, Section 8, clause 17, doesn't allow the U.S. government to compel an individual to answer census questions.

Other jurisdictions besides territorial ones are established by the U.S. Constitution. Many individuals fall under those jurisdictions. Some of those individuals are the various public officials.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution....

—*Constitution for the United States of America*
—Article 6, Section 3

By this provision, all officers of the federal and State governments are required to support the U.S. Constitution which, of course, contains the requirement for a census. Those individuals have all submitted voluntarily to the jurisdiction and can therefore be legitimately compelled to answer census questions. If they refuse, then the requirement can be enforced, at least at the federal level, by impeachment.

The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

—*Constitution for the United States of America*
—Article 2, Section 4

That should certainly include violation of oath of office.

Public officials aren't the only individuals to come under the jurisdiction of the federal government.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States....

—*Constitution for the United States of America*
—Fourteenth Amendment

This clause says that a citizen is subject to the jurisdiction of the federal government. That's very important because if someone is under its jurisdiction then that means that it has authority over him. It can compel him. How does one get to be a citizen?

... "Citizens" are members of a political community who, in their associated capacity, have established or submitted themselves to the dominion of a government....

—*Black's Law Dictionary*, 1979

You were taught in the government schools that you're automatically a citizen and you probably never questioned it. But are you? According to Black's it isn't automatic. People are citizens if they have "submitted themselves to the dominion of a government". How does one submit oneself to the dominion (jurisdiction) of the federal government? Generally, by taking an oath. One place where that routinely happens is on the INS Form I-9, which is today a prerequisite for employment. On that form, individuals attest under penalty of perjury that they're citizens. If an individual was born in the United States, then completing the oath seals the deal.

Submitting to citizenship means submitting to the jurisdiction of the United States. Another example of the oath is voter's registration. The State of California provides an example of how it works. The Affidavit of Registration² contains a certification of citizenship, which an individual completes under penalty of perjury, again submitting to the jurisdiction of the United States.

The question of citizenship, viewed this way, takes on a whole new importance because the Congress can pass any law that it considers to be necessary and proper to execute all delegated powers.

[The Congress shall have power] to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.
—*Constitution for the United States of America*
—Article 1, Section 8, Clause 18

The obligation to conduct a census can thus be enforced upon anyone under the jurisdiction of the federal government and it can be enforced by any legislation that the Congress considers to be necessary and proper. However, the obligation applies to the Congress, to those individuals upon whom it may be constitutionally imposed, and to no others. An individual who is not bound by a valid oath of citizenship, voluntarily taken, is outside of the lawful jurisdiction of the federal government. Individuals outside of that jurisdiction aren't represented in the Congress and don't need to be counted. Individuals who are under the jurisdiction of the United States should insist on being counted. Since the purpose of the census is to apportion representation and tax obligations of citizens, it's a reasonable arrangement. So long as the census is conducted using properly delegated powers, within the constituted jurisdictions, and without compelling individuals who are outside of those jurisdictions, then there shouldn't be any cause for anybody to complain.

It seems, however, that the intent of the federal government is that everyone, regardless of status, should be compelled to participate in the census. If that results in the exercise of undelegated powers, or in the exercise of powers outside of the constituted jurisdictions, then it will demonstrate the existence of despotism. Any coercion of people into the jurisdictions of the United States would likewise demonstrate the exercise of despotism. A lawful census can be conducted only when those compelled to participate have consented to the powers that compel them and exist voluntarily within the lawful jurisdictions of those powers. The eventual performance of the federal government on this issue remains to be seen. Let's hope that it proves to be more nearly immaculate than has been the case in other areas.

² In California, it isn't a "Voter's Registration Form" as it's commonly called. It's an "Affidavit Of Registration". You should check to see what it is in your state. Also, see the definition of *affidavit* in the glossary.

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Glossary

AFFIDAVIT In Practice. A statement or declaration reduced to writing, and sworn or affirmed to before some officer who has authority to administer an oath or affirmation.

It differs from a deposition in this, that in the latter the opposite party has an opportunity to cross-examine the witness, whereas an affidavit is always taken *ex parte*; Gresley, Eq. Ev. 413; 3 Blatch. 456.

An affidavit includes the oath, and may show what facts the affiant swore to, and thus be available as an oath, although unavailable as an affidavit; 28 Wis. 460.

By general practice, affidavits are allowable to present evidence upon the hearing of a motion, although the motion may involve the very merits of the action; but they are not allowable to present evidence on the trial of an issue raised by the pleadings. Here the witnesses must be produced before the adverse party. They are generally required on all motions to open defaults or to grant delay in the proceedings and other applications by the defendant addressed to the favor of the court.

Formal parts.—An affidavit must intelligibly refer to the cause in which it is made. The strict rule of the common law is that it must contain the exact title of the cause. This, however, is not absolutely essential; 80 Ill. 307. The place where the affidavit is taken must be stated, to show that it was taken within the officer's jurisdiction; 1 Barb. Ch. Pr. 601. The deponent must sign the affidavit at the end; 11 Paige, Ch. 173. The jurat must be signed by the officer with the addition of his official title. In the case of some officers the statutes conferring authority to take affidavits require also his seal to be affixed.

In general, an affidavit must describe the deponent sufficiently to show that he is entitled to offer it; for example, that he is a party, or agent or attorney of a party, to the proceeding; 7 Hill, 177; 4 Denio, 71, 258; and this matter must be stated, not by way of recital or as mere description, but as an allegation in the affidavit; 3 N. Y. 41; 8 *id.* 158.

—*Bouvier's Law Dictionary*, 1889

Citizen. One who, under the Constitution and laws of the United States, or of a particular state, is a member of the political community, owing allegiance and being entitled to the enjoyment of full civil rights. All persons born or naturalized in the United States, and subject to the jurisdic-

tion thereof, are citizens of the United States and of the state wherein they reside. U.S. Const., 14th Amend.

The term may include or apply to children of alien parents born in United States, *Von Schwerdtner v. Piper*, D.C.Md., 23 F.2d 862, 863; *U. S. v. Minoru Yasui*, D.C.Or., 48 F.Supp., 40, 54; children of American citizens born outside United States, *Haaland v. Attorney General of United States*, D.C.Md., 42 F.Supp. 13, 22; *Indians, United States v. Hester*, C.C.A.Okl., 137 F.2d 145, 147; *State v. McAlhaney*, 220 N.C. 387, 17 S.E.2d 352, 354; national banks, *American Surety Co. v. Bank of California*, C.C.A.Or., 133 F.2d 160, 162; nonresident who has qualified as administratrix of estate of deceased resident, *Hunt v. Noll*, C.C.A.Tenn., 112 F.2d 288, 289. However, neither the United States nor a state is a citizen for purposes of diversity jurisdiction. *Skandia American Reinsurance Corp. v. Schenck*, 441 F.Supp. 715; *Jizemerjian v. Dept. of Air Force*, 457 F.Supp. 820. On the other hand, municipalities and other local governments are deemed to be citizens. *Rieser v. District of Columbia*, 563 F.2d 462. A corporation is not a citizen for purposes of privileges and immunities clause of the Fourteenth Amendment, *D. D. B. Realty Corp. v. Merrill*, 232 F.Supp. 629, 637.

“Citizens” are members of a political community who, in their associated capacity, have established or submitted themselves to the dominion of a government for the promotion of their general welfare and the protection of their individual as well as collective rights. *Herriott v. City of Seattle*, 81 Wash.2d 48, 500 P.2d 101, 109.

—*Black's Law Dictionary*, 1979

CONGRESS The name of the legislative body of the United States, composed of the senate and house of representatives (*q.v.*). U.S. Const. art. 1, sec. 1

—*Bouvier's Law Dictionary*, 1889

Law vs. Legislation — The term *law* properly addresses things that are inherent or fundamental. It addresses things that men observe or discover, such as the law of gravity or the law of supply and demand. Laws operate of their own accord, whether or not any man is even aware of them. They don't require enforcement by men. Any violation of a law will result in a consequence, without the intervention of men. The term *legislation* properly addresses the proclamations and declarations of men, usually intended to compel or to prohibit some specified behavior. Legislation

doesn't operate of its own accord. The violation of legislation might not cause any consequence at all unless such violation is observed by men and such consequence is enforced by men.

—*Milam's Dictionary of Distinctions, Differences, and Other Odds and Ends*, 2009

Lawful. Legal; warranted or authorized by the law; having the qualifications prescribed by law: not contrary to nor forbidden by the law.

The principal distinction between the terms "lawful" and "legal" is that the former contemplates the substance of law, the latter the form of law. To say of an act that it is "lawful" implies that it is authorized, sanctioned, or at any rate not forbidden, by law. To say that it is "legal" implies that it is done or performed in accordance with the forms and usages of law, or in a technical manner. In this sense "illegal" approaches the meaning of "invalid." For example, a contract or will, executed without the required formalities, might be said to be invalid or illegal, but could not be described as unlawful. Further, the word "lawful" more clearly implies an ethical content than does "legal." The latter goes no further than to denote compliance, with positive, technical, or formal rules; while the former usually imports a moral substance or ethical permissibility. A further distinction is that the word "legal" is used as the synonym of "constructive," which "lawful" is not. Thus "legal fraud" is fraud implied or inferred by law, or made out by construction. "Lawful fraud" would be a contradiction of terms. Again, "legal" is used as the antithesis of "equitable." Thus, we speak of "legal assets," "legal estate," etc., but not of "lawful assets," or "lawful estate." But there are some connections in which the two words are used as exact equivalents. Thus, a "lawful" writ, warrant, or process is the same as a "legal" writ, warrant, or process.

See also **Legal**; **Legitimate**; **Valid**.

—*Black's Law Dictionary*, 1979

Oath. Any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully, *e.g.* President's oath on entering office, Art. II, Sec. 1, U.S. Const. *Vaughn v. State*, 146 Tex.Cr.R. 586, 177 S.W.2d 59, 60. An affirmation of truth of a statement, which renders one willfully asserting untrue statements punishable for perjury. An outward pledge by the person taking it that his attestation or promise is made under an immediate sense of responsibility to God. A solemn appeal to the Supreme Being in attestation of the truth of some statement. An external pledge or

asseveration, made in verification of statements made, or to be made, coupled with an appeal to a sacred or venerated object, in evidence of the serious and reverent state of mind of the party, or with an invocation to a supreme being to witness the words of the party, and to visit him with punishment if they be false. In its broadest sense, the term is used to include all forms of attestation by which a party signifies that he is bound in conscience to perform the act faithfully and truly. In a more restricted sense, it excludes all those forms of attestation or promise which are not accompanied by an imprecation.

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

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

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

Corporal oath. See **Corporal oath**.

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

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

False oath. See **False swearing**; **Perjury**.

Judicial oath. One taken in some judicial proceeding or in relation to some matter connected with judicial proceedings. One taken before an officer in open court, as distinguished from a "non-judicial" oath, which is taken before an officer *ex parte* or out of court. See also *Witnesses*, below.

Loyalty oath. An oath requiring one to swear his loyalty to the state and country generally as a condition of public employment. Such oaths which are not overbroad have been upheld. Elf-

brandt v. Russell, 384 U.S. 11, 86 S.Ct. 1238, 16 L.Ed.2d 321; Cole v. Richardson, 405 U.S. 676, 92 S.Ct. 1332, 31 L.Ed.2d 593. See also **Oath of allegiance**.

Official oath. One taken by an officer when he assumes charge of his office, whereby he declares that he will faithfully discharge the duties of the same, or whatever else may be required by statute in the particular case. See Art. VI, U.S. Const.

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

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

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

Solemn oath. A corporal oath.

Suppletory oath. In the civil and ecclesiastical law, the testimony of a single witness to a fact is called "half-proof," on which no sentence can be founded; in order to supply the other half of proof, the party himself (plaintiff or defendant) is admitted to be examined in his own behalf, and the oath administered to him for that purpose is called the "suppletory oath," because it supplies the necessary *quantum* of proof on which to found the sentence. This term, although without application in American law in its original sense, is sometimes used as a designation of a party's oath required to be taken in authentication or support of some piece of documentary evidence which he offers, for example, his books of account.

Voluntary oath. Such as a person may take in extra-judicial matters, and not regularly in a court of justice, or before an officer invested with authority to administer the same.

Witnesses. Before testifying, every witness shall be required to declare that he will testify, truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

Fed.Evid.R. 603. See also *Affirmation in lieu of oath*, above. —*Black's Law Dictionary*, 1979

OBLIGATION (from Lat. *obligo, ligo*, to bind). A duty.

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

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

A deed whereby a man binds himself under a penalty to do a thing. Comyns, Dig. *Obligation* (A); 2 S. & R. 502; 6 Vt. 40; 1 Blackf. 241; Harp. 434; Baldw. 129.

An *absolute* obligation is one which gives no alternative to the obligor, but requires fulfilment (sic) according to the engagement.

An *accessory* obligation is one which is dependent on the principal obligation; for example, if I sell you a house and lot of ground, the principal obligation on my part is to make you a title for it; the accessory obligation is to deliver you all the title-papers which I have relating to it, to take care of the estate till it is delivered to you, and the like.

An *alternative* obligation is where a person engages to do or to give several things in such a manner that the payment of one will acquit him of all.

Thus, if A agrees to give B, upon a sufficient consideration, a horse, or one hundred dollars, it is an *alternative* obligation. Pothier, Obl. pt. 2, c. 3, art. 6, no. 245.

In order to constitute an alternative obligation, it is necessary that two or more things should be promised disjunctively: where they are promised conjunctively, there are as many obligations as the things which are enumerated; but where they are in the alternative, though they are all due, there is but one obligation, which may be discharged by the payment of any of them.

The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that it shall belong to the creditor; Dougl. 14; 1 Ld.Raym. 279; 4 Mart. La. N.S. 167. If one of the acts is prevented by the obligee or the act of God, the obligor is discharged from both. See 2 Evans, Pothier, Obl. 52-54; Viner, Abr. *Condition* (S b); **CONJUNCTIVE**; **DISJUNCTIVE**; **ELECTION**.

A *civil* obligation is one which has a binding operation in law, and which gives to the obligee the right of enforcing it in a court of justice; in other words, it is an engagement binding on the obligor. 4 Wheat. 197; 12 *id.* 318, 337.

Civil obligations are divided into express and implied, pure and conditional, primitive and secondary, principal and accessory, absolute and alternative, determinate and indeterminate, divisible and indivisible, single and penal, and joint and several. They are also purely personal, purely real, or mixed.

A *conditional* obligation is one the execution of which is suspended by a condition which has not been accomplished, and subject to which it has been contracted.

A *determinate* obligation is one which, has for its object a certain thing: as, an obligation to deliver a certain horse named Bucephalus. In this case the obligation can only be discharged by delivering the identical horse.

A *divisible* obligation is one which, being a unit, may nevertheless be lawfully divided with or without the consent of the parties.

It is clear that it may be divided by consent, as those who made it may modify or change it as they please. But some obligations may be divided without the consent of the obligor: as, where a tenant is bound to pay two hundred dollars a year rent to his landlord, the obligation is entire; yet, if his landlord dies and leaves two sons, each will be entitled to one hundred dollars; or if the landlord sells one undivided half of the estate yielding the rent, the purchaser will be entitled to receive one hundred dollars and the seller the other hundred. See APPORTIONMENT.

Express or conventional obligations are those by which the obligor binds himself in express terms to perform his obligation.

Imperfect obligations are those which are not binding on us as between man and man, and for the non-performance of which we are accountable to God only: such as charity or gratitude. In this sense an obligation is it mere duty. Pothier, Obl. art. pré. n. 1.

An *implied* obligation is one which arises by operation of law: as for example, if I send you daily a loaf of bread, without any express authority, and you make use of it in your family, the law raises an obligation on your part to pay me the value of the bread.

An *indeterminate* obligation is one where the obligor binds himself to deliver one of a certain species: as, to deliver a horse, where the delivery of any horse will discharge the obligation.

An *indivisible* obligation is one which is not susceptible of division: as, for example if I promise to pay you one hundred dollars, you cannot assign one-half of this to another, so as to give him a right of action against me for his share. See DIVISIBLE.

A *joint* obligation is one by which several obligors promise to the obligee to perform the obligation. When the obligation is only joint, and the obligors do not promise separately to fulfil (sic) their engagement, they must be all sued, if living, to compel the performance: or, if any be dead, the survivors must all be sued. See PARTIES TO ACTIONS.

A *natural* or *moral* obligation is one which cannot be enforced by action, but which is binding on the party who makes it in conscience and according to natural justice.

As, for instance, when the action is barred by the act of limitation, a natural obligation still subsists, although the civil obligation is extinguished; 5 Binn. 573. Although natural obligations cannot be enforced by action, they have the following effect; *first*, no suit will lie to recover back what has been paid or given in compliance with a natural obligation: 1 Term, 285; 1 Dall. 184; *second*, a natural obligation has been held to be a sufficient consideration for a new contract; 2 Binn. 591; 5 *id.* 33; Yelv. 41 a, n. 1; Cowp. 290; 2 Bla. Com. 445; 3 Bos. & P. 249, n.; 2 East, 506; 3 Taunt. 311; 5 *id.* 36; 3 Pick. 207; Chitty, Contr. 10; but see MORAL OBLIGATION; CONSIDERATION.

A *penal* obligation is one to which is attached a penal clause, which is to be enforced if the principal obligation be not performed. See LIQUIDATED DAMAGES.

A *perfect* obligation is one which gives a right to another to require us to give him something or not to do something. These obligations are either natural or moral, or they are Civil.

A *personal* obligation is one by which the obligor binds himself to perform an act, without directly binding his property for its performance.

It also denotes an obligation in which the obligor binds himself only, not including his heirs or representatives.

A *primitive* obligation, which in one sense may also be called a principal obligation, is one which

is contracted with a design that it should itself be the first fulfilled.

A *principal* obligation is one which is the most important object of the engagement of the contracting parties.

A *pure* or simple obligation is one which is not suspended by any condition, either because it has been contracted without condition, or, having been contracted with one, it has been fulfilled.

A *real* obligation is one by which real estate, and not the person, is liable to the obligee for the performance.

A familiar example will explain this. When an estate owes an easement as a right of way, it is the thing, and not the owner, who owes the easement. Another instance occurs when a person buys an estate which has been mortgaged, subject to the mortgage: he is not liable for the debt, though the estate is. In these cases the owner has an interest only because he is seised of the servient estate or the mortgaged premises, and he may discharge himself by abandoning or parting with the property. The obligation is both personal and real when the obligor has bound himself and pledged his estate for the fulfilment of his obligations.

A *secondary* obligation is one which is contracted and is to be performed in case the *primitive* cannot be. For example, if I sell you my house, I bind myself to give a title: but I find I cannot, as the title is in another: then my *secondary* obligation is to pay you damages for my non-performance of my obligation.

A *several* obligation is one by which one individual, or, if there be more, several individuals, bind themselves separately to perform the engagement. In this case each obligor may be sued separately; and if one or more be dead, their respective executors may be sued. See PARTIES TO ACTIONS.

A *single* obligation is one without any penalty: as where I simply promise to pay you one hundred dollars. This is called a single bill, when it is under seal. —*Bouvier's Law Dictionary*, 1889

Obligation. A generic word, derived from the Latin substantive "obligatio," having many, wide, and varied meanings, according to the context in which it is used. That which a person is bound to do or forbear; any duty imposed by law, promise, contract, relations of society, courtesy, kindness, etc. *Rucks-Brandt Const. Co. v. Price*, 165 Okl. 178, 23 P.2d 690; *Helvering v. British-American Tobacco Co.*, C.C.A., 69 F.2d 528, 530. Law or

duty binding parties to perform their agreement. An undertaking to perform. That which constitutes a legal or moral duty and which renders a person liable to coercion and punishment for neglecting it; a word of broad meaning, and the particular meaning intended is to be gained by consideration of its context. An obligation or debt may exist by reason of a judgement as well as an express contract, in either case there being a legal duty on the part of the one bound to comply with the promise. *Schwartz v. California Claim Service*, 52 Cal.App.2d 47, 125 P.2d 883, 888. Liabilities created by contract or law (*i.e.* judgements). *Rose v. W. B. Worthen Co.*, 186 Ark. 205, 53 S.W.2d 15, 16. As legal term word originally meant a sealed bond, but it now extends to any certain written promise to pay money or do a specific thing. *Lee v. Kenan*, C.C.A.Fla., 78 F.2d 425. A formal and binding agreement or acknowledgment of a liability to pay a certain sum or do a certain thing. *United States v. One Zumstein Briefmarken Katalog 1938*, D.C.Pa., 24 F.Supp. 516, 519. The binding power of a vow, promise, oath, or contract, or of law, civil, political, or moral, independent of a promise; that which constitutes legal or moral duty.

See also **Contract; Duty; Liability.**

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

Conjunctive or alternative obligation. The former is one in which the several objects in it are connected by a copulative, or in any other manner which shows that all of them are severally comprised in the contract. This contract creates as many different obligations as there are different objects; and the debtor, when he wishes to discharge himself, may force the creditor to receive them separately. But where the things which form the object of the contract are separated by a disjunctive, then the obligation is alternative, and the performance of either of such things will discharge the obligor. The choice of performing one of the obligations belongs to the obligor, unless it is expressly agreed that it shall belong to the creditor. A promise to deliver a certain thing or to pay a specified sum of money is an example of an alternative obligation. *Civ.Code La. arts. 2063, 2066, 2067.*

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

Current obligation. See **Current obligations.**

Determinate or indeterminate obligation. A determinate obligation is one which has for its ob-

ject a certain thing; as, an obligation to deliver a certain horse named Bucephalus, in which case the obligation can be discharged only by delivering the identical horse. An indeterminate obligation is one where the obligor binds himself to deliver one of a certain species: as, to deliver a horse, where the delivery of any horse will discharge the obligation.

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

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

Failure to meet obligations. See **Failure to meet obligations.**

Joint or several obligation. A joint obligation is one by which two or more obligors bind themselves jointly for the performance of the obligation. A several obligation is one where the obligors promise, each for himself, to fulfill the engagement.

Moral obligation. A duty which is valid and binding in conscience and according to natural justice, but is not recognized by the law as adequate to set in motion the machinery of justice; that is, one which rests upon ethical considerations alone, and is not imposed or enforced by positive law. A duty which would be enforceable by law, were it not for some positive rule, which, with a view to general benefit, exempts the party in that particular instance from legal liability. See also **Love and affection.**

Natural or civil obligation. A natural obligation is one which cannot be enforced by action, but which is binding on the party who makes it in conscience and according to natural justice. As, for instance, when the action is barred by the act of limitation, a natural obligation still subsists, although the civil obligation is extinguished. *Ogden v. Saunders*, 25 U.S. 213, 337, (12 Wheat.) 6 L.Ed. 606. A civil obligation is a legal tie, which gives the party with whom it is contracted the right of enforcing its performance by law.

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

Perfect or imperfect obligation. A perfect obligation is one recognized and sanctioned by positive law; one of which the fulfillment can be enforced by the aid of the law. But if the duty created by the obligation operates only on the moral sense, without being enforced by any positive law, it is called an "imperfect obligation," and creates no right of action, nor has it any legal operation. The duty of exercising gratitude, charity, and the other merely moral duties are examples of this kind of obligation. *Edwards v. Kearzey*, 96 U.S. 595, 600, 24 L.Ed. 793.

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

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

Primary or secondary obligation. An obligation which is the principal object of the contract. For example, the primary obligation of the seller is to deliver the thing sold, and to transfer the title to it. It is distinguished from the accessory or secondary obligation to pay damages for not doing so. The words "primary" and "direct," contrasted with "secondary," when spoken with reference to an obligation, refer to the remedy provided by law for enforcing the obligation, rather than to the character and limits of the obligation itself.

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

then his secondary obligation is to pay damages for nonperformance of the obligation.

Principal or accessory obligation. A principal obligation is one which arises from the principal object of the engagement of the contracting parties; while an accessory obligation depends upon or is collateral to the principal. For example, in the case of the sale of a house and lot of ground, the principal obligation on the part of the vendor is to make title for it; the accessory obligation is to deliver all the title-papers which the vendor has relating to it, to take care of the estate until it is delivered, and the like. See, further, the title **Accessory obligation.**

Pure obligation. One which is not suspended by any condition, whether it has been contracted without any condition, or, when thus contracted, the condition has been accomplished. See *Simple or conditional obligation.*

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

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

Solidary obligation. In the law of Louisiana, one which binds each of the obligors for the whole debt, as distinguished from a "joint" obligation, which binds the parties each for his separate

proportion of the debt. *Groves v. Sentell*, 153 U.S. 465, 14 S.Ct. 898, 38 L.Ed. 785. See **Solidary.** —*Black's Law Dictionary*, 1979

obligation *n.* **1.** The act of binding oneself by a social, legal, or moral tie. **2.a.** A social, legal, or moral requirement, such as a duty, contract, or promise that compels one to follow or avoid a particular course of action. **b.** A course of action imposed by society, law, or conscience by which one is bound or restricted. **3.** The constraining power of a promise, contract, law, or sense of duty. **4. Law.** **a.** A legal agreement stipulating a specified payment or action, especially if the agreement also specifies a penalty for failure to comply. **b.** The document containing the terms of such an agreement. **5.a.** Something owed as payment or in return for a special service or favor. **b.** The service or favor for which one is indebted to another. **6.** The state, fact, or feeling of being indebted to another for a special service or favor received....

SYNONYMS: *obligation, responsibility, duty.* These nouns refer to a course of action that is demanded of a person, as by law or conscience. *Obligation* usually applies to a specific constraint arising from a particular cause: "*Then in the marriage union, the independence of the husband and wife will be equal, their dependence mutual, and their obligations reciprocal*" (Lucretia Mott). *Responsibility* stresses accountability for the fulfillment of an obligation: "*I believe that every right implies a responsibility; every opportunity, an obligation; every possession, a duty*" (John D. Rockefeller, Jr.). *Duty* applies especially to constraint deriving from moral or ethical considerations: "*I therefore believe it is my duty to my country to love it, to support its Constitution, to obey its laws, to respect its flag, and to defend it against all enemies*" (William Tyler Page).

—*The American Heritage Dictionary of the English Language*, 1992

sic, adv. [L.] Thus; it is so; in a quotation, used within brackets in order to call attention to the fact that the quotation is literally given, though containing an ingrammaticism or a misstatement; as, whom [sic] do men say that I am?

—*Webster's Universal Dictionary of the English Language*, 1910-1911

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