

**1993 California Vehicle Code
(Through the 1992 Legislative Session)**

[NOTE: This is a study of licensing, registration and related issues (e.g., contract, quasi-contract, etc.). The Vehicle Code (Motor Vehicle Act; e.g., Statutes of California of 1905, 1907, 1913, 1915, 1917, 1919, 1923, 1927, 1929, 1931), has been researched, by section (double-indented in the following document), and related statutes have also been studied. Many sections have been clarified and many words defined by resort to various constitutional, statutory, case citations, and other sources, each of which is identified. Any and all supplemental information is welcome. Robert D. Ferlingere, c/o USPS P.O. Box 437, Pine Grove, Amador County, California, ZIP Code exempt (DMM 122.32).]

"FOREWORD

"... The State Edition of the Vehicle Code contains the text recodified by Chapter 3, Statutes of 1959, as amended by chapters enacted subsequently in the Statutes of 1959 through 1992. ... Prior to 1967 the Legislature met every other year (in odd-numbered years) to consider matters of general legislation. ... The Vehicle Code was published every other year, following the full sessions of the Legislature. ... For legislative history of the Vehicle Code as enacted in Chapter 27, Statutes of 1935, and of its sections prior to the 1959 recodification, reference may be made to the 1957 or earlier printings of the Vehicle Code in the State Edition, or to an annotated edition. Most editions of the code published in 1959 and 1961 contain Tables of Derivation and Disposition of the sections renumbered in the 1959 recodification. For purposes of the State Edition, these tables were deemed to be of diminishing reference value effective with the 1963 edition, and have not been included in subsequent issues."

"**RE**, a prefix or inseparable particle in the composition of words, denotes return, repetition, iteration. It is contracted from *red*, which the Latins retained in words beginning with a vowel, as in *redamo*, *redeo*, *redintegro*; Ar. (symbols omitted) *radda*, to return, restore, bring back, *repel*, to answer. Class Rd. No. 1. From the Latin or the original Celtic, the Italians, Spanish and French have their *re*, *ra*, as prefixes. In a few English words, all or most of which, I believe, we receive from the French, it has lost its appropriate signification, as in *rejoice*, *recommend*, *receive*." *American Dictionary of the English Language*, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. II, p. 51.

"**re-**, [from Fr. or L.; Fr. *re-*, *ré-*; L. *re-*; *red-*, back, back-ward.]

...

"2. a prefix meaning *again*, *anew*, *over again*, as in *reappear*, *retell*.

"When hyphenated, it is used (a) to distinguish between a word in which the prefix means simply *again* or *anew* and a word of similar form having a special meaning or meanings (e.g., *re-sound*, *resound*); ..."

Webster's New Twentieth Century Dictionary, Unabridged, Second Edition, 1956, p. 1499.

"CODIFICATION. Process of collecting and arranging the laws of a country or state into a code, *i.e.*, into a complete system of positive law, scientifically ordered, and promulgated by legislative authority." *Black's Law Dictionary, Third Edition, 1933, West Publishing Co., p. 345; Black's, Revised Fourth Edition, 1968, p. 324.*

"codify ..., *v.t.*; *codified, pt., pp.*; *codifying, ppr.* to arrange (laws, etc.) systematically; to reduce a code or digest, as laws." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition, 1956, p. 350.*

"AN ACT TO ESTABLISH A COMMERCIAL CODE, THEREBY CONSOLIDATING AND REVISING THE LAW RELATING TO CERTAIN COMMERCIAL TRANSACTIONS IN OR REGARDING PERSONAL PROPERTY AND CONTRACTS AND OTHER DOCUMENTS CONCERNING THEM, INCLUDING SALES, COMMERCIAL PAPER, ... WAREHOUSE RECEIPTS, BILLS OF LADING, OTHER DOCUMENTS OF TITLE, ... INCLUDING ... CONTRACT RIGHTS; ... REGULATING PROCEDURE, EVIDENCE AND DAMAGES IN CERTAIN COURT ACTIONS INVOLVING SUCH TRANSACTIONS, CONTRACTS OR DOCUMENTS; TO MAKE UNIFORM THE LAW WITH RESPECT THERETO; AMENDING VARIOUS SECTIONS OF THE CIVIL CODE, CODE OF CIVIL PROCEDURE, CORPORATIONS CODE, FINANCIAL CODE AND VEHICLE CODE, TO MAKE THEM CONSISTENT THEREWITH ...

"[Enacted Stats 1963 ch 819; Approved June 8, 1963; Effective January 1, 1965.] *Deering's California Codes, Annotated, Uniform Commercial Code, Bancroft-Whitney, 1986, p. 1.* [NOTE: All Commercial Code cites are from this edition, unless otherwise noted.]

"VEHICLE CODE

"An act to repeal and re-enact the Vehicle Code.

"[Chapter 3, Statutes of 1959, as amended to the close of the Regular Session of the Legislature in 1990.]

"The people of the State of California do enact as follows:

"GENERAL PROVISIONS

"Continuation of Existing Law

"2. The provisions of this code, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments."

"insofar, *adv.* to the degree that (with *as*); *as, insofar as* I can say now, I shall come: often *in so far.* *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition, 1956, p. 949.*

"CONSTRUE, *v.t.* [L. *construo.* See *Construct.*]

"1. To arrange words in their natural order; to reduce from a transposed

to a natural order, so as to discover the sense of a sentence; hence, to interpret; and when applied to a foreign language, to translate; to render into English; as, to *construe* Greek, Latin or French.

"2. To interpret; to explain; to show or to understand the meaning.

"I pray that I may not be so understood or *construed*."

"Hooker.

"Thus we are put to *construe* and paraphrase our own words.

"*Stillingfleet*."

American Dictionary of the English Language, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. I, p. 47.

"**construe**, *v.t.*; *construed*, *pt.*, *pp.*; *construing*, *p pr.* [ME. *construen*, to interpret, *construe*; L. *construere*, to heap up, bring together; from *com-*, together, and *struere*, to heap, or pile up.]

"1. to analyze (a clause, etc.) so as to show its grammatical construction and meaning.

"2. to translate.

"3. to explain or deduce the meaning of; interpret; as her sudden departure was *construed* as an insult.

"4. to infer or deduce.

"5. in grammar, to combine in syntax; as, the verb *let*, unlike *permit*, is *construed* with an infinitive omitting the *to*." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition*, 1956, p. 392.

"**restatement**, *n.* 1. a restating or being restated.

"2. a statement made again.

"3. a statement (of something stated before) in a new form."

Webster's New Twentieth Century Dictionary, Unabridged, Second Edition, 1956, p. 1544.

"**CONTINUATION**, *n.* [L. *continuatio*.] Extension of existence in a series or line; succession uninterrupted.

"These things must be the works of providence, for the *continuation* of the species." Ray."

American Dictionary of the English Language, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. I, p. 47.

"**continuation**, *n.* 1. a keeping up or going on without interruption; prolonged and unbroken existence or maintenance.

"2. a taking up or beginning again after an interruption; resumption.

"3. a part or thing added to make something reach further or last longer; extension; supplement; sequel." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition*, 1956, p. 395.

"**new**, *a.*; *comp.* newer; *superl.* newest. [AS. *niwe*, *neowe*, *new*; compare D. *nieuw*, Dan. and Sw. *ny*, Ice. *nyr*, Goth. *niujis*, O.H.G. *niwi*, *niuwi*, Lith. *naujas*, L. *novus*, Gr. *neos*, Sans. *navas*, *new*.] "1. never

existing before; appearing, thought of, developed, made, produced, etc. for the first time.

...

"**Syn.**—novel, fresh, modern, recent, young."

"**new**, adv. 1. lately; newly; recently: often used in hyphenated compounds ...

"2. again."

"**new**, n. something new." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition, 1956, pp. 1208-1208.*

"**ENACTMENT**, n. The passing of a bill into a law; the act of voting, decreeing and giving validity to a law.

"*Christian Observer. Walsh.*"

American Dictionary of the English Language, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. I, p. 72.

"**enactment**, n. 1. the passing of a bill into a law; the act of voting, decreeing, and giving validity to a law.

"2. a statute; a law enacted; an act; a decree." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition, 1956, p. 596.*

"*Pending Proceedings and Accrued Rights*

"4. No action or proceeding commenced before this code takes effect, and no right accrued, is affected by the provisions of this code, but all procedure taken therein shall conform to the provisions of this code so far as possible."

"**ACCRUED RIGHT.** As used in Constitution, a matured cause of action, or legal authority to demand redress. *Morley v. Hurst, 174 Okl. 2, 49 P.2d 546, 648.*" *Black's Law Dictionary, Revised Fourth Edition, West Publishing Co., 1968, p. 38.*

"**ACCRUE**, v.i. *accru.* [Fr. *accroitre, accru*, to increase; L. *accresco, cresco*; Sp. *crecer* and *acrecer*; It. *crescere, accrescere*; Port. *crecer*; Arm. *crisqi*.]

"Literally, to grow to; hence to arise, proceed or come ; to be added, as increase, profit or damage; as, a profit accrues to government from the coinage of copper; a loss accrues from the coinage of gold and silver.

"**ACCRUE**, n. *accru.* Something that accedes to, or follows the property of another. *Obs.*" *American Dictionary of the English Language, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. I, p. 2.*

"**AFFECT** v.t. [L. *afficio, affectum*, of *ad* and *facio*, to make; L. *affecto*, to desire, from the same root. *Affect* is to make to, or upon, to press upon.]

"1. To act upon; to produce an effect or change upon; as, cold affects the body; loss affects our interests." *American Dictionary*

of the English Language, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. I, p. 5.

"AFFECT. To act upon; influence; change; enlarge or abridge; often used in the sense of acting injuriously upon persons and things. Ryan v. Carter, 93 U.S. 84, 23 L.Ed. 807; Tyler v. Wells, 2 Mo.App. 538; Holland v. Dickerson, 41 Iowa 373; Meurer v. Hooper, Tex.Civ.App., 271 S.W. 172, 177. Does not mean to impair. Harris v. Friend, 24 N.M. 627, 175 P. 722, 725. To lay hold of or attack (as a disease does); to act, or produce an effect upon; to impress or influence (the mind or feelings); to touch. State v. Hurd, 5 Wash.2d 308, 105 P.2d 59, 61, 62. Acted upon, influenced, concerned. In re National Lock Co., D.C.Ill., 9 F.Supp. 432, 433. Implies an indirect relation. Chapman v. Home Ice Co., D.C.Tenn., 43 F.Supp. 424, 428." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 79.

"Constitutionality

"5. If any portion of this code is held unconstitutional, such decision shall not affect the validity of any other portion of this code."

"It is a fundamental guaranty of American constitutional government that no person shall be deprived of his liberty without due process of law. The liberty thus guaranteed by the federal and state Constitutions is a very broad and extensive concept. Judicial interpretation has given to this word as so used its most comprehensive signification; it has been said to embrace every form and phase of individual right that is not necessarily taken away by some valid law for the common good. [*Wright v. Hart*, 182 N.Y. 330, 75 N.E. 404, 2 L.R.A.(N.S.) 338, 3 Ann.Cas 263; *Drexel, Ex parte*, 147 Cal 763, 82 P 429, 2 L.R.A.(N.S.) 147, 128 Ann.Cas 878 (The word "liberty," as used in the Constitution of the United States and the several states, means the right to do such acts as one may judge best for his interest, not inconsistent with the rights of others.)] ... The right to liberty guaranteed by a Constitution includes the right to exist [*Pavesich v. New England Mut. L. Ins. Co.*, 122 Ga. 190, 50 S.E. 68, 69 L.R.A. 101, 106 Am.St.Rep 104, 2 Ann.Cas 561] and the right to the enjoyment of life while existing, and is invaded not only by a deprivation of life, but also by a deprivation of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual [*Ibid.*]

"Liberty consists partially of the right to be free from arbitrary personal restraint or servitude [*Smith v. Texas*, 233 U.S. 630, 58 L.Ed 1129, 34 S.Ct 681, L.R.A. 1915D, 677, Ann.Cas 1915D, 420; *Watertown v. Christnacht*, 39 S.D. 290, 164 N.W. 62, L.R.A. 1917F, 903; *Block v. Schwartz*, 27 Utah 387, 76 P 22, 65 L.R.A. 308, 101 Am.St.Rep 971, 1Ann.Cas 550]. In this sense it consists largely of freedom from arbitrary physical restraint [*Moyers v. Memphis*, 135 Tenn 263, 186 S.W. 105, Ann.Cas 1918C, 854; *Ex parte Hudgins*, 86 W.Va 526, 103 S.E. 327, 9 A.L.R. 1361].

"Personal liberty largely consists of the right of locomotion—to go where and when one pleases—only so far restrained as the rights of others

may make it necessary for the welfare of all other citizens [*Williams v. Fears*, 179 U.S. 270, 45 L.Ed 186, 21 S.Ct 128; *Pinkerton v. Verberg*, 78 Mich 573, 44 N.W. 579, 7 L.R.A. 507, 18 Am.St.Rep 473; *Watertown v. Christnacht*, 39 S.D. 290, 164 N.W. 62, L.R.A. 1917F, 903]. The right of a citizen to travel upon the highways and to transport his property thereon, by horse-drawn carriage, wagon, or automobile, is not a mere privilege which may be permitted or prohibited at will, but a common right which he has under his right to life, liberty, and the pursuit of happiness [*Slusher v. Safety Coach Transit Co.*, 229 Ky 731, 17 S.W.2d 1012, 66 A.L.R. 1378; *Thompson v. Smith*, 155 Va 367, 154 S.E. 579, 71 A.L.R. 604]. Under this constitutional guaranty one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's rights, he will be protected, not only in his person, but in his safe conduct [*Pinkerton v. Verberg*, 78 Mich 573, 44 N.W. 579, 7 L.R.A. 507, 18 Am.St.Rep 473. See *St. Louis v. Gloner*, 210 Mo 502, 109 S.W. 30, 15 L.R.A.(N.S.) 973, 124 Am.St.Rep 750 (loitering on street)]." 11 Am.Jur., Constitutional Law, § 329, pp. 1134-1135.

"Governmental powers are limited by the existence of a broad and important class of basic rights which, according to the fundamental principles of the American system of government, are considered inalienable, ... When [they] are recognized and declared in the constitutions, they are not thereby granted or created, but are merely guaranteed against federal or state impairment." 13 Cal.Jur.3d, Constitutional Law, §223, p. 396.

"Constitutional rights may not be infringed simply because the majority of the people choose that they be [*Westbrook v. Mihaly*, 2 Cal.3d 765, 87 Cal.Rptr 839, 471 P.2d 487, vacated and remanded on other grnds 403 U.S. 915, 29 L.Ed.2d 692, 91 S.Ct 2224]. Nor may a constitutional prohibition be transgressed indirectly by the creation of statutory presumption any more than it can be violated by direct enactment; the power to create presumptions is not a means of escape from constitutional restriction [*Speiser v. Randall*, 357 U.S. 513, 2 L.Ed.2d 1460, 78 S.Ct 1332]." 13 Cal.Jur.3d, Constitutional Law, §229, p. 412.

"The term 'liberty' as used in the state and federal constitutions consists partially of the right to be free from arbitrary personal restraint. [*Lambert, In re*, 134 Cal 626, 66 P. 851.] For example, the right of a citizen to drive on a public street with freedom from police interference, unless he is engaged in suspicious conduct associated in some manner with criminality, is a fundamental constitutional right. [*People v. Horton*, 14 Cal.3d 930, 92 Cal.Rptr 666.] But liberty means much more than freedom from restraint. It means not merely the right to go where he chooses, but also to do such acts as he may best judge best for his interests, not inconsistent with the rights of others. ... Other rights, peripheral to those in the Bill of Rights of the Federal Constitution, but protected by various interpretations of the general provision of the Bill of Rights, such as the right of privacy, the right to travel, and freedom of association, may also find part of their foundation in the basic right of liberty." 13 Cal.Jur.3d, Constitutional

Law, §231, p. 415-416.

The right to travel is protected by the Fifth Amendment, and statutory limitations upon that right will be strictly construed. *Lynd v. Rusk* (1967) 389 F.2d 940, 128 U.S.App.D.C. 399.

The right to travel abroad is an important aspect of the citizen's liberty guaranteed in the due process clause of the Fifth Amendment. *Aptheker v. Secretary of State*, Dist.Col. 1964, 84 S.Ct 1659, 378 U.S. 500, 12 L.Ed.2d 992.

Freedom of travel is a constitutional liberty closely related to the rights of free speech and association. *Aptheker v. Secretary of State*, Dist.Col.1964, 84 S.Ct 1659, 378 U.S. 500, 12 L.Ed.2d 992.

The right to travel is a part of "liberty" of which citizens cannot be deprived without due process of law. *Kent v. Dulles*, App.D.C.1958, 78 S.Ct 1113, 357 U.S. 116, 2 L.Ed2d 1204. See, also, *MacEwan v. Rusk*, D.C.Pa.1964, 228 F.Supp 306, affd 344 F.2d 963.

The right to travel is part of liberty protected by the Constitution, and a person can be deprived of such right only by due process of law; but regulation reasonable in relation to its subject and adopted in the interest of the community affords requisite due process. *Dayton v. Dulles* (1958) 254 F.2d 71, 102 U.S.App.D.C. 372, revd on other grnds 78 S.Ct 1127, 57 U.U. 144, 2L.Ed.2d 1221.

Though the right to travel is part of liberty of which a person cannot be deprived without due process of law under the Fifth Amendment, it is subject to restrictions under some circumstances and for some reasons. *U. S. v. Travis*, D.C.Cal. 1863, 241 F.Supp 468.

The right to travel under the provision of the Fifth Amendment is not an absolute right, free of all restraint or regulation. *U. S. v. Eramdjian*, D.C.Cal.1957, 155 F.Supp 914.

"Liberty", of which deprivation without due process of law is forbidden, means not only the right of the citizen to be free from mere physical restraint of his person, but the right to be free in enjoyment of all his faculties, and personal liberty includes the right of locomotion, tht is, the right to remove from one place to another, according to inclination. *Bauer v. Acheson*, D.C.D.C.1952 , 106 F.Supp 445.

"... the state courts are bound by the decision of the supreme court of the United States on questions depending upon the construction of the United States Constitution." *Moon v. Martin* (1921) 185 Cal. 361, 366.

"The Legislature has the power to pass any Act it pleases, ... While that body confines its actions within the limits of the Constitution, its acts are rightful and conclusive; and when it transcends the limits of that instrument, its acts are void and bind no one. In the contemplation of our system they are not laws; ..." *Nougues v. Douglass* (1857) 7 Cal. 65,

70.

"I think there can be no doubt that the Legislature cannot do, indirectly, what they are forbid from doing directly; ..." *Nougues v. Douglass* (1857) 7 Cal. 65, 79.

"Our conclusion is, that the right of transit through each State, with every species of property known to the Constitution of the United States, and recognized by that paramount law, is secured by that instrument to each citizen, and does not depend upon the uncertain and changeable ground of mere comity." *Ex parte Archy* (1858) 9 Cal. 147, 163-164.

"TRANSIT, *n.* [L. *transitus*, from *transeo*.]

"1. A passing; a passing over or through; conveyance; as the *transit* of goods through a country." *American Dictionary of the English Language*, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. II, p. 96.

"transit, *n.* [L. *transitus*, pp. of *transire*, to go across.]

"1. (a) passage through or across; (b) a transition; a change.

"transit, *v.t.* 1. to make a transit through or across, especially in astronomical senses." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition*, 1956, p. 1939.

"COMITY, *n.* [L. *comitas*, from *comes*, mild, affable; Ir. *caomh*.]

"Mildness and suavity of manners; courtesy; civility; good breeding. Wellbred people are characterized by *comity* of good manners." *American Dictionary of the English Language*, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. I, p. 41.

"comity, *n.* [L. *comitas*, courteousness, from *comis*, courteous, kind.] politeness; courtesy; civility; as well-bred people are characterized by their *comity*.

"*comity of nations*; the friendly relation existing between nations by which the laws and institutions of each country are recognized and respected; also, loosely, the nations practicing this." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition*, 1956, p. 362.

"COMITY. Courtesy; complaisance; respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will. *Dow v. Lillie*, 26 N.D. 512, 144 N.W. 1082, 1088, L.R.A. 1915D, 754; *Cox v. Terminal R. Ass'n of St. Louis*, 331 Mo. 910, 55 S.W.2e 685." *Black's Law Dictionary, Revisee Fourth Edition*, West Publishing Co., 1968, p. 334.

"Statutes enacted by the law-making department of a state which are clearly confined to the legitimate exercise of the police power reserved to the sovereign states are not repugnant to the interstate commerce clause of the federal Constitution. (*Plumley v. Massachusetts*, 155 U. S.

461 [15 Sup. Ct. 154, 39 L. Ed. 223]; *Missouri, Kansas & Texas Railway v. Haber*, 169 U. S. 613, 628 [18 Sup. Ct. 488, 42 L. Ed. 878]; *Savage v. Jones*, 225 U. S. 501, 525 [32 Sup. Ct. 715, 56 L. Ed. 1182].)" *People v. Jarvis* (1933) 135 Cal.App. 288, 313.

"Although not explicitly mentioned in the federal Constitution, the right to travel freely from one state to another is a basic right under the Constitution. The nature of the federal union and of constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of the United States uninhibited by statutes, rules, or regulations that unreasonably burden or restrict this movement [*Shapiro v. Thompson*, 394 U.S. 618, 22 L.Ed.2d 600, 89 S.Ct 1322].

"The constitutional right to travel embodies more than merely the right to cross state lines and move about the country; it includes, as well, the right of an individual freely to choose the state in which he wishes to reside [*King, In re*, 3 Cal.3d 226, 90 Cal.Rptr 15, 474 P.2d 983]. And the right to travel is not restricted to travel within the country, but extends as well to travel outside the jurisdiction of the United States [*Aptheker v. Secretary of State*, 378 U.S. 500, 12 L.Ed.2d 992, 84 S.Ct 1659]." 16 Cal.Jur.3d, Constitutional Law, §235, pp. 423-424.

The right to travel is a part of the "liberty" of which a citizen cannot be deprived without due process of law. *Kent v Dulles*, 357 U.S. 116, 2 L.Ed.2d 1204, 78 S.Ct 1113; *U. S. v Laub*, 385 U.S. 475, 17 L.Ed.2d 256, 87 S.Ct 574.

The right to travel freely from state to state finds constitutional protection independently of the Fourteenth Amendment; the federal commerce power authorizes Congress to legislate for the protection of individuals from violations of civil rights that impinge on their free movement in interstate commerce. *U. S. v Guest*, 383 U.S. 745, 16 L.Ed.2d 239, 86 S.Ct 1170.

"The privileges and immunities protected under the Fourteenth Amendment are fundamental in nature [see §263], but are neither extensive nor clearly defined. They are only those that belong to citizens of the United States as distinguished from state citizens [*Addison v Addison*, 62 Cal.2d 558, 43 Cal.Rptr 97, 399 P.2d 897, 14 A.L.R..3d 391], and are limited to such as rise out of the nature and essential character of the federal government and are granted or secured by the United States Constitution or laws as contrasted with those that spring from other sources [*Addison v Addison*, 62 Cal.2d 558, 43 Cal.Rptr 97, 399 P.2d 897, 14 A.L.R.3d 391; *Sacramento Orphanage & Children's Home v Chambers*, 25 Cal.App 536, 144 P 317; *Slaughter House Cases*, 83 U.S. 36, 21 L.Ed 394; *Hamilton v Regents of University of Cal.*, 293 U.S. 245, 79 L.Ed 343, 55 S.Ct 197]...."

"The privileges and immunities protected by the Fourteenth Amendment do not include the rights and privileges granted to citizens which depend solely on the laws of a state [*Cook v Ray (W. S.) Mfg. Co.*, 159 Cal 694, 115 P 318; *Tashiro v Jordan*, 201 Cal 236, 256 P 545, 53 A.L.R. 1279, *affd.* 278 U.S. 123, 73 L.Ed 214, 49 S.Ct 47]...." 13 Cal.Jur.3d,

Constitutional Law, §268, pp. 499, 500.

"Construction of Code

"6. Unless the provision or the context otherwise requires, these general provisions and rules of construction shall govern the construction of this code."

"CONSTRUCTION, n. [L. *constructio*.]

...

"3. In *grammar*, syntax, or the arrangement and connection of words in a sentence, according, to established usages, or the practice of good writers and speakers.

"4. Sense; meaning; interpretation; explanation; or the manner of understanding the arrangement of words, or of understanding facts. Let us find the true *construction*; or let us give the author's words a sound, rational, consistent *construction*. What *construction* can be put upon this affair, or upon the conduct of a man? *American Dictionary of the English Language*, Noah Webster, 1828 (Facsimile First Edition, Foundation for American Christian Education, San Francisco, California, Fourth Edition, 1985), Vol. I, p. 47.

"CONSTRUCTION. The process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute ... by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking or applying the probable aim and purpose of the provision. *Koy v. Schneider*, 110 Tex. 369, 221 S.W. 880, 884." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 386.

"Where a term has two meanings differing in the degree merely, it is to be understood in the larger sense wherever it occurs unless it appears to have been used in the narrower sense, by some form of direct expression, or from the context, the nature of the subject matter, or the *res gestae*." *Miller v. Miller* (1867) 33 Cal. 353, 355.

"Construction of Tenses

"12. The present tense includes the past and future tenses; and the future, the present."

"Shall and May

"15. 'Shall' is mandatory and 'may' is permissive."

"MANDATORY. *adj.* Containing a command; preceptive; imperative; peremptory." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 1114.

"PERMISSIVE. Allowed; allowable; that which may be done." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 1298.

"In the case of *People v. Johnson, supra*, 134 Cal.App.2d 140, the court said, at page 144: 'It is true that the word "shall" when appearing

in a statute is not necessarily mandatory, and may be construed as directory or permissive, depending upon the intent of the Legislature. (Citing cases.) But it is also true that "When language which is reasonably susceptible of two constructions is used in a penal law ordinarily that construction which is more favorable to the offender will be adopted." (Citing cases.) ...'

"The Legislature did not use such words as 'may,' 'might,' 'should,' or 'ought,' nor any other equivocal words or phrases ... In common and ordinary usage 'shall' has a compulsory or mandatory meaning.

"In this sense 'shall' is inconsistent with and excludes the idea of discretion and operates to impose a duty—particularly if public policy is in favor of this meaning, or when addressed to public officials, ... or where the public or persons have right which ought to be exercised or enforced, unless an intent to the contrary appears; but the context ought to be very strongly persuasive before it is softened into a mere permission." *People v. Municipal Court* (1956) 145 Cal. App.2d 767, 777-778, 303 P.2d 68.

"Service of Civil Process and Subpoenas

"24.5. All civil process in actions brought against the director and the Department of Motor Vehicles and all subpoenas for the production of department records shall be served upon the director or his appointed representatives at the department's headquarters.

"Method of Giving Notice

"29. Whenever any notice or other communication is required by this code to be mailed by registered mail by or to any person or corporation, the mailing of such communication by certified mail shall be deemed to be a sufficient compliance with the requirements of law.

"Application of Definitions

"100. Unless the provision or context otherwise requires, these definitions shall govern the construction of this code.

"Board

"232. The 'board' is the New Motor Vehicle Board."

"Certificate of Compliance

"246. A 'certificate of compliance' for the purposes of this code is a document issued by a state agency, board, or commission, or authorized person, setting forth that the requirements of a particular law, rule or regulation, within its jurisdiction to regulate or administer has been satisfied."

"certificate, n. [LL. *certificatus*, pp. of *certificare*, to certify; L. *certus*, certain, and *facere*, to make.] a written or printed statement testifying to a fact, qualification, or promise." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition*, 1956, p. 297.

"**CERTIFICATE.** ... A written assurance, or official representation, that some act has or has not been done, or some event occurred, or some legal formality been complied with." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 285.

"**compliance**, n. [from L. *complere*, to fill up.]

"1. the act of complying; a yielding, as to a request, wish, desire, demand, or proposal; concession; submission.

"Let the king meet *compliance* in your looks,

"A free and ready yielding to his wishes.

"

—Rowe.

"2. a disposition to yield to others; complaisance.

"He was a man of few words and great *complaisance*.

"

—Clarendon.

"**Syn.**—acquiescence, assent, concession, consent, execution, obedience, performance, submission." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition*, 1956, p. 5371.

"**COMPLY.** To yield, to accomodate, or to adapt oneself to, to act in accordance with. *Dragwa v. Federal Labor Union No. 23070*, 41 A.2d. 32, 36, 136 N.J.Eq. 172." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 357.

"*Commercial Vehicle*

"260. (a) A 'commercial vehicle' is a vehicle of a type required to be registered under this code used or maintained for the transportation of persons for hire, compensation, or profit or designed, used, or maintained primarily for the transportation of property.

"(b) Passenger vehicles which are not used for the transportation of persons for hire, compensation, or profit and housecars are not commercial vehicles. This subdivision shall not apply to Chapter 4 (commencing with Section 6700) of Division 3.

"(c) Any vanpool vehicle is not a commercial vehicle.

"(d) The definition of a commercial vehicle in this section does not apply to Chapter 7 (commencing with Section 15200) of Division 6."

"*Driver*

"305. A 'driver' is a person who drives or is in actual physical control of a vehicle. ..."

"**DRIVER.** One employed in conducting or operating a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals, or a bicycle, tricycle, or motor car, though not a street railroad car. A person actually doing driving, whether employed by owner to drive or driving his own vehicle. *Wallace v. Woods*, 340 Mo. 452, 102 S.W.2d 91, 97." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 585.

"... Section 1 [of the Motor Vehicle Act] excludes from the definition of the term 'operator' everyone 'who solely transports by motor vehicle ...

his or its own property, or employees, or both, and who transports no persons or property for hire or compensation.'" *Bacon Service Corporation v. Huss* (1926) 199 Cal. 21, 28.

"Driver's License

"310. 'Driver's license' is a valid license to drive the type of motor vehicle or combination of vehicles for which a person is licensed under this code or by a foreign jurisdiction."

"Petitioner [is] a chauffeur who refused to pay the actual license fee ... exacted by the provisions of the Motor Vehicle Act (Stats. 1913, p. [whose] sole contention in this regard is that the legislature without reason and warrant has made an arbitrary classification whereby chauffeurs or drivers of motor vehicles for hire are required to pay a license, while all other drivers of vehicles are classed as 'operators' and are not required to secure a license or pay a license fee.

"Conceding his construction of the law in this respect to be sound, is the division by the legislature of drivers of motor vehicles into the two classes indicated and the exaction of a license fee from the one and not from the other class so unwarranted and arbitrary as to compel a declaration from this court that it is unconstitutional special legislation?

"That the occupation of a chauffeur is one calling for regulation and therefore permitting a regulatory license fee is beyond question. 'When the calling or profession or business is attended with danger or requires a certain degree of scientific knowledge upon which others must rely, then legislation properly steps in and imposes conditions upon its exercise.' (*Minneapolis etc. Railroad Co. v. Beckwith*, 129 U.S. 29 [32 L.Ed. 585, 9 Sup. Ct. Rep. 207]). That the occupation of a chauffeur is that of this character may not be questioned and has been decided. (*State v. Swagerty*, 203 Mo. 517 [120 Am. St. Rep 671, 11 Ann. Cas. 725, 10 L. R. A. (N. S.) 601, 102 S. W. 483]; *Christy v. Elliott*, 216 Ill. 31 [108 Am. St. Rep. 196, 3 Ann. Cas. 487, 1 L. R. A. (N. S.) 215, 74 N. E. 1035]). There are unquestionable elements of similarity, even of identity, between the driving of an automobile by a professional chauffeur and the driving of a like vehicle by a private owner, designated in this act as an 'operator.' ... yet there are [other matters] of equal significance where the differences between the two drivers are radical. Of first importance in this is the fact that the chauffeur offers his services to the public and is frequently a carrier of the general public. These circumstances put professional chauffeurs in a class by themselves and entitle the public to receive the protection which the legislature may accord in making provision for the competency and carefulness of such drivers. The chauffeur, generally, is not driving his own car. He is entrusted with the property of others. In the nature of things a different amount of care will ordinarily be exercised by such a driver than will be exercised by the man driving his own car and risking his own property. ...

"In conclusion it may be said that while on reason we hold the classification to be sound and the license fee therefore legal, no case where any court of last resort has taken a contrary view has been called to our attention, while, besides the intimations in the cases above

cited, this precise conclusion was adopted by the court of appeals of Maryland in *Ruggles v. State*, 120 Md. 553 [87 Atl. 1080]." *Matter of Application of Stork* (1914) 167 Cal. 295, 295-296.

"... the evidence shows that the plaintiff did not have an operator's license at the time of the collision ... With reference to the question of the operator's license, it is sufficient to say that it had nothing to do with the collision. We are not disposed to say that the presence of the plaintiff upon the highway was unlawful and that this was a proximate cause of his injuries or to deprive him of the right of recovery." *Page v. Mayors* (1923) 191 Cal. 263, 264.

"As indicated by its title, the act was designed to impose a license tax upon those engaged in the business of operating motor vehicles upon the public highways for the transportation of persons or property for compensation. Section 1 defines certain words and phrases employed in the act. The term 'operator' is declared generally to include all persons, firms, associations, and corporations who operate motor vehicles upon any public highway in the state and thereby engage in the transportation of persons or property for hire or compensation. The term 'motor vehicles' is defined to mean and include all vehicles, automobiles, trucks, or trailers operated upon or over the public highways of this state whether the same be propelled or operated by steam or electricity or propelled or operated by combustion of gasoline, distillate, or other volatile and inflammable liquid fuels. ...

"Section 2 of the act provides: 'Each operator of a motor vehicle within this state who transports or desires to transport for compensation or hire persons or property upon or over any public highway within this state shall apply to and secure from the board of equalization of the State of California a license to operate each and all of the motor vehicles which such operator desires to operate or which such operator from time to time may operate.' ...

"It is provided in Section 7 that any operator using the public highways of the state for the transportation of persons or property for hire, either as a public or private carrier without first obtaining the license ... is guilty of a misdemeanor ..." *Bacon Service Corporation v. Huss* (1926) 199 Cal. 21, 26-27.

"The next exemption [from the license fee] applies to those who use said public highways for the transportation of their own property or employees or both and to those who transport no persons or property for hire or compensation. It is obvious that those who operate motor vehicles for the transportation of persons or property for hire enjoy a different and more extensive use of the public highways. They are thereby enabled to engage in business on the public highways and to provide for themselves a livelihood, particularly because of the existence of the public highways and the facilities thereby afforded. Such extraordinary use constitutes a natural distinction and a full justification for their separate classification and for relieving from the burden of the license tax those who merely employ the public highways for the transportation of their own property or employees." *Bacon Service Corporation v. Huss* (1926) 199 Cal. 21, 30.

"... [T]he exemptions provided for in section 1 [of the Motor Vehicle Transportation License Act of 1925 (Stats. 1925, p. 833) in favor of those who solely transport their own property or employees, or both, and of those who transport no persons or property for hire or compensation, by motor vehicle,] have been determined in the Bacon Service Corporation case to be lawful exemptions." *In re Schmolke* (1926) 199 Cal. 42, 46.

"LICENSE. Certificate or the document itself which gives permission. *Aldrich v. City of Syracuse*, 236 N.Y.S. 614, 617, 134 Misc. 698. Permission or authority. *Independent School Dist., Class A, No. 1, Cassia County v. Pfof*, 51 Idaho 240, 4 P.2d 893, 897; *Monsour v. City of Shreveport*, 194 La. 625, 194 So. 569, 571; *Platt v. Bender*, La.App., 178 So. 678, 682.

"Authority or liberty given to do or forbear any act. *Monsour v. City of Shreveport*, 194 La. 625, 194 So. 569, 571. Leave to do thing which licensor could prevent. *Western Electric Co. v. Pacent Reproducer Corporation, C.C.A.N.Y.*, 42 F.2d 116, 118. Permission by some competent authority to do some act which, without such permission, would be illegal. *State ex rel. Zugravu v. O'Brien*, 130 Ohio St. 23, 196 N.E. 664; *Solberg v. Davenport*, 211 Iowa, 612, 232 N.W. 477, 480; *Standard Oil Co. (Indiana) v. State Board of Equalization*, 110 Mont. 5, 99 P.2d 229, 234. Permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation. *Blatz Brewing Co. v. Collins*, Cal.App., 160 P.2d 37, 39, 40. Permission to do something which without the license would not be allowable. *City of Shreveport v. Brister*, 194 La. 615, 194 So. 566, 567. *Great Atlantic & Pacific Tea Co. v. City of Lexington*, 256 Ky. 595, 76 S.W.2d 894, 896. Privilege from state or sovereign. *M. Itzkowitz & Sons v. Geraghty*, 247 N.Y.S. 703, 704, 139 Misc. 163; *Alabama Power Co. v. Federal Power Commission*, 75 U.S.App.D.C. 315, 128 F.2d 280, 289. Revocable certificate of convenience and necessity. *Ex parte Lockhart*, 350 Mo. 1220, 171 S.W.2d 660, 666. To 'license' means to confer right or power which does not exist without it. *Inter-City Coach Lines v. Harrison*, 172 Ga. 390, 157 S.E. 673, 676; *S. S. Kresge Co. v. City of Bluefield*, 117 W.Va. 17, 183 S.E. 601, 602.

...

"Constitutional Law and Law of Contracts

"A permission, by a competent authority to do some act which without such authorization would be illegal, or would be a trespass or a tort. *State v. Hipp*, 38 Ohio St. 226; *Hubman v. State*, 61 Ark. 482, 33 S.W. 843, *Chicago v. Collins*, 175 Ill. 445, 51 N.E. 907, 49 L.R.A. 408, 67 L.R.A. 224. A permit or privilege to do what otherwise would be unlawful. *Palmetto Fire Ins. Co. v. Beha*, D.C.N.Y., 13 F.2d 500, 505; *La Plante v. State Board of Public Roads*, 47 R.I. 258, 131 A. 641, 642; *State ex rel. Biscayne Kennel Club v. Stein*, 130 Fla. 135. Also, the written permission.

...

"Motor Vehicles

"License to operate motor vehicle is mere privilege, and not a contract or property right. *Garford Trucking v. Hoffman*, 114 N.J.L. 522, 177 A. 882, 887; *Blashfield*, *Cyc. of Automobile Law and Prac.*, Perm. Ed., § 580." *Black's Law Dictionary, Revised Fourth Edition*,

West Publishing Co., 1968, pp. 1067-1068.

"PRIVILEGE. A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond the common advantages of other citizens. An exceptional or extraordinary power or exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law. *Waterloo Water Co. v. Village of Waterloo*, 193 N.Y.S. 360, 362, 200 App.Div. 718; *Colonial Motor Coach Corporation v. City of Oswego*, 215 N.Y.S. 159, 163, 126 Misc. 829; *Cope v. Flanery*, 234 P. 845, 849, 70 Cal.App. 738; *Bank of Commerce & Trust Co. v. Senter*, 260 S.W. 144, 147, 149 Tenn. 569; *State v. Betts*, 24 N.J.L. 557." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 1359.

"Quasi Contracts

"In the civil law. A contractual relation arising out of transactions between the parties which give them mutual rights and obligations, but do not involve a specific and express convention or agreement between them. *Keener*, *Quasi Contr.* 1; *Elbert County v. Brown*, 16 Ga.App. 834, 86 S.E. 651, 665. ...

"Persons who have not contracted with each other are often regarded by the Roman law, under a certain state of facts, as if they had actually concluded a convention between themselves. The legal relation which then takes place between these persons, which has always a somilarity to a contract obligation, is therefore termed '*obligatio quasi ex contractu*.'" Such a relation arises from the conducting of affairs without authority, (*negotiorum gestio*), from the payment of what was not due, (*solutio indebiti*), ... *Mackeld.Rom.Law* § 491.

"Legal fiction invented by **common law** courts to permit recovery by contractual remedy of *assumpsit* in cases where, in fact, there is no contract, but where circumstances are such that justice warrants a recovery as though there had been a promise. *Clark v. Peoples Savings and Loan Ass'n of De Kalb County*, 221 Ind. 168, 46 N.E.2d 681, 682, 144 A.L.R. 1495. It is not based on intention or consent of the parties, but is founded on considerations of justice and equity, and on doctrine of unjust enrichment. *Bruggeman v. Independent School Dist., No. 4, Union Tp., Mitchell County*, 227 Iowa 661, 289 N.W. 5, 8, 11.

"It is not in fact a contract, but an obligation which the law creates in absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money, or its equivalent, under such circumstances that in equity and good conscience he ought not to retain it. *Grossblier v. Chicago, St. P., M. & O. Ry. Co.*, 173 Wis. 502, 181 N.W. 746, 748: It is an implication of law. *First Nat. Bank v. Matlock*, 99 Okl. 150, 226 P. 328, 331, 36 A.L.R. 1088; *Caldwell v. Missouri State Life Ins. Co.*, 148 Ark. 474, 230 S.W. 566, 568.

"It is what was formerly known as the contract implied in law; it has no reference to the intentions or expressions of the parties. The obligation is imposed despite, and frequently in frustration of their intention. *Town of Balkan v. Village of Buhl*, 158 Minn. 271, 197 N.W. 266, 35 A.L.R. 470." *Black's Law Dictionary, Revised*

Fourth Edition, West Publishing Co., 1968, p. 396.

"FRANCHISE. A special privilege conferred by government on individual or corporation, and which does not belong to citizens of country generally of common right. *Elliott v. City of Eugene*, 135 Or. 108, 294 P. 358, 360. In England it is defined to be a royal privilege in the hands of a subject.

...

"In this country a franchise is a privilege or immunity of a public nature, which cannot be legally exercised without legislative grant. To be a corporation is a franchise. The various powers conferred on corporations are franchises. ... In a popular sense, the political rights of subjects and citizens are franchises, such as the right of suffrage, etc. *Pierce v. Emery*, 32 N.H. 484; *State v. Black Diamond Co.*, 97 Ohio St. 24, 119 N.E. 195, 199, L.R.A. 1918E 352."

...

"*General and Special.* The charter of a corporation is its 'general' franchise, while a 'special' franchise consists in any rights granted by the public to use property for a public use but with private profit. *Lord v. Equitable Life Assur. Soc.*, 194 N.Y. 212, 87 N.E. 443, 22 L.R.A.N.S. 420." *Black's Law Dictionary, Revised Fourth Edition, West Publishing Co., 1968, p. 786.*

"SUBJECT.

"Constitutional Law

"One that owes allegiance to a sovereign and is governed by his laws. The natives of Great Britain are *subjects* of the British government. Men in free governments are subjects as well as *citizens*; as citizens they enjoy rights and franchises; as subjects they are bound to obey the laws. Webster. The term is little used in this sense, in countries enjoying a republican form of government. *The Pizarro*, 2 Wheat. 245, 4 L.Ed. 226; *Swiss Nat. Ins. Co. v. Miller*, 267 U.S. 42, 45 S.Ct. 213, 214, 69 L.Ed. 504." *Black's Law Dictionary, Revised Fourth Edition, West Publishing Co., 1968, p. 1594.*

"SUBJECT TO. Liable, subordinate, subservient, inferior, obedient to; governed or affected by; provided that; provided; answerable for. *American Mfg. Co. v. Commonwealth*, 251 Mass. 329, 146 N.E. 801; *Hannibal Trust Co. v. Elzea*, 315 Mo. 485, 286 S.W. 371, 377; *Allen v. Simmons*, 97 W.Va. 318, 125 S.E. 86, 88; *Middleton v. Findla*, 25 Cal. 76; *Manning v. Sams*, 143 Ga. 205, 84 S.E. 451; *Hofman v. Employers Reinsurance Corporation*, 345 Mo. 650, 136 S.W.2d 289, 302, 127 a.l.r. 163." *Black's Law Dictionary, Revised Fourth Edition, West Publishing Co., 1968, p. 1594.*

"Highway

"360. 'Highway' is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway includes street."

"... It was clearly and definitely established by the decision of [the

United States supreme] court in *St. Louis v. Western Union Tel. Co.*, 148 U. S. 92, [13 Sup. Ct. 485, 37 L. Ed. 380], [that] '... streets and highways; they are the public property of the state. While for purposes of travel and common use they are open to the citizens of every state alike, and no state can by its legislation deprive the citizens of another state of such common use, yet when an appropriation of any part of this public property to an exclusive use is sought, whether by a citizen or corporation of the same or another state, or a corporation of the national government, it is within the competency of the state, representing the sovereignty of that local public, to exact for its benefit compensation for this exclusive appropriation. It matters not for what that exclusive appropriation is taken, ... the state may if it chooses exact from the party or corporation given such exclusive use pecuniary compensation to the general public for being deprived of the common use of the portion thus appropriated.'

"These views were reaffirmed and applied in *Postal Tel. Co. v. Baltimore*, 156 U. S. 210, [15 Sup. Ct. 356, 39 L. Ed. 399], and approved in *Richmond v. Southern Bell T. & T. Co.*, 174 U. S. 771, [19 Sup. Ct. 778, 43 L. Ed. 1162], and they have not been modified by any subsequent decision." *Western Union Tel. Co. v. Hopkins* (1911) 160 Cal. 106, 115-117.

"Highways are made and maintained for the free usage of persons, ..." *Townsend v. Butterfield* (1914) 168 Cal. 564, 567.

"The common use of the highways is open to all." *Pacific Gas & Electric Co. v. Roberts* (1914) 168 Cal. 420, 427.

"Legal Owner

"370. A 'legal owner' is a person holding a security interest in a vehicle which is subject to the provisions of the Uniform Commercial Code, or the lessor of a vehicle to the state or to any county, city, district, or political subdivision of the state, or to the United States, under a lease, lease-sale, or rental-purchase agreement which grants possession of the vehicle to the lessee for a period of 30 consecutive days or more."

"Legal owner. One who is recognized and held responsible by the law as the owner of the property. In a more particular sense, one in whom the legal title ... is vested, but who holds it in trust for the benefit of another, the latter being called the 'equitable' owner." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 1260.

"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 ... which will ripen into legal ownership 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. *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, pp. 1259-1260.

"§ 1201. General definitions

"(37) 'Security interest' means an interest in personal property ... which secures the payment or performance of an obligation. ..." *California Uniform Commercial Code*, § 1201(37).

"§ 7502. Rights acquired by due negotiation

"(1) Subject to the following section and to the provisions of Section 7205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

"(a) Title to the document;

"(b) Title to the goods;

"(c) All rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

"(d) The direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this division.

"(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person." *California Uniform Commercial Code*, § 7502.

"Motor Truck

"410. A 'motor truck' is a motor vehicle designed, used, or maintained primarily for the transportation of property."

"Motor Vehicle

"415. A 'motor vehicle' is a vehicle which is self-propelled. ..."

"'Motor vehicle' means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, or passengers and property.

...

"'Used for commercial purposes' means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit." 18 U.S.C. § 31.

"Original Driver's License

"455. 'Original driver's license' means the first driver's

license issued to a person under this code."

"Owner

"460. An 'owner' is a person having all the incidents of ownership, including the legal title of a vehicle whether or not such person lends, rents, or creates a security interest in the vehicle; the person entitled to the possession of a vehicle as a purchaser under a security agreement; or the state, or any county, city, district, or political subdivision of the state, or the United States, when entitled to the possession and use of a vehicle under a lease, lease-sale, or rental-purchase agreement for a period of 30 consecutive days or more."

"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." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 1259.

"Passenger Vehicle

"465. A 'passenger vehicle' is any motor vehicle, other than a motortruck or truck tractor, designed for carrying not more than 10 persons including the driver, and used or maintained for the transportation of persons. The term 'passenger vehicle' shall include a housecar."

"Person

"470. 'Person' includes a natural person, firm, copartnership, association, or corporation."

"Pickup Truck

"471. A 'pickup truck' is a motor truck with a manufacturer's gross vehicle weight rating of less than 10,001 pounds, an unladen weight of less than 6,001 pounds, and which is equipped with an open box-type bed less than 9 feet in length."

"Registered Owner

"505. A 'registered owner' is a person registered by the

department as the owner of a vehicle."

"registered, *a.* [pp. of *register.*] officially recorded or enrolled; specifically, ... (c) legally certified or authenticated." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition*, 1956, p. 1521.

"REGISTERED. Entered or recorded in some official register or record or list. *State v. McGuire*, 183 Iowa 927, 167 N.W. 592, 594." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 1449.

"Registration Year

"506. 'Registration year' is the period of time beginning with the date the vehicle is first required to be registered in this state and ending on the date designated by the director for expiration of the registration or the period of time designated for subsequent renewal."

"Resident

"516. 'Resident' means any person who manifests an intent to live or be located in this state on more than a temporary or transient basis. Presence in the state for six months or more in any 2-month period gives rise to a rebuttable presumption of residency.

"The following are evidence of residency for purposes of vehicle registration:

"(a) Address where registered to vote.

"(b) Location of employment or place of business.

"(c) Payment of resident tuition at a public institution of higher education.

"(d) Attendance of dependents at a primary or secondary school.

"(e) Filing a homeowner's property tax exemption.

"(f) Renting or leasing a home for use as a residence.

"(g) Declaration of residency to obtain a license or any other privilege or benefit not ordinarily extended to a nonresident.

"(h) Possession of a California driver's license.

"(i) Other acts, occurrences, or events that indicate presence in the state is more than temporary or transient."

"resident, *n.* 1. one who lives in a place, as distinguished from a visitor or transient." *Webster's New Twentieth Century Dictionary, Unabridged, Second Edition*, 1956, p. 1540.

"RESIDENT. One who has his residence in a place." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 1473.

"RESIDENCE. A factual place of abode. Living in a particular locality. *Reese v. Reese*, 179 Misc. 665, 40 N.Y.S.2d 468, 472; *Zimmerman v. Zimmerman*, 175 Or. 585, 155 P.2d 293, 295. It requires only bodily

presence as an inhabitant of a place. In re Campbell's Guardianship, 216 Minn. 113, 11 N.W.2d 786, 789.

"As 'domicile' and 'residence' are usually in the same place, they are frequently used as if they had the same meaning, but they are not identical terms, for a person may have two places of residence, as in the city and country, but only one domicile. Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. In re Riley's Will, 266 N.Y.S. 209, 148 Misc. 588. 'Residence' demands less intimate local ties than 'domicile,' but 'domicile' allows absence for indefinite period if intent to return remains. Immigration Act 1917, § 3, 8 U.S.C.A. § 136 (e, p). *Transatlantica Italiana v. Eiting*, C.C.A.N.Y., 74 F.2d 732, 733. But see, *Ward v. Ward*, 115 W.Va. 429, 176 S.E. 708, 709; *Southern Greyhound Lines v. Craig*, 182 Okl. 610, 80 P.2d 221, 224; holding that residence and domicile are synonymous terms. 'Residence' has a meaning dependent on context and purpose of statute. In re Jones, 341 Pa. 329, 19 A.2d 280, 282. Words 'residence' and 'domicile' may have an identical or variable meaning depending on subject-matter and context of statute. *Kemp v. Kemp*, 16 N.Y.S.2d 26, 34, 172 Misc. 738." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 1473.

"*Street*

"590. 'Street' is a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular traffic. Street includes highway."

"*Transferee*

"640. A 'transferee' is a person who has acquired the sole ownership of or an equity in a vehicle of a type required to be registered under this code."

"*Used Vehicle*

"665. A 'used vehicle' is a vehicle that has been sold, or has been registered with the department, or has been sold and operated upon the highways ..."

"*Vehicle*

"670. A 'vehicle' is a device by which any person or property may be propelled, moved, or drawn upon a highway ..."

"DIVISION 2 ADMINISTRATION

"*Department of Motor Vehicles*

"1500. There is in the Business, Transportation and Housing Agency the Department of Motor Vehicles."

"*Successor to State Agencies*

"1501. The department is the successor to and is hereby vested with all of the powers, duties, purposes,

responsibilities, and jurisdiction now or hereafter vested by law in the Department of Motor Vehicles, the Motor Vehicle Department, the Motor Vehicle Department of California, the Division of Motor Vehicles of the Department of Finance, the Division of Motor Vehicles of the Department of Public Works, and all other state agencies of similar designation, or in its several heads, members, officers, and employees of each thereof."

**"DIVISION 3
"REGISTRATION OF VEHICLES AND
"CERTIFICATES OF TITLE"**

"Registration Required

"4000. (a)(1) No person shall drive, move, or leave standing upon a highway, or in an offstreet parking facility, any motor vehicle ... unless it is registered and the appropriate fees have been paid under this code ..."

"The state constitution provides that all people have the inalienable right of acquiring, possessing, and protecting property [*Constitution of the State of California* (1849), Article I, Section 1]. It is said that such right lies at the foundation of our constitutional government and is necessary to the existence of civil liberty and free institutions [*Miller v McKenna*, 23 Cal.2d 774, 147 P.2d 531]. This constitutional provision refers to the right to acquire and possess the absolute and unqualified title to every species of property recognized by law, with all the rights incidental thereto [*Archy, In re*, 149 Cal 79, 84 P 766].... The right of protecting property is not the simple right to protection by individual physical force, but is the right to protect property by the law of the land and the force of the body politic [*Billings v Hall*, 7 Cal 1]....

"Both the state [*Constitution of the State of California* (1849), Article I, Section 8. NOTE: 13 Cal.Jur.3d cites *Const Art I § 13*" as authority.] and federal [*Constitution of the United States of America, Bill of Rights*, Article 3. NOTE: 13 Cal.Jur.3d cites *US Const Fourteenth Amendment § 1* as authority] constitutions prohibit the state from depriving a person of property without due process of law. The rights to acquire, enjoy, own, and dispose of property are among the civil rights that were intended to be protected from discriminatory state action by the due process clause of the federal Constitution. The state constitution also provides that private property may not be taken or damaged for public use without just compensation having first been made to the owner [*Constitution of the State of California* (1849), Article I, Section 8. NOTE: 13 Cal.Jur.3d cites *Const Art I § 14*" as authority.]" 13 Cal.Jur.3d, Constitutional Law, §236, pp. 424-425.

"The Fourteenth Amendment of the United States Constitution provides that no state may deprive any person of life, liberty, or property without due process of law [*U. S. Const., 14th Amendment*]. The Bill of Rights of the United States Constitution provides that no person may be deprived of life, liberty, or property without due process of law [*U. S. Const., 5th Amendment*]. These provisions are distinguishable in that the

former affords protection of due process with respect to state action, while the latter affords such protection only with respect to federal action [*Rosenfield v Vosper*, 57 Cal.App.2d 605, 134 P.2d 529, 135 P.2d 579; *Civil Rights Cases*, 109 U.S. 3, 27 L.Ed 835, 3 S.Ct 18; *Georgia Power Co. v Decatur*, 281 U.S. 505, 74 L.Ed 999, 50 S.Ct 369; *Betts v Brady*, 316 U.S. 455, 86 L.Ed 1595, 62 S.Ct 1252, ovrl'd. on other grounds *Gideon v Wainwright*, 372 U.S. 335, 9 L.Ed.2d 799, 83 S.Ct 792, 93 A.L.R.2d 733]. The California Constitution also provides that no person may be deprived of life, liberty, or property without due process of law [*Constitution of the State of California* (1849), Article I, Section 8. NOTE: 13 Cal.Jur.3d cites *Const Art I § 13*" as authority.]" The due process provision of the California Constitution is identical in purpose and scope with the due process clause of the Fourteenth Amendment [*Manford v Memil Singh*, 40 Cal.App 700, 181 P 844; *Abstract Invest. Co. v Hutchinson*, 204 Cal.App.2d 242, 22 Cal.Rptr 309; *Gray v Whitmore*, 17 Cal.App.3d 1, 94 Cal.Rptr 904; *Russell v Carlson*, 36 Cal.App.3d 334, 111 Cal.Rptr 497].]" 13 Cal.Jur.3d, Constitutional Law, §342, pp. 638-639.

It may not be disputed that the use of private property is a right as much as entitled to protection as the property itself, and an undue restriction on the use thereof is as much a taking for constitutional purposes as appropriating or destroying it. *People v Associated Oil Co.*, 211 Cal 93, 294 P 717.

"The motor vehicle act as approved March 22, 1905, and amended in 1907 (Stats. 1907, p. 915), provides for the registration of motor vehicles and the issuance of license certificates to their owners and operators, and the regulation of the rates of speed at which such vehicles may be operated upon the public highways of the state, etc." *Ex parte Snowden* (1910) 12 Cal. App. 521, 523-524.

"... The Motor Vehicle Act requires the owner of every automobile to cause an application for registration to be filed, and the automobile to be registered, in the name of the owner. (Stats. 1913, p. 641, secs. 3, 4.) Such legislation warrants a finding that the person in whose name an automobile is registered is in fact the rightful owner. (*Commonwealth v. Sherman*, 191 Mass. 439, [78 N. E. 98]; *Ferris v. Sterling*, 214 N. Y. 249, Ann. Cas. 1916D, 1161, and note on p. 1163 et seq., [108 N. E. 406].)" *Hammond v. Hazard* (1919) 40 Cal. App. 45, 49.

"... The nature of motor vehicle traffic requires that there be a more certain *indicia* of ownership than mere possession for the protection of the general public in case of accidents or violations of the law and to prevent fraud upon innocent purchasers. In order to effectuate this purpose registration and identification of motor vehicles is required. The 'legal owner' and the 'registered owner' upon the face of the certificate identify the vehicle. ... The state is concerned in the identity and ownership of cars operated upon the public highways. It cannot be said to be beyond the power of the legislature to require such registration and indorsement as essentials to complete title in a motor vehicle, when the enforcement of the police regulations and revenue measures contained in the act is dependent upon the fact of title and ownership. We quote from Huddy on Automobiles, fifth edition, 113: 'The

reason assigned for the necessity of registration and licensing is that the vehicle should readily be identified in order to debar operators from violating the law and the rights of others, and to enforce the laws regulating speed, and to hold the operator responsible in cases of accident. The legislatures have deemed that the best method of identification, both as to the vehicle and the owner or operator, is by a number on a tag conspicuously attached to the vehicle. In case of any violation of law this furnishes means of identification, for, from the number, the name of the owner may be readily ascertained and through him the operator. Such acts are not passed merely for the purpose of revenue but have for their object the protection of the public.'" *Parke v. Franciscus* (1924) 194 Cal. 284, 292.

"Registration of Exempt Vehicles

"4001. All vehicles exempt from the payment of registration fees shall be registered as otherwise required by this code by the person having custody thereof, and he shall display upon the vehicle a license plate bearing distinguishing marks or symbols, which shall be furnished by the department free of charge."

"... such self-propelling vehicles as are used neither for the conveyance of persons for hire, pleasure, or business, nor for the transportation of freight, are hereby exempted from the payment of the fees in this act prescribed. The department shall furnish, free of charge, distinguishing plates for motor vehicles thus exempt." Statutes of California, Forty-First Session, 1915, Chapter 188, § 2, p. 397, at 400.

"... number plates furnished ... for such motor vehicles as are exempted by section two of this act [Statutes of California, Forty-First Session, 1915, Chapter 188, § 2, p. 399.] from the payment of the fees in this act prescribed shall contain suitable distinguishing marks or symbols, and the numbers assigned in such cases shall run in different numerical series from the numbers assigned to other vehicles registered under the provisions of this act; ..." Statutes of California, Forty-Second Session, 1917, Chapter 218, § 8, p. 388.

"... This section [2 of the Motor Vehicle Act] provides that: '... such self-propelling vehicles as are used neither for the conveyance of persons for hire, pleasure, or business, nor for the transportation of freight, are hereby exempted from the payment of the fees in this act prescribed. The department shall furnish, free of charge, distinguishing plates for motor vehicles thus exempt.' ...

"We think that section 2 ... excludes specifically all motor vehicles that are not used for the conveyance of persons for hire, for pleasure or for business. ... The general definition of the word [business] is 'that which busies, or engages time, attention, or labor, as a principal serious concern or interest,' but the word has a narrower meaning applicable to occupation or employment for livelihood or gain, and to mercantile or commercial enterprises or transactions. ... The passage evidently refers to ordinary business ... The phrase 'for the conveyance of persons for hire, pleasure, or business, nor for the transportation of freight,' clearly indicates an intention to describe

ordinary occupations engaged in by private persons or private corporations, either for business or pleasure, and so far as it refers to business it would include private business ..." *Marin Municipal Water Dist. v. Chenu* (1922) 188 Cal. 734, 737-738.

The Motor Vehicle Act "'imposes an excise tax or privilege for the purpose of providing a fund for roads under the dominion of state authorities.' ... [T]he use which petitioner's vehicles propose to make of the highways is identically that which of common right all persons and vehicles may make. ... The common use of the highways is open to all. ... So here, the charge is a fee exacted of motor vehicles for the right to use any public highway. It is not a toll. It is a revenue measure pure and simple. It being thus clear both upon principle and upon the adjudication of the Schuler case that this license charge is a privilege tax, established for the purposes of revenue ... But it is to be noted here ... that the state ... has simply declared a method by which it will tax such corporations ..." *Pacific Gas & Electric Co. v. Roberts* (1914) 168 Cal. 420, 427-429.

"Operation of Vehicle Pending Registration

"4017. The provisions of Section 4000 shall not apply to the moving or operating of a vehicle during the period of time in which application may be made for registration of the vehicle without penalty as provided in section 4152.5."

"Application for Vehicle Other Than Motorcycle

"4150. Application for the original or renewal registration of a vehicle of a type required to be registered under this code shall be made by the owner to the department upon the appropriate form furnished by it and shall contain all of the following:

...

"(d) Any other information that is reasonably required by the department to enable it to determine whether the vehicle is lawfully entitled to registration."

"Certificate of Ownership and Registration Card

"4450. The department upon registering a vehicle shall issue a certificate of ownership to the legal owner and a registration card to the owner, or both to the owner if there is no legal owner of the vehicle."

"Certificate of Ownership

"4600. Certificates of ownership shall not be renewed annually but shall remain valid until suspended, revoked, or canceled by the department for cause or upon a transfer of any interest shown therein."

"Grounds Permitting Refusal

"4751. The department may refuse registration or the renewal or transfer of registration of a vehicle in any of the following events:

"(a) If the department is not satisfied that the applicant

is entitled thereto under this code.

"(b) If the applicant has failed to furnish the department with information required in the application or reasonable additional information required by the department.

...

"(f) If the department determines that a lien exists, pursuant to Section 9800, against one or more other vehicles in which the applicant has an ownership interest."

"Issuance of Plates: Reflectorized Plates

"4850. (a) The department, upon registering a vehicle, shall issue to the owner two partially or fully reflectorized license plates or devices for a motor vehicle, ... The plates or devices shall identify the vehicles for which they are issued for the period of their validity."

"Special Plates

"5000. (a) License plates issued for ... such vehicles as are exempt from the payment of registration fees under this code shall display suitable distinguishing marks or symbols, and the registration numbers assigned to each class of vehicles shall run in a separate numerical series, except that registration numbers assigned to vehicles exempt from the payment of registration fees may run in several separate numerical series."

Identification Plates and Cards

"5016. Upon proper application and payment of the fees specified in Section 9261 [\$7.00], the department shall issue an identification plate and an identification card for the ... vehicle ... for which application is made."

"Period of Display

"5202. Every license plate issued by this State ... shall remain attached during the period of its validity to the vehicle for which it is issued while being operated within this State ... or until such time as a vehicle with special or identification plates is no longer entitled to such plates and no person shall operate, nor shall an owner knowingly permit to be operated, upon any highway any vehicle unless the license plate is so attached. ..."

"Plates Surrendered or Removed

"5203. This chapter does not apply to plates which the department has ordered to be surrendered, transferred to another vehicle, or removed."

"Transfer by Legal Owner

"5603. A legal owner may assign his title or interest in or to a vehicle registered under this code to a person other than the owner without the consent of and without affecting the interest of the owner."

"Transfer by Legal Owner

"5750. Upon transfer of the title or any interest of the legal owner or owners of a vehicle registered under this code, the transferor shall write his signature, and the transferee shall write his signature and address, in the appropriate spaces provided on the certificate of ownership issued for the vehicle."

"Transfer by Registered Owner

"5751. Upon transfer of the title or interest of the registered owner only in a vehicle registered under this code, the registered owner shall write his signature and address and the transferee shall write his signature and address in the appropriate spaces provided on the certificate of ownership for the vehicle, and the legal owner shall write his signature in the space provided for the new legal owner indicating that he is to retain his legal title and interest."

"General Powers

"8800. The department may suspend, cancel, or revoke the registration of a vehicle or a certificate of ownership, registration card, or license plate or any permit in any of the following events:

"(a) When the department is satisfied that the registration or the certificate, card, plate, or permit was fraudulently obtained or erroneously issued.

...

"(d) When the department determines that the required fee has not been paid and the same is not paid upon reasonable notice and demand.

...

"(f) When the registration could have been refused when last issued or renewed.

"(g) When the department determines that the owner or legal owner has committed any offense under Sections 20 (with respect to an application for the registration of a vehicle), 4000, 4159 to 4163, inclusive, 4454, 4456, 4461, 4463, 5202, 10750, and 10751, involving the registration or the certificate, card, plate, or permit to be suspended, canceled, or revoked.

"(h) When the department is so authorized under any other provision of law."

"Registration Fees

"9250.1. (a) A registration fee of twenty-seven dollars (\$27) shall be paid to the department for the registration of every vehicle ... of a type subject to registration under this code, except as are expressly exempted under this code from the payment of registration fees.

...

(c) The fees imposed by this section apply in lieu of the fees specified in Section 9250 to ... (2) the renewal of registration of any vehicle for which the registration period

expires on or after January 1, 1992 ..."

"Weight Fees for Commercial Vehicles

"9400. In addition to any other registration fees, there shall be paid the fees set forth in this section for the registration of commercial vehicles. ...

...

(d) This section shall not be applicable to any vehicle which is operated or moved over the highway exclusively for the purpose of historical exhibition or other similar noncommercial purpose."

"Lien for Fees, Taxes, and Penalties: Sale of Trip Permits

"9800. (a) Payments for any of the following, and any interest, penalties, or service fees added thereto, required to register or transfer the registration of a vehicle, constitute a lien on the vehicle on which they are due or which was involved in the offense, and on any other vehicle owned by the owner of that vehicle:

- "(1) Registration fees.
- "(2) Transfer fees.
- "(3) License fees.
- "(4) Use taxes. ..."

"Unlawful to Drive Unless Licensed

"12500. (a) No person shall drive a motor vehicle upon a highway, unless the person then holds a driver's license issued under this code, except those person who are expressly exempted under this code."

"... 'chauffeur' shall mean any person who operates an automobile in the transportation of persons and who receives any compensation for such service in wages, commission or otherwise, paid directly or indirectly, or who as owner or employee operates an automobile carrying passengers for hire; ... 'operator' shall mean any person other than a chauffeur who operates a motor vehicle and any person who operates, rides, drives or propels any vehicle other than a motor vehicle; ..." Statutes of California, Forty-First Session, 1915, Chapter 188, § 1, p. 397, at 398-399.

[Note that an "operator" is "any person other than" 1) "a chauffeur who operates a motor vehicle" or 2) "any person who operates, rides, drives or propels any vehicle other than a motor vehicle".]

"No person shall employ for hire as a chauffeur of a motor vehicle any person not licensed as in this act provided. No person shall allow a motor vehicle owned by him or under his control to be operated by any person who has no legal right to do so, or in violation of the provisions of this act." Statutes of California, Forty-First Session, 1915, Chapter 188, § 19, p. 397, at 406.

"RIGHT. ...

"As a *noun*, and taken in a *concrete* sense, a right signifies a

power, privilege, faculty, or demand, inherent in one person and incident upon another. 'Rights' are defined generally as 'powers of free action.' ... But leaving the abstract moral sphere, and giving to the term a juristic content, a 'right' is well defined as 'a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others.' Holl. Jur. 69.

...

"... *Primary* rights are those which can be created without reference to rights already existing. ...

"*Preventive* or *protective secondary* rights exist in order to prevent the infringement or loss of primary rights. They are judicial when they require the assistance of a court of law for their enforcement, and extrajudicial when they are capable of being exercised by the party himself. ...

...

"With respect to the ownership of external objects of property, rights may be classed as *absolute* and *qualified*. An absolute right gives to the person in whom it inheres the uncontrolled dominion over the object at all times and for all purposes. A qualified right gives the possessor a right to the object for certain purposes or under certain circumstances only. ...

"Rights are also either *legal* or *equitable*. The former is the case where the person seeking to enforce the right for his benefit has the legal title and a remedy at law." *Black's Law Dictionary, Third Edition*, West Publishing Co., 1933, pp. 1558-1559.

"... In the new York case [*People v. Rosenheimer*, 209 N.Y. 115, 102 N.E. 530] the court held that it was within the power of the legislature to prohibit altogether the operation of automobiles on the public highways, and since this power might be exercised by the legislature any restrictions or conditions attached, less than absolute prohibition, subject to which they might be operated, was lawful; in other words, the greater power included the less. This position is based upon the theory that the driver of an automobile in the operation thereof exercises a privilege and not a right, and as to such privilege it is competent for the legislature to provide the conditions upon which it shall be exercised, or deny it altogether. Reference is made to the opinion for the numerous authorities cited in support of the proposition." *People v. Diller* (1914) 24 Cal. App. 799, 801.

"It shall be unlawful for any person to operate or drive a motor vehicle upon the public highway unless licensed by the department ... Licenses, whether to chauffeurs or operators, shall be valid during the calendar year only in which issued." Statutes of California, Forty-Second Session, 1917, Chapter 218, § 24, p. 407.

"It is not disputed that the public health, public morals, and general public welfare, may be preserved under the police powers vested in the state. (5 Cal. Jur. 696.) While it is true that legislation under the police powers must not be unreasonable, or oppressive, yet all property within the jurisdiction of the state is held subject to reasonable regulations so that it may not be used to the detriment of the equal rights of others. (6 R. C. L. 193.) And so it has been held to be

a valid regulation of business under the police powers to prohibit fraud, deceit and imposition. (12 C. J. 920; 6 R. C. L. 208.) In *Coffman v. Ousterhous, State Dairy Com.*, 40 N. D. 390 [18 A. L. R. 219, 168 N. W. 826], upholding the constitutionality of an act regulating dairy interests, and licensing and authorizing the withholding of licenses under specified conditions, the court said: 'The police power of the state is not limited to the mere regulation of affairs to preserve the good order, public health and safety.

"In the interest of public health, public morals, and public welfare, statutes have been upheld in nearly every state of the Union regulating and licensing various businesses and professions ..." *Gregory v. Hecke* (1925) 73 Cal. App. 268, 277-278.

"As indicated by its title, the act was designed to impose a license tax upon those engaged in the business of operating motor vehicles upon the public highways for the transportation of persons or property for compensation. Section 1 defines certain words and phrases employed in the act. The term 'operator' is declared generally to include all persons, firms, associations, and corporations who operate motor vehicles upon any public highway in the state and thereby engage in the transportation of persons or property for hire or compensation. The term 'motor vehicles' is defined to mean and include all vehicles, automobiles, trucks, or trailers operated upon or over the public highways of this state whether the same be propelled or operated by steam or electricity or propelled or operated by combustion of gasoline, distillate, or other volatile and inflammable liquid fuels. ...

"Section 2 of the act provides: 'Each operator of a motor vehicle within this state who transports or desires to transport for compensation or hire persons or property upon or over any public highway within this state shall apply to and secure from the board of equalization of the State of California a license to operate each and all of the motor vehicles which such operator desires to operate or which such operator from time to time may operate.' ...

"It is provided in Section 7 that any operator using the public highways of the state for the transportation of persons or property for hire, either as a public or private carrier without first obtaining the license ... is guilty of a misdemeanor ..." *Bacon Service Corporation v. Huss* (1926) 199 Cal. 21, 26-27.

"... Section 1 excludes from the definition of the term 'operator' everyone 'who solely transports by motor vehicle ... his or its own property, or employees, or both, and who transports no persons or property for hire or compensation.'" *Bacon Service Corporation v. Huss* (1926) 199 Cal. 21, 28.

"An examination of the entire statute discloses that the obvious and only purpose of the act was to provide a revenue with which to maintain and repair the public highways of the state outside of the incorporated cities and that such revenue was to be obtained by the imposition of a license or privilege tax on the business of operating motor vehicles for hire over such public highways. The act is not a police measure in any sense. It provides for a license tax for revenue purposes only." *Bacon Service Corporation v. Huss* (1926) 199 Cal. 21, 29.

"The next exemption [from the license fee] applies to those who use said public highways for the transportation of their own property or employees or both and to those who transport no persons or property for hire or compensation. It is obvious that those who operate motor vehicles for the transportation of persons or property for hire enjoy a different and more extensive use of the public highways. They are thereby enabled to engage in business on the public highways and to provide for themselves a livelihood, particularly because of the existence of the public highways and the facilities thereby afforded. Such extraordinary use constitutes a natural distinction and a full justification for their separate classification and for relieving from the burden of the license tax those who merely employ the public highways for the transportation of their own property or employees." *Bacon Service Corporation v. Huss* (1926) 199 Cal. 21, 30.

"... [T]he exemptions provided for in section 1 [of the Motor Vehicle Transportation License Act of 1925 (Stats. 1925, p. 833) in favor of those who solely transport their own property or employees, or both, and of those who transport no persons or property for hire or compensation, by motor vehicle,] have been determined in the Bacon Service Corporation case to be lawful exemptions. *In re Schmolke* (1926) 199 Cal. 42, 46.

"... [T]he language in *Buck v. Kuykendall*, 267 U. S. 307 [69 L. Ed. 623, 45 Sup. Ct. Rep. 324, 38 A. L. R. 286], applies. The rule there stated is: '. . . A citizen may have, under the fourteenth amendment, the right to travel and transport his property upon them (the public highways) by auto vehicle, but he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process clause or the equal protection clause.'" *In re Graham* (1928) 93 Cal. App. 88, 94.

Actions founded on licenses issued by the State and their fees are in form common law actions of assumpsit upon an implied contract. *Welsbach Co. v. State of California* (1929) 206 Cal. 556.

"ASSUMPSIT. Lat. He undertook; he promised.

"A promise or engagement by which one person assumes or undertakes to do some act or pay something to another. It may be either oral or in writing, but it is not under seal. It is *express* if the promisor puts his engagement in distinct and definite language; it is *implied* where the law infers a promise (though no formal one has passed) from the conduct of the party or the circumstances of the case. *Dukes v. Rogers*, 67 Ga.App. 661, 21 S.E.2d 295, 297.

"Practice

"A form of action which lies for the recovery of damages for the non-performance of a parol or simple contract; or a contract that is neither of record nor under seal. 7 Term. 351; *Ballard v. Walker*, 3 Johns. Cas. (N.Y.) 60. A liberal and equitable action, applicable to almost every case where money has been received which in equity and good conscience ought to be refunded; express promise is not necessary to sustain action, but it may be maintained whenever

anything is received or done from the circumstances of which the law implies a promise of compensation. *Armour & Co. v. Whitney & Kemmerer, Inc.*, 164 Va. 12, 178 S.E. 889, 98 A.L.R. 596." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 157.

"The legislative power to regulate travel over the highways and thoroughfares of the state for the general welfare is extensive. It may be exercised in any reasonable manner to conserve the safety of travelers and pedestrians. Since motor vehicles are instruments of potential danger, their registration and the licensing of their operators have been required almost from their first appearance. The right to operate them in public places is not a natural and unrestrained right, but a privilege subject to reasonable regulation, under the police power, in the interest of the public safety and welfare. (*Hendrick v. Maryland*, 235 U. S. 610, 622 [59 L. Ed. 385, 35 Sup. Ct. Rep. 140].) The power to license imports the further power to withhold or revoke such license upon noncompliance with prescribed conditions." *Watson v. Division of Motor Vehicles* (1931) 212 Cal. 279, 283.

"... While, as pointed out in *Bosse v. Marye, supra* [80 Cal. App. 109, 250 Pac. 693], one may be an operator of an automobile within the meaning of the Motor Vehicle Act without actually driving the same, on the other hand, under the definition applying under the terms of the act, one who actually drives the machine is an operator. (Sec. 18 of Motor Vehicle Act, Stats. 1923, p. 519.)

"Looking at certain other provisions of the act as it stood at the time of the accident here in question, we find: Section 58 provides that all operators must be licensed, and it is made unlawful for any person, except those expressly exempted under this act, to drive a motor vehicle upon a public highway in this state, unless such person has been licensed. It is also provided that every person, before driving a motor vehicle, shall apply to the division for a license, either as an operator or a chauffeur, as the case may be. Section 59, as amended in 1925, provides for a temporary permit. It first provides that any person of requisite age to obtain an operator's license may apply for a driver's permit. It then goes on to provide that the division, upon good cause shown, may, in its discretion, issue to an applicant a driver's permit entitling him to drive an automobile for a period of thirty days, when accompanied by an operator or chauffeur. Section 60 gives the person exempted, as referred to in section 58. It is perfectly apparent therefrom that a minor living in this state who has not therefore been licensed is not exempted." *Pontius v. McLain* (1931) 113 Cal. App. 452, 456.

"Section 58 of the California Vehicle Act provides that it shall be unlawful for any person to drive a motor vehicle upon a public highway in this state without first having obtained an operator's license." *People v. O'Rourke* (1932) 124 Cal. App. 752, 757.

"The power to license carries with it the power to prescribe reasonable conditions precedent, and must and does include the power of revocation. That the licensee shall not interfere with the equal rights

of other licensees is certainly a reasonable requirement and condition upon which to base the issuance and continuance of such a license. ... To provide that the privilege represented by the license will be granted only upon the condition that any damage done through the exercise of the privilege will be made good, would not be an unreasonable regulation. A provision making the continuance of the privilege dependent upon a similar condition seems equally reasonable." *Sheehan v. Division of Motor Vehicles* (1934) 140 Cal. App. 200, 203-204.

"Social Security Number Required

"12801 Notwithstanding any other provision of law, the department shall require every application for a driver's license to contain the applicant's social security number and any other number or identifier determined to be appropriate by the department."

"Renewal of License

"12814. (a) Application for renewal of a license shall be made at an office of the department of Motor Vehicles by the person to whom the license was issued. ...

"(b) Renewal of a driver's license shall be under the terms and conditions prescribed by the department."

"Possession of License

"12951. (a) The licensee shall have the license issued to him in his immediate possession at all times when driving a motor vehicle upon a highway. ..."

"Cancellation

"13100. When used in reference to a driver's license, 'cancellation' means that a driver's license certificate is terminated without prejudice and must be surrendered. ..."

"Revocation

"13101. When used in reference to a driver's license, 'revocation' means that the person's privilege to drive a motor vehicle is terminated ..."

"Suspension

"13102. When used in reference to a driver's license, 'suspension' means that the person's privilege to drive a motor vehicle upon a highway is temporarily withdrawn. ..."

"Unlicensed persons

"13553. Whenever a court or the department suspends or revokes the privilege of any person to operate a motor vehicle and the person does not hold a valid driver's license, or has never applied for or received a driver's license in this state, the person shall be subject to any and all penalties and disabilities provided in this code for a violation of the terms and conditions of a suspension or revocation of the privilege to operate a motor vehicle." [NOTE: Appears to apply only to nonresidents.]

"Compact Enacted

"15000. The Driver License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially contained in Article 2 (commencing with Section 15020), of Chapter 6, Division 6 of this code."

"COMPACT, *n.* An agreement; a contract. *Green v. Biddle*, 8 Wheat. 1, 92, 5 L.Ed 547. Usually applied to conventions between nations or sovereign states.

"A contract between two parties, which creates obligations and rights capable of being enforced, and contemplated as such between the parties, in their distinct and independent characters. *Story*, *Const.* b. 3; *Rutherf.Inst.* b. 2, c. 6, § 1.

"A mutual consent of parties concerned respecting some property or right that is the object of the stipulation, or something that is to be done or forborne. *Chesapeake & O. Canal Co. v. Baltimore & O. R. Co.*, 4 Gill & J., Md., 1." *Black's Law Dictionary, Revised Fourth Edition*, West Publishing Co., 1968, p. 351.

"Licensing Authority

"15001. As used in the compact, the term 'licensing authority' with reference to this State shall mean the Department of Motor Vehicles. That department shall furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of Sections 15022, 15023, and 15024 of the compact."

"Legislative Intent

"15200. It is the intent of the Legislature, in enacting this chapter, to adopt those standards required of drivers by the Federal Highway Administration of the Department of Transportation, as set forth in the Commercial Motor Vehicle Safety Act of 1986 (Title XII of P.L. 99-570) and to reduce or prevent commercial motor vehicle accidents, fatalities, and injuries by permitting drivers to hold only one license ... This act is a remedial law and shall be construed to promote the public health, safety and welfare. To the extent that this chapter conflicts with general driver licensing provisions, this chapter shall prevail. ..." (Emphasis added.)

"Resident Accepting Certificate of Ownership or Registration

"17459. The acceptance by a resident of this state of a certificate of ownership or a certificate of registration of any motor vehicle or any renewal thereof, issued under the provisions of this code, shall constitute the consent by the person that service of summons may be made upon him within or without this state, whether or not he is then a resident of this state, in any action brought in the courts of this state upon a cause of action arising in this state out of the

ownership or operation of the vehicle."

"Resident Accepting or Retaining Driver's License

"17460. The acceptance or retention by a resident of this state of a driver's license issued pursuant to the provisions of this code, shall constitute the consent of the person that service of summons may be made upon him within or without this state, whether or not he is then a resident of this state, in any action brought in the courts of this state upon a cause of action arising in this state out of his operation of a motor vehicle anywhere within this state."

"Prosecution of Persons Owning or Controlling Vehicles

"40002. (a) Whenever a written notice to appear has been mailed to an owner of a vehicle or other person referred to in Section 40001, an exact and legible copy of the notice when filed with the magistrate, in lieu of a verified complaint, is a complaint to which the defendant may plead 'guilty.'

If, however, the defendant fails to appear in court or does not deposit lawful bail, or pleads other than 'guilty' of the offense charged, a complaint shall be filed which shall conform to Chapter 2 (commencing with Section 948) of Title 5 of Part 2 of the Penal Code, and which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by the defendant and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear."

"Unregistered Vehicle: Compliance

"40152. (a) Whenever any vehicle ... is found to be not registered as required by this code, and a notice to appear is issued or a complaint filed for such violation, the person to whom the notice to appear is issued or against whom the complaint is filed shall produce in court satisfactory evidence that the vehicle ... is registered, had appropriate fees paid, or is reduced to junk, to conform with the requirements of this code. The court shall not adjudicate the offense until that evidence is produced."

"Violation Involving Commercial Motor Vehicle

"40300.2. Whenever a person is arrested for a violation of this code, or a violation of any other statute required to be reported under Section 1803, the written complaint, notice to appear in court, or other notice of violation, shall indicate whether the vehicle involved in the offense is a commercial motor vehicle, as defined in subdivision (b) of Section 15210."

"Arrest Without Warrant

"40300.5. Notwithstanding any other provision of law, a peace officer may, without a warrant, arrest a person who is

(1) involved in a traffic accident or (2) observed by the peace officer in or about a vehicle which is obstructing a roadway, when the officer has reasonable cause to believe that the person has been driving while under the influence of an alcoholic beverage or any drug, or under the combined influence of an alcoholic beverage and any drug."

"Mandatory Appearance

"40302. Whenever any person is arrested for any violation of this code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or is most accessible with reference to the place where the arrest is made in any of the following cases:

"(a) When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination.

"(b) When the person arrested refuses to give his written promise to appear in court.

"(c) When the person arrested demands an immediate appearance before a magistrate.

"(d) When the person arrested is charged with violating Section 23152."

"Notice to Appear

"40500. (a) Whenever a person is arrested for any violation of this code not declared to be a felony, or for a violation of an ordinance of a city or county relating to traffic offenses and he is not immediately taken before a magistrate, as provided in this chapter, the arresting officer shall prepare in triplicate a written notice to appear in court or before a person authorized to receive a deposit of bail ..."

"Delivery of Notice

"40504. (a) The officer shall deliver one copy of the notice to appear to the arrested person and the arrested person in order to secure release must give his written promise to appear in court or before a person authorized to receive a deposit of bail by signing two copies of the notice which shall be retained by the officer. Thereupon the arresting officer shall forthwith release the person arrested from custody."

"Filing of Complaint

"40513. (a) Whenever written notice to appear has been prepared, delivered, and filed with the court, or whenever notice has been given pursuant to the provisions of Section 41102, and exact and legible duplicate copy of the notice when filed with the magistrate, in lieu of a verified complaint, shall constitute a complaint to which the defendant may plead 'guilty' or 'nolo contendere.'

If, however, the defendant ... pleads other than 'guilty' or

'nolo contendere' to the offense charged, a complaint shall be filed which shall conform to the provisions of Chapter 2 (commencing with Section 948) of Title 5, Part 2 of the Penal Code, and which shall be deemed to be an original complaint, and thereafter proceedings shall be had as provided by law, except that a defendant may, by an agreement in writing, subscribed by him and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

"(b) Notwithstanding the provisions of subdivision (a) of this section, whenever the written notice to appear has been prepared on a form approved by the Judicial Council, an exact and legible copy of the notice when filed with the magistrate shall constitute a complaint to which the defendant may enter a plea ..."

"*Federal Law*

"41401. No person shall be prosecuted for a violation of any provision of this code if the violation was required by a law of the federal government, ..."

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." *Constitution of the United States of America, Analysis and Interpretation, 1973*, U. S. Government Printing Office, Washington, Article VI, Clause 2. (Capitalization in original.)

[NOTE: The Constitution of the United States of America is the "supreme law of the land." It recognizes and guarantees the "right to travel"; therefore, it "requires" violation of the Vehicle Code.]

"In *United States v. Guest*, 383 U.S. 745, 758, 759 (1966), Justice Stewart observed that 'freedom to travel throughout the United States has long been recognized as a basic right under the Constitution' and that while 'there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel ... [a]ll [the Justices] have agreed that the right exists." *Constitution of the United States of America, Analysis and Interpretation, 1973*, U. S. Government Printing Office, Washington, p. 269, fn. 7.

"... To date, the 'right to travel' is the only liberty [but see *v. Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954)] protected by the due process clause of the Fifth Amendment which the Court has identified and asserted in reviewing federal legislation to determine whether it had a rational basis. Thus, in *Kent v. Dulles* [357 U.S. 116, 127 (1958)], while deciding the case on another issue, the Court observed that '[t]he right to travel is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the Fifth Amendment.... Freedom of movement across frontiers in either direction, and inside frontiers as well, as a part of our heritage. Travel abroad, like travel within the country,... may be as close to the heart of the individual as the choice

of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.'" *Constitution of the United States of America, Analysis and Interpretation*, 1973, U. S. Government Printing Office, Washington, p. 1170.

"No opinion of the Court attempts to delineate the process by which certain 'fundamental' rights are differentiated from others so that *de jure* or *de facto* application of distinctions between them will activate the 'compelling state interest' type of analysis. It can be accepted from the cases that ... the right of interstate travel [*Shapiro v. Thompson*, 394 U.S. 618 (1969); *Graham v. Richardson*, 403 U.S. 365 (1971)] ... ha[s] so far been denominated as sufficiently fundamental to require active review." *Constitution of the United States of America, Analysis and Interpretation*, 1973, U. S. Government Printing Office, Washington, p. 1476.

"... The constitutional right to travel predates the recent cases [*Crandall v. Nevada*, 6 Wall. (73 U.S.) 35 (1868); *Edwards v. California*, 314 U.S. 160 (1941). '[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution,' the Court said in *United States v. Guest*, 383 U.S. 758 (1966). 'Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need to canvass those differences further. All have agreed that the right exists.' *Id.*, 759; and see *id.*, 763-764 (Justice Harlan concurring and dissenting), 777 n. 3 (Justice Brennan concurring and dissenting)]. ..." *Constitution of the United States of America, Analysis and Interpretation*, 1973, U. S. Government Printing Office, Washington, p. 1521.

"Citation Defined

"41601. For purposes of this chapter, 'citation' means a notice to appear, notice of violation, or notice of parking violation."

"Unregistered Vehicle

"42001.8. Every person convicted of an infraction for a violation of Section 4000 shall be punished by a fine of not less than fifty dollars (\$50) and not more than two hundred fifty dollars (\$250)."

**OTHER STATUTES RELATED TO THE
USE AND OPERATION OF MOTOR VEHICLES**

CIVIL CODE

"Service by Certified Mail in Lieu of Registered

"17. Whenever any notice or other communication is required by this code to be mailed by registered mail, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of law."

"Motor Vehicle Sales and Finance Act

"2981. As used in this chapter, unless the context otherwise requires:

...

"(k) 'Motor vehicle' means any vehicle required to be registered under the Vehicle Code which is bought for use primarily for personal or family purposes, and does not mean any vehicle which is bought for use primarily for business or commercial purposes ..."

PENAL CODE

"§19c. Infractions Not Punishable by Imprisonment.

"An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. ..."

"§19d. Application of Misdemeanor Laws to Infractions.

"Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions, including but not limited to powers of peace officers, jurisdiction of courts, periods for commencing action and for bringing a case to trial and burden of proof."

REVENUE AND TAXATION CODE

"Computation of Vehicle License Fee

"10751. A license fee is hereby imposed for the privilege of operating upon the public highways in this state any vehicle of a type which is subject to registration under the Vehicle Code. ..."

"Seizure and Sale

"10876. Every license fee and any penalty added thereto, from the date on which the fee becomes due, shall constitute a lien upon the vehicle for which due and upon any other vehicle owned by the owner of that vehicle."

"10877. The department shall collect the fee and any penalty by seizure and sale of the vehicle as provided in Article 6 (commencing with Section 9800) of Chapter 6 of Division 3 of the Vehicle Code, or by appropriate civil action."