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secrecy.—Welsh v. Pritchard, 241 P.2d 816, 125 Mont. 517.

N.Y.Sup. 1957. "Privacy" means the state of being in retirement from company or observation of others, concealment of what is said and done and secrecy;— while a "consultation" is a deliberation of two or more persons on some subject.—In re Lanza, 163 N.Y.S.2d 576, 6 Misc.2d 411, affirmed 164 N.Y.S.2d 534, 4 A.D.2d 252, appeal denied 166 N.Y.S.2d 302, 4 A.D.2d 831, appeal denied Reuter, Matter of (Cosentino), 3 N.Y.2d 710.—Torts 330.

Or.App. 1995. Government conduct does not intrude on person's "privacy," and thus does not amount to search for purposes of State Constitution, when government's scrutiny is no different from what could have been done by any private person. Const. Art. 1, § 9.—State v. Juarez-Godinez, 900 P.2d 1044, 135 Or.App. 591, review allowed 907 P.2d 247, 322 Or. 360, affirmed 942 P.2d 772, 326 Or. 1.—Searches 13.1.

PRIVACY INTEREST

C.A.D.C. 1983. "Privacy interest," in constitutional lexicon, consists of reasonable expectation that uninvited and unauthorized persons will not intrude into particular area; one may freely admit guests of one's choosing, or be legally obliged to admit specific persons, without sacrificing one's right to expect that space will remain secure against all others. U.S.C.A. Const.Amend. 4.—U.S. v. Lyons, 706 F.2d 321, 227 U.S.App.D.C. 284.—Searches 26.

C.A.4 (Va.) 1986. Defendant had no "privacy interest" entitled to Fourth Amendment protection in tapes storing information defendant had transmitted to government bidder, where defendant had sold information to bidder, tapes were stored in building belonging to bidder, and defendant was rarely, if ever, physically present at bidder's premises, and was hundreds of miles away when search and seizure took place. U.S.C.A. Const.Amend. 4.—U.S. v. Horowitz, 806 F.2d 1222.—Searches 26.

N.Y. 1990. Mere fact that defendant has "property interest" in items surrendered to prison authorities at time of booking does not mean that he also has "privacy interest," such as would be protected by state and federal guarantees against unreasonable searches and seizures. U.S.C.A. Const. Amend. 4; McKinney's Const. Art. 1, § 12.—People v. Natal, 553 N.Y.S.2d 650, 75 N.Y.2d 379, 553 N.E.2d 239, certiorari denied Natal v. New York, 111 S.Ct. 169, 498 U.S. 862, 112 L.Ed.2d 134.—Searches 52.

Or. 1988. "Privacy interest"—as used in state constitutional searches and seizures provision—is interest in freedom from particular forms of scrutiny. Const. Art. 1, § 9.—State v. Campbell, 759 P.2d 1040, 306 Or. 157.—Searches 26.

Or.App. 1994. "Privacy interest" protected by State Constitution provision governing searches and seizures is interest in freedom from particular forms of scrutiny, but not freedom from all forms of scrutiny; if police officer's observation from public place is one that could have been made by private citizen, it does not impair "the people's" freedom from scrutiny. Const. Art. 1, § 9.—State v. Binner, 886 P.2d 1056, 131 Or.App. 677.—Searches 16, 26.

Utah App. 2000. A "privacy interest," in the constitutional lexicon, consists of a reasonable expectation that uninvited and unauthorized persons will not intrude into a particular area. U.S.C.A. Const.Amend. 4.—State v. McArthur, 996 P.2d 555, 2000 UT App 23, certiorari denied 9 P.3d 170.—Searches 26.

PRIVACY RIGHT

Pa.Cmwlth. 1992. Pursuant to "customer preference" defense, there is "privacy right" exception to Pennsylvania Human Relations Act which permits exclusion of all men from all-women's exercise facility; psychologist testified that 50 percent of members interviewed stated that exercising in all-female environment was decisive and primary reason for choosing facility, just because "intimate areas" of women's bodies were not exposed during exercise did not mean that they had no privacy interest worthy of recognition, and exclusion of males from facilities would not result in harm to men, as there were other facilities just as convenient where men could exercise in coed environment. 43 P.S. § 955.—Livingwell (North) Inc. v. Pennsylvania Human Relations Com'n, 606 A.2d 1287, 147 Pa. Cmwlth. 116, appeal denied Com. Human Relations Com'n v. Livingwell (North), Inc., 618 A.2d 401, 533 Pa. 611.—Civil R 1050.

PRIVATE

AFCMR 1983. Assuming that Uniform Code of Military Justice does not apply to heterosexual sodomy between consenting adults in private, such conduct was not in "private" where it occurred in base exchange snack bar while customers were in outer area waiting for the snack bar to open, notwithstanding that act took place behind a closed door with a sheet of paper over a wire opening. UCMJ Art. 125, 10 U.S.C.A. § 925.—U.S. v. Linnear, 16 M.J. 628.—Mil Jus 566.

C.A.D.C. 1984. Reference in Small Business Investment Act and amendments thereto to "private" paid-in capital and surplus, in turn defining the minimum capital investment required of a small business investment company, means nongovernmental, not merely non-SBA, funds for purposes of SBA leveraging provisions. Small Business Investment Act of 1958, §§ 302, 303(c), as amended, 15 U.S.C.A. §§ 682, 683(c).—Inner City Broadcasting Corp. v. Sanders, 733 F.2d 154, 236 U.S.App.D.C. 62.—U S 53(8).

C.A.11 (Fla.) 2003. A government's act is "private" in nature, as required to fall within the commercial activities exception of the Foreign Sovereign Immunities Act (FSIA), if it is the type of transaction that private actors could complete, but is "public" in nature, and thus not within the Act's commercial activities exception, if it is one which requires sovereign power, such as a government's regulation of the market, or use of its police power. 28 U.S.C.A. § 1605(a)(2).—Beg v. Islamic Republic

of Pakistan, 353 F.3d 1323, rehearing and rehearing denied 104 Fed.Appx. 154.—Intern Law 10.33.

C.A.1 (Mass.) 2002. Videotape allegedly depicting state trooper smoking marijuana with others did not involve facts of highly personal or intimate nature, and thus was not "private," as required for videotape to be protected by Massachusetts' Right-of-Privacy Act, inasmuch as it involved activity in presence of others who owed no duty of confidentiality. M.G.L.A. c. 214, § 1B.—Dasey v. Anderson, 304 F.3d 148.—Torts 351.

C.A.1 (Mass.) 2002. Activity in the presence of others who owe no duty of confidentiality is not "private" so as to be protected by the Massachusetts right-of-privacy statute. M.G.L.A. c. 214, § 1B.—Dasey v. Anderson, 304 F.3d 148.—Torts 330.

C.A.3 (Pa.) 1953. The word "private" means apart from the state, peculiar to an individual.—R. F. C. v. Foust Distilling Co., 204 F.2d 343.

C.A.1 (R.I.) 2002. For fact to be "private" within meaning of Rhode Island privacy statute, plaintiffs must demonstrate that they actually expected disclosed fact to remain private, and that society would recognize this expectation of privacy as reasonable and be willing to respect it. R.I.Gen.Laws 1956, § 9–1–28.1.—Hatch v. Town of Middletown, 311 F.3d 83.—Torts 350.

C.C.A.8 (Neb.) 1938. The Regional Agricultural Credit Corporation created by the Reconstruction Finance Corporation pursuant to statute authorizing it to create such corporations with paid-up capital stock to be subscribed for by Reconstruction Finance Corporation and paid for out of unexpended balance of amounts allocated to Secretary of Agriculture and providing that such corporations should be managed by officers and agents to be appointed by Reconstruction Finance Corporation is not a "private" or "commercial corporation" and as such subject to suit but is a "governmental agency" immune from suit without express consent. 15 U.S.C.A. § 605b(e).—Keifer & Keifer v. Reconstruction Finance Corp., 97 F.2d 812, certiorari granted 59 S.Ct. 106, 305 U.S. 588, 83 L.Ed. 372, reversed 59 S.Ct. 516, 306 U.S. 381, 83 L.Ed. 784.—U S 53(14).

C.D.Cal. 1998. Among the factors considered in determining whether a facility is genuinely "private," and therefore exempt from classification as a "place of public accommodation" under the Americans With Disabilities Act (ADA), are the following: the use of the facilities by nonmembers (or nonemployees, in the commercial context); the purpose of the facility's existence; advertisement to the public; and profit or nonprofit status. Americans with Disabilities Act of 1990, §§ 301(7), 302, 307, 42 U.S.C.A. §§ 12181(7), 12182, 12187.—Jankey v. Twentieth Century Fox Film Corp., 14 F.Supp.2d 1174, affirmed 212 F.3d 1159.—Civil R 1050.

S.D.Cal. 1935. Relation between holders of irrigation district's bonds and irrigation district held "private" within rule that Congress may in exercise of powers granted by Constitution impair obligations of private contracts.—In re Imperial Irr. Dist., 10 F.Supp. 832, reversed Southern Sierras Power Co v. Imperial Irr Dist, 85 F.2d 1019, rehearing denied 87 F.2d 355.—Const Law 143.

M.D.Fla. 1994. Membership club was "private," for purposes of determining whether it was exempt from employment discrimination suit under Americans with Disabilities Act (ADA); incidents when club allowed nonmembers to use facilities were only isolated failures to abide by club's rules, and club did not allow guests unfettered use of its facilities, promote use of its facilities through advertisements aimed at nonmembers, permit profit making businesses to use its facilities to exclusion of uninvited members, or allow employees to host social or business events. Americans with Disabilities Act of 1990, § 101(2), (5)(B), 42 U.S.C.A. § 12111(2), (5)(B).—Kelsey v. University Club of Orlando, Inc., 845 F.Supp. 1526.—Civil R 1050.

E.D.Mo. 1952. The "sale of stock" by corporation to its key employees, not for purpose of raising finances, but to keep part of stock ownership of business within operating personnel of the business and to spread ownership throughout all departments and activities of the business, was a "private" rather than a "public" sale, and Securities Act was not applicable. Securities Act of 1933, §§ 4(1), 5(a) (1), 15 U.S.C.A. §§ 77d(1), 77e(a) (1).—Securities & Exchange Commission v. Ralston Purina Co., 102 F.Supp. 964, affirmed 200 F.2d 85, certiorari granted 73 S.Ct. 643, 345 U.S. 903, 97 L.Ed. 1340, reversed 73 S.Ct. 981, 346 U.S. 119, 97 L.Ed. 1494.—Sec Reg 18.11.

E.D.Pa. 2001. Adversary proceeding brought by debtor for interpretation of insurance policy that it obtained postpetition, for declaratory judgment that policy covered postpetition flood damage, for determination that insurer acted in bad faith in denying coverage, and for award of punitive damages was "legal" proceeding that concerned purely "private" rights, in which insurer had Seventh Amendment right to jury trial. U.S.C.A. Const.Amend. 7.—Northwestern Institute of Psychiatry, Inc. v. Travelers Indem. Co., 272 B.R. 104, on reconsideration.—Bankr 2130; Jury 14(12.5), 19(9).

E.D.Pa. 1983. Information as to terms of separation agreement entered into between personnel director and university hospital was not "private" as required to state claim for invasion of privacy by publicity given to private life where former personnel director contended throughout her complaint that personnel policies of hospital and university were not followed and, had she received what she contended she was entitled to, facts of her potential termination, as well as her negative evaluation report and other items of her employment history at university hospital, would have presumably been disclosed to at least same extent as they were allegedly disclosed by university and hospital officials.—Wells v. Thomas, 569 F.Supp. 426.—Torts 351.

W.D.Tex. 1993. Even private information that has been previously disclosed is "private" for pur-

poses of Freedom of Information Act (FOIA) exemption for documents compiled for law enforcement purposes disclosure of which could reasonably be expected to constitute unwarranted invasion of personal privacy. 5 U.S.C.A. § 552(b)(7)(A, C).—Church of Scientology of Texas v. I.R.S., 816 F.Supp. 1138.—Records 60.

E.D.Wis. 1993. Word "private," as used in the municipal ordinance regulating commercial establishments that offered booths for private viewing of videotapes, would be interpreted to refer to solitary or individual viewing, as opposed to group viewing, regardless of extent to which booth's occupant was exposed to those outside booth.—Libra Books, Inc. v. City of Milwaukee, 818 F.Supp. 263.—Pub Amuse 47.

Ala. 1951. The word "private" means belonging to, or concerning, an individual person, company or interest.—Stringer Realty Co. v. City of Gadsden, 53 So.2d 617, 256 Ala. 77.

Ala. 1902. The term "general laws" is one which has been employed to designate different classes of laws. Examples of its various signification are given in Bouvier's Law Dictionary, where it is shown that its use is common with reference to the subject-matter of statutes, as well as to the extent of territory over which statutes are intended to operate. There it is shown to be in use as the antithesis of "private," also of "local," and also of "special" statutes, and it is said that, "in deciding whether or not a given law is general, the purpose of the act and the objects on which it operates must be looked to." Legal writings abound with instances where enactments of the general lawmaking department are mentioned as general laws by way of distinguishing them from municipal laws.—Southern Exp. Co. v. City of Tuscaloosa, 31 So. 460, 132 Ala. 326.

Colo. 1953. "Private" means in the interest of the individual, as distinguished from enterprise or business operated by or on behalf of the public, or of any official function performed for public benefit.—Colorado Contractors Ass'n v. Public Utilities Com'n, 262 P.2d 266, 128 Colo. 333.

Colo. 1953. Restrictive covenants in deeds providing that no building should be constructed on premises conveyed other than for "private" residence purposes, and used quoted word as connoting that the word "residence" as used in the singular was peculiar to the privacy of one man and his family, and would not apply to structures for two or more families.—Flaks v. Wichman, 260 P.2d 737, 128 Colo. 45.—Covenants 51(1).

Colo. 1906. "The municipality of Denver, though created by a constitutional amendment by a direct vote of the people, and having the power to frame its own charter, is just as much an agency of the state, for the purpose of government, as if it was organized under a general law passed by the General Assembly. The mode of its creation does not change the nature of its relation to the state. Like cities and towns organized under the General Statutes, it is still a part of the state government. It is as much amenable to state control in all matters of a public, as distinguished from matters of a local, character, as are other municipalities." While the work of the city in building a sanitary sewer is local or "private," in that it affects, primarily, its own citizens, it is directly connected with the public health, and is a matter of concern to the people of the entire state. It is not municipal work of a private character, and hence is within 3 Mills' Ann. St.Rev.Supp. § 2801 a-c, restricting the hours of labor on work undertaken in behalf of the state toward any municipality, etc.—Keefe v. People, 87 P. 791, 37 Colo. 317, 8 L.R.A.N.S. 131.

D.C. 1973. Where proposed facility was to be located on property zoned residential, was to house indoor tennis, squash, handball, sauna baths and indoor swimming and was not to be open to members of the community at large, but was to be operated as a club with use limited to members and their guests, and where memberships offered would be limited in number, the proposed facility was a "private" club and not a "community center" facility operated by a local "community organization" within zoning ordinance authorizing granting of special exception for such a community facility.—Stewart v. District of Columbia Bd. of Zoning Adjustment, 305 A.2d 516.—Zoning 284.

Fla. 1995. Right of privacy set forth in State Constitution did not apply to ordinance prohibiting erection of fences in specified area in order to protect endangered species of deer, as decision to use land in manner contrary to lawful public environmental policy is not "private" act. West's F.S.A. Const. Art. 1, § 23.—Department of Community Affairs v. Moorman, 664 So.2d 930, rehearing denied, certiorari denied 117 S.Ct. 79, 519 U.S. 822, 136 L.Ed.2d 37.—Const Law 82(7); Environ Law 516.

Ga. 1946. "Private" is defined as belonging to, or concerning, an individual person, company, or interest; one's own; not public; not general.—Mitchell v. Green, 39 S.E.2d 696, 201 Ga. 256.

Ill. 1942. When a power conferred upon a municipal corporation bears relation to a public purpose and is for the public good, it is "governmental" in its nature and appertains to the corporation in its political capacity, but when it relates to accomplishment of private purposes, in which the public is only indirectly concerned, it is "private" in its nature and municipality, in respect of its exercise, is regarded as a legal individual, and in the former case the corporation is exempt from all liability, whether for non-user or for misuser, while in the latter case it may be held to that degree of responsibility which would attach to an ordinary corporation.—Merrill v. City of Wheaton, 41 N.E.2d 508, 379 Ill. 504.—Mun Corp 724, 725.

Ill. 1901. Where the term "alley" is used in a deed or in a plat, it will be taken to mean a private alley, where the term "private" is prefixed, or where the context requires that a different meaning than that of a public alley is to be assigned to the term.—City of Chicago v. Borden, 60 N.E. 915, 190 Ill. 430.

Kan. 1958. Laws relating to matters which affect only the change of name, organization, powers

and continuity of religious organizations are "private" laws.—In re Cramer's Estate, 332 P.2d 560, 183 Kan. 816, certiorari denied Division of Nat Missions of the Bd of Missions of the Methodist Church v. Koerner, 79 S.Ct. 1296, 360 U.S. 912, 3 L.Ed.2d 1261.—Statut 77(1).

Kan. 1905. The mere fact that the word "private" is used in the petition and other papers and proceedings relating to the establishment of a road under Gen.St.1901, § 6044, as a part of the description thereof, will not affect the validity of a road so established.—Johnson County Com'rs v. Minnear, 83 P. 828, 72 Kan. 326.—High 29(5).

Ky. 1960. "Private" relates to individuals as opposed to that which is public or general.—Stovall v. Gartrell, 332 S.W.2d 256.

Md. 1878. An indictment against a person for maintaining a nuisance near unto divers "roads and streets" cannot be construed as meaning private roads and streets, but should be taken as descriptive of public roads and streets. The noun "road," according to the legal definition, means a passage through the country for the use of the people. The ordinary and accepted meaning of the term is a way for public travel, unless qualified by the adjective "private," or some other qualifying expression; and so, as to the noun "street," that term is defined to mean a public thoroughfare or highway in a city or village; and hence the words "roads and streets" mean public ways or thoroughfares, and are sufficient to charge the offense as having been committed against the public.—Horner v. State, 49 Md. 277.

Mass. 1994. Act of urination is inherently "private," for purposes of determining whether employer's drug testing requirement violates employee's statutory right to privacy. M.G.L.A. c. 214, § 1B.—Folmsbee v. Tech Tool Grinding & Supply, Inc., 630 N.E.2d 586, 417 Mass. 388.—Torts 332.

Mich. 1937. "Private" means affecting or belonging to individuals, as distinct from the public generally, and "public" means the whole body politic, or all the citizens of the state; the inhabitants of a particular place.—People v. Powell, 274 N.W. 372, 280 Mich. 699, 111 A.L.R. 721.

Mich.App. 1999. Whether a conversation was "private," for purposes of eavesdropping statute, depends on whether the conversation was intended for or restricted to the use of a particular person or group or class of persons and is intended only for the persons involved. M.C.L.A. § 750.539c.—People v. Stone, 593 N.W.2d 680, 234 Mich.App. 117, application for leave to appeal held in abeyance 595 N.W.2d 852, appeal granted 610 N.W.2d 928, 461 Mich. 1002, affirmed 621 N.W.2d 702, 463 Mich. 558.—Tel 1436.

Mich.App. 1997. Parent's conversation that was surreptitiously transmitted by hidden microphone on child remained "private," and, thus, talk show host, show's producer, and contractor, by covertly recording and then rebroadcasting conversation, violated eavesdropping statute prohibiting use of device to eavesdrop upon private conversation without consent of all parties, even though microphone broadcast conversation on public airwaves, and even though conversation occurred in public park; parent had no knowledge of air wave transmission of her words and expected private conversation with her daughter. M.C.L.A. §§ 750.539a(2), 750.539c.—Dickerson v. Raphael, 564 N.W.2d 85, 222 Mich.App. 185, appeal granted 589 N.W.2d 281, 459 Mich. 902, appeal granted 589 N.W.2d 281, reversed in part 601 N.W.2d 108, 461 Mich. 851.—Tel 1440.

Mich.App. 1997. Conversation is "private" within meaning of eavesdropping statute prohibiting use of device to eavesdrop upon private conversation without consent of all parties, if it is intended for or restricted to use of particular person or group or class of persons and is intended only for the persons involved. M.C.L.A. §§ 750.539a(2), 750.539c.—Dickerson v. Raphael, 564 N.W.2d 85, 222 Mich.App. 185, appeal granted 589 N.W.2d 281, 459 Mich. 902, appeal granted 589 N.W.2d 281, reversed in part 601 N.W.2d 108, 461 Mich. 851.—Tel 1436.

Mich.App. 1997. Although participant may expect that conversation would be repeated, it remains "private" within meaning of eavesdropping statute which prohibits use of any device to eavesdrop upon private conversation without consent of all parties; thus, conversation may not be overheard, recorded, amplified, or transmitted to others without consent of all participants. M.C.L.A. § 750.539c.—Dickerson v. Raphael, 564 N.W.2d 85, 222 Mich.App. 185, appeal granted 589 N.W.2d 281, 459 Mich. 902, appeal granted 589 N.W.2d 281, reversed in part 601 N.W.2d 108, 461 Mich. 851.—Tel 1440.

Mich.App. 1979. Even if salary information about individual public employees is "private" information for Freedom of Information Act purposes, so that disclosure would constitute an invasion of personal privacy, that invasion would not be "clearly unwarranted" as the minor invasion occasioned by disclosure of information which university employee might hitherto have considered private was outweighed by the public's right to know precisely how its tax dollars are spent. M.C.L.A. § 15.231(2).—Penokie v. Michigan Technological University, 287 N.W.2d 304, 93 Mich.App. 650.—Records 58.

Miss. 1911. The charter of a building and loan association, obtained under the general law, is not a "local" or "private" law, within Code 1906, § 8, providing that private and local laws, not revised and brought into the Code, are not affected by its adoption; and so is not saved from the operation of section 2678, revising the usury law, and doing away with the exception thereof, whereby building and loan associations could receive more than 10 per cent. interest.—Mississippi Building & Loan Ass'n v. McElveen, 56 So. 187, 100 Miss. 16.—Statut 167(2).

Mo.App. 1950. A nuisance is "public" when it affects the rights to which every citizen, as a part of the general public, is entitled, while a "private"

nuisance is any unwarranted, unreasonable, or unlawful use by a person of his own property to the injury, annoyance or detriment of the rights of another not amounting to a trespass, and the distinction to be applied between public and private nuisances does not depend upon the nature of the act committed but upon the question of whether such act affects the general public or merely some private individual or group of individuals.—Biggs v. Griffith, 231 S.W.2d 875.—Nuis 1, 59.

Mont. 1963. Word "private" means not of a public nature, unconnected with others.—Stocking v. Johnson Flying Service, 387 P.2d 312, 143 Mont. 61.

Mont. 1918. A "special" or "private" act is one operating only on particular persons and private concerns; a "local act" is one applicable only to a particular part of the legislative jurisdiction.—Trumper v. School Dist. No. 55 of Musselshell County, 173 P. 946, 55 Mont. 90.

N.H. 1997. For purposes of determining whether service provider is public utility subject to Public Utilities Commission (PUC) jurisdiction, enterprise is necessarily "private" if service provider has relationship with service recipient, apart from service provision itself, that is sufficiently discrete as to distinguish recipient from other members of relevant public; this is the "discrimination" that separates public utilities from private. RSA 362:2, 374:3.—Appeal of Zimmerman, 689 A.2d 678, 141 N.H. 605.—Pub Ut 112.

N.Y. 1938. A statute creating a state agency in corporate form and exempting its property from taxation does not violate constitutional prohibition against exemption by private or local bill for the benefit of any person, association, firm, or corporation, since the statute is not "private" or "local," and since the state agency is not a "corporation" within the Constitution. Const. art. 3, § 18.—People ex rel. Buffalo and Fort Erie Public Authority v. Davis, 14 N.E.2d 74, 277 N.Y. 292.—Statut 95(1).

N.Y. 1938. A statute creating the Buffalo and Fort Erie Public Bridge Authority to acquire international bridge, with cooperation of Canadian government, for public benefit, subject to first lien of holders of bonds issued by the Authority, and exempting property of the Authority from taxation, does not violate constitutional prohibition against exemption by private or local bill for benefit of any person, association, firm or corporation, since the Authority is a "state agency," and hence statute is not "private" or "local," and the Authority is not a "corporation" within the constitution. Laws 1933, Ex.Sess., c. 824; Const. art. 3, § 18.—People ex rel. Buffalo and Fort Erie Public Authority v. Davis, 14 N.E.2d 74, 277 N.Y. 292.—Statut 95(1), 97(1).

N.Y. 1919. A track placed by carrier on its own land for use and convenience only of shippers whose warehouses were adjacent thereto was a "private or other" siding within Uniform Bill of Lading, § 3, providing that property when received from, or delivered on, private or other sidings, etc., shall be at owner's risk until cars are attached to trains, the words "or other" following word "private," including not all other sidings, but sidings like private sidings.—Bers v. Erie R. Co., 122 N.E. 456, 225 N.Y. 543.—Carr 113.

N.Y.A.D. 1 Dept. 1997. Hallmark of a "private" place within meaning of Human Rights Law is its selectivity or exclusivity, and persons seeking benefit of exemption have burden of establishing that their place of accommodation is distinctly private. McKinney's Executive Law § 292, subd. 9.—D'Amico v. Commodities Exchange Inc., 652 N.Y.S.2d 294, 235 A.D.2d 313.—Civil R 1050.

N.Y.Sup. 1939. The city of New York may expend its money or property for the broadcast over municipal radio station of radio programs of interest to the listening public, the expending of money for such purpose being for a "municipal" and not a "private" purpose. General City Law, § 20, subd. 16; Administrative Code, § 683–1.0; Const.1938, art. 8, § 1.—Lewis v. La Guardia, 14 N.Y.S.2d 463, 172 Misc. 82, affirmed 14 N.Y.S.2d 991, 258 A.D. 713, affirmed 27 N.E.2d 44, 282 N.Y. 757.—Mun Corp 861.

N.Y.Sup. 1938. The phrase "public and official" has varied meanings, depending on the context in which it is found. "Public" may be used in contradistinction to "private," or it may be the antithesis of "secret." "Public" means of, pertaining to, or affecting the people at large or the community, distinguished from "private" or "personal." "Official" means of or pertaining to an office or public trust.—Farrell v. New York Evening Post, 3 N.Y.S.2d 1018, 167 Misc. 412.

N.Y.Sup. 1938. An investigation by civil works administrator into charges of criminal misconduct by civil works administration employees was a "public and official proceeding," under statute, so as to make fair and true newspaper account thereof absolutely privileged. Civil Practice Act, § 337, as amended by Laws 1930, c. 619. The phrase "public and official" has varied meanings, depending on the context in which it is found. "Public" may be used in contradistinction to "private," or it may be the antithesis of "secret." "Public" means of, pertaining to, or affecting the people at large or the community, distinguished from "private" or "personal." "Official" means of or pertaining to an office or public trust.—Farrell v. New York Evening Post, 3 N.Y.S.2d 1018, 167 Misc. 412.

N.C. 1965. The word "private" when applied to powers of municipality is used to designate proprietary as distinguished from governmental functions.—Keeter v. Town of Lake Lure, 141 S.E.2d 634, 264 N.C. 252.—Mun Corp 57.

N.C. 1961. Municipal activity which is commercial or chiefly for private advantage of community is "private" or "proprietary function".—Clark v. Scheld, 117 S.E.2d 838, 253 N.C. 732.—Mun Corp 725.

N.C. 1952. The word "private" as applied to the powers of a municipality is used to designate proprietary as distinguished from governmental func-

tions.—Britt v. City of Wilmington, 73 S.E.2d 289, 236 N.C. 446.—Mun Corp 57.

N.C. 1949. Any activity of municipality which is discretionary, political, legislative or public in nature and performed for the public good in behalf of the state, is a "governmental function" but when the activity is commercial or chiefly for the private advantage of the compact community, it is "private" or "proprietary".—Rhodes v. City of Asheville, 52 S.E.2d 371, 230 N.C. 134, rehearing denied 53 S.E.2d 313, 230 N.C. 759.—Mun Corp 723.

N.C. 1937. The position of deputy sheriff is not an "employment" within Workmen's Compensation Act providing that the term "employment" includes the employment by the state and all political subdivisions and all public and quasi public corporations and all "private" employments in which five or more employees are regularly employed in the same "business" or "establishment" (Code 1935, § 8081(i), subd. (a); Const. art. 4, § 24).—Borders v. Cline, 193 S.E. 826, 212 N.C. 472.—Work Comp 163.

Okla. 1946. The word "private" connotes privately owned as differentiated from publicly owned, or dedicated to public use voluntarily or by eminent domain, it likewise implies a way of convenience for those engaged in common or related activities in a given area.—Cox v. Oklahoma Tax Com'n, 168 P.2d 634, 197 Okla. 12, 1946 OK 124.

Okla. 1916. The word "alley," used by itself in a petition in connection with the streets of a town, will be deemed a public way, unless prefixed by the word "private."—Bellevue Gas & Oil Co. v. Carr, 161 P. 203, 61 Okla. 290, 1916 OK 969.—Mun Corp 816(3).

Pa. 1924. Under a deed restricting erection of buildings designed or used for any purpose other than a private dwelling house, erection of an apartment house could be enjoined, because "private dwelling" is commonly understood to be single, private, personal, and an "apartment" as a sort of tenement, "dwelling" eliminates all business buildings, and "private" restricts residential buildings of a public character, i. e., hotels and apartment houses, which are not a number of private dwellings built one on the other, but a collection of dwellings, the restriction being in the singular, not the plural.—Taylor v. Lambert, 124 A. 169, 279 Pa. 514.—Covenants 51(2).

Pa. 1890. "Public," is a convertible term, and, when used in an act of assembly, may refer to the whole body politic–that is, all the inhabitants of the state–or to the inhabitants of a particular place only. It may be properly applied to the affairs of a state, or of a county, or of a community. In its most comprehensive sense, it is the opposite of "private."—Overseers of the Poor of Benezette v. Overseers of the Poor of Huston, 19 A. 1060, 135 Pa. 393, 26 W.N.C. 278, 38 P.L.J. 29, 47 Leg.Int. 351.

Pa.Cmwlth. 1979. "Private" as well as "public," adultery can be considered "immorality" or "conduct unbecoming an officer" within meaning of statute providing that police officer may be removed for immorality or conduct unbecoming an officer. 53 P.S. § 46190.—Borough of Darby v. Coleman, 407 A.2d 468, 47 Pa.Cmwlth. 9.—Mun Corp 185(1).

S.C. 1889. The term "public" is opposed to the term "private," and according to the best lexicographers means pertaining to or belonging to the people, relating to a nation, state, or community; but to make a matter a public matter it need not pertain to the whole nation or state. It is sufficient if it pertains to any separate or distinct portion thereof, or community.—State v. Whitesides, 9 S.E. 661, 30 S.C. 579, 3 L.R.A. 777.

S.D. 1904. A certificate of acknowledgment of a married woman stating that she, on a "separate" examination apart from her husband, acknowledged the deed, sufficiently shows compliance with Laws 1865-66, p. 95, § 521, providing that acknowledgment of a married woman shall be on a "private" examination, apart from her husband.—Timber v. Desparois, 101 N.W. 879, 18 S.D. 587.—Ack 37(2).

Tex.Com.App. 1937. A city's operation of street grader for purpose of cleaning gutters to protect abutting property from damage from accumulated waters was "private" or "corporate" rather than "governmental function," as respects city's liability for negligence resulting in injury to city employee running grader.—City of Panhandle v. Byrd, 106 S.W.2d 660, 130 Tex. 96.—Mun Corp 733(2).

Tex.Civ.App.–Waco 1955. A nuisance is said to be "private" when the injury resulting therefrom violates only private rights and produces damage to only one person or not more than a few persons.—Ballenger v. City of Grand Saline, 276 S.W.2d 874.—Nuis 1.

Va. 1926. Where the term "alley" is used in a plat or statute concerning cities or towns, it will be taken to mean a public way, unless the word "private" is prefixed or the context requires that a different meaning be assigned to the term, and it has been held that, in laying out an addition when alleys are called for, it may be presumed that alleys run from one street to another. Whatever may be the dimensions of a way, if it be opened to the free use of the public it is a highway; nor is its character determined by the number of persons who actually use it for passage. The right of the public to use the way, and not the size of the way or the number of persons who choose to exercise that right, determines its character. An alley of small dimensions, actually used by only a limited number of persons, but which the public have a general right to use, therefore, may be regarded as a public way.—Payne v. Godwin, 133 S.E. 481, 147 Va. 1019.—Dedi 19(1).

Va. 1926. "Alley" in plat concerning cities or towns means a public way, unless word "private" is prefixed or context requires different meaning.—Payne v. Godwin, 133 S.E. 481, 147 Va. 1019.—Dedi 19(2).

Va. 1926. "Alley," in statute concerning cities or towns, means a public way, unless word "private" is prefixed or context requires different meaning.—

Payne v. Godwin, 133 S.E. 481, 147 Va. 1019.—Statut 199.

Wash. 2002. Defendant's e-mail messages and real time Internet client-to-client messages with undercover police officer posing as fictitious child were "private" communications, so that under the telecommunications privacy act, defendant's consent to the recording of the messages may have been required; defendant's subjective intent was that his messages were for fictitious child's eyes only, that intent was made manifest by defendant's message not to "tell anyone about us," and the sexual subject-matter of defendant's communications strongly suggested that he intended the communications to be private, though the interception of the messages was a possibility. West's RCWA 9.73.030(1)(a).—State v. Townsend, 57 P.3d 255, 147 Wash.2d 666.—Tel 1440.

Wash. 1996. Conversations were not "private" within meaning of Privacy Act where they were routine sales conversations for illegal drugs on public streets between defendants and a stranger who was undercover police informant, especially where 12 of 16 conversations took place in front of a third party or while the defendant was standing in the public thoroughfare within sight and hearing of any passerby; thus, as conversations were not private, Privacy Act's requirement of consent to use of device to record private conversation did not apply. West's RCWA 9.73.010 et seq.—State v. Clark, 916 P.2d 384, 129 Wash.2d 211.—Tel 1440.

Wash. 1996. Generally, presence of another person during a conversation means that the matter is not secret or confidential to qualify as "private" and afford protection under privacy statute requiring consent to use of device to record a private conversation. West's RCWA 9.73.010 et seq.—State v. Clark, 916 P.2d 384, 129 Wash.2d 211.—Tel 1440.

Wash. 1996. Communication is not "private," within meaning of privacy statute affording protection against use of device to record private conversation, where anyone may turn out to be the recipient of the information or recipient may disclose the information; what is voluntarily exposed to the general public is not considered part of a person's private affairs and nonconsenting party's apparent willingness to impart information to unidentified stranger evidences nonprivate nature of conversation. West's RCWA 9.73.010 et seq.—State v. Clark, 916 P.2d 384, 129 Wash.2d 211.—Tel 1436.

Wash. 1996. Conversations were not "private" within meaning of Privacy Act where, even though not in front of third parties, defendants stood in a public street during their entire encounter with informant and were in plain view and potentially within sight or hearing of anyone who might have passed by, and where nature of defendants' interaction with informant would have indicated to any resident of a high drug trafficking area that drug sale was transpiring. West's RCWA 9.73.010 et seq.—State v. Clark, 916 P.2d 384, 129 Wash.2d 211.—Tel 1436.

Wash. 1996. Proposed landfill project was properly characterized as "private," as it was primarily sponsored and initiated by private corporation and was not intended to fulfill solid waste responsibilities of county and, thus, environmental impact statement (EIS) did not have to include discussion of offsite alternatives; private corporation had no obligation to develop landfill for county, and was not currently involved in handling county's solid waste, nor was county involved in creating corporation, and corporation sought to build landfill to serve customers throughout region, including other states and Canada, and county had no governmental responsibility for solid wastes generated outside county. West's RCWA 43.21C.090; Wash.Admin. Code §§ 197–11–44(5)(d), 197–11–780.—Organization to Preserve Agr. Lands v. Adams County, 913 P.2d 793, 128 Wash.2d 869.—Environ Law 604(6).

Wash. 1996. To determine whether project is "public" or "private," for purposes of determining whether environmental impact statement (EIS) for project must consider offsite alternatives, court looks first to who sponsored or initiated project; classification rests not on nominal sponsorship but on factual assessment of level of public involvement in project. West's RCWA 43.21C.090; Wash.Admin. Code §§ 197–11–44(5)(d), 197–11–780.—Organization to Preserve Agr. Lands v. Adams County, 913 P.2d 793, 128 Wash.2d 869.—Environ Law 601.

Wash. 1942. A county which purchased land including timber at tax foreclosure sale was not "estopped" to dispute title to standing timber which former county treasurer unlawfully sold as personalty in satisfaction of realty taxes, since county was acting not in its "private" or "proprietary capacity" but in its "governmental capacity" as "trustee" for the state and the taxing municipalities within which land lay, and, in dealing with former treasurer, purchaser of timber was bound by "constructive notice" of the law and public records as to measure of treasurer's powers. Rem.Rev.Stat. §§ 11108, 11109, 11247–1.—Bennett v. Grays Harbor County, 130 P.2d 1041, 15 Wash.2d 331.—Estop 62.3.

Wash. 1918. A "common carrier" is one whose occupation is transportation of persons or things from place to place for hire or reward, and who holds himself out to the world as ready and willing to serve the public indifferently in the particular line or department in which he is engaged, the true test being whether the given undertaking is a part of the business engaged in by the carrier, which he has held out to the general public as his occupation, rather than the quantity or extent of the business actually transacted, or the number and character of the conveyances used in the employment; but if the undertaking be a single transaction, not a part of the general business or occupation engaged in, as advertised and held out to the general public, then the individual or company furnishing such service is a "private" and not a common carrier, and in either case the question must be determined by the character of the business actually carried on, and not by any secret intention or mental reservation entertained or asserted when charged with duties and

obligations which the law imposes. A carrier engaged in the automobile rent business, who owns and operates a motor-propelled vehicle for hire, either at a charge of so much per trip or so much per hour, who has a fixed stand or place where his car is available to prospective customers during many hours of the day and night, and who transports passengers from place to place, although he has no fixed schedule of charges and does not operate over definite routes, and does not on all occasions load his car to its full capacity, and reserves the right to refuse to transport passengers whether his vehicle is engaged or not, is a "common carrier" within Laws 1915, p. 227, regulating common carriers of passengers on public streets, roads, and highways, providing for the issuance of permits, etc.—Cushing v. White, 172 P. 229, 101 Wash. 172, L.R.A. 1918F,463.

Wash. 1905. For the purpose of general designation, it is not uncommon to use the term "municipal corporation" as including quasi corporations to distinguish public or political corporations from those which are termed "private." A county is a "municipal corporation," within a constitutional provision providing that no right of way shall be appropriated for the use of any corporation other than municipal until full compensation shall have been made, irrespective of benefits.—Lincoln County v. Brock, 79 P. 477, 37 Wash. 14.

Wash.App. Div. 1 1994. Determination whether particular conversation is "private" under Privacy Act which makes it unlawful for governmental entities to record private conversation without parties consent is question of fact; however, where pertinent facts are undisputed and reasonable minds could not differ on subject, issue of whether particular conversation is private may be determined as matter of law. West's RCWA 9.73.030(1)(b).—State v. D.J.W., 882 P.2d 1199, 76 Wash.App. 135, review granted 892 P.2d 1088, 126 Wash.2d 1008, decision affirmed and remanded State v. Clark, 916 P.2d 384, 129 Wash.2d 211.—Tel 1440.

Wash.App. Div. 1 1994. Conversations between undercover cooperating witness and defendants regarding drug transaction were not "private" and, therefore, government's recording of conversations did not violate Privacy Act, where defendants' manifested willingness to engage in conversation with any prospective buyer and where conversations were not intended only for "ears" of individual defendant's and undercover witness. West's RCWA 9.73.030(1)(b).—State v. D.J.W., 882 P.2d 1199, 76 Wash.App. 135, review granted 892 P.2d 1088, 126 Wash.2d 1008, decision affirmed and remanded State v. Clark, 916 P.2d 384, 129 Wash.2d 211.—Tel 1440.

Wash.App. Div. 1 1992. Arrestee's attempt to use tape recorder to record his arrest by two officers, on public thoroughfare in presence of third party, and within sight and hearing of passerby, did not involve attempt to record "private" conversation, and thus did not violate statute prohibiting recording of private communications. West's RCWA 9.73.030.—State v. Flora, 845 P.2d 1355, 68 Wash.App. 802.—Tel 1436.

Wash.App. Div. 2 1983. Easement obtained through statutory condemnation was not exclusive, since word "private" as used in statute, which allowed private party to sue one who is not his grantor to establish way of necessity, does not mean "exclusive," but rather, is used in contrast to "public," and easement thus established is mere right of passage over land to be used jointly with condemnee, and condemnor's use of easement may neither impair nor destroy full use of road by condemnees; in essence, easement obtained through statutory condemnation differs not at all in scope from that which would arise by implication between grantor and his landlocked grantee. West's RCWA 8.24.010.—Hoffman v. Skewis, 668 P.2d 1311, 35 Wash.App. 673, review denied 101 Wash.2d 1001.—Em Dom 318.

Wash.App. Div. 3 2001. Communications over internet between defendant and fictitious 13-year-old girl created by detective were "private," within meaning of statute prohibiting the recording of transmitted private communications without the consent of all participants, where defendant specifically asked fictitious girl not to tell anyone about their relationship, and subject matter of communications related to proposed sexual liaisons between them. West's RCWA 9.73.030(1)(a).—State v. Townsend, 20 P.3d 1027, 105 Wash.App. 622, review granted 32 P.3d 283, 144 Wash.2d 1016, affirmed 57 P.3d 255, 147 Wash.2d 666.—Tel 1440.

W.Va. 1987. "Private," for purposes of city amusement tax levied on public amusement or entertainment conducted within corporate limits for private profit or gain, means intended for or restricted to use of particular person or group or class of persons; not freely available to the public; belonging to or concerning individual person, company or interest. Code, 8–13–6.—City of Morgantown v. West Virginia Bd. of Regents, 354 S.E.2d 616, 177 W.Va. 520.—Pub Amuse 50.

W.Va. 1906. An "alley" may be public or private. When used in a plat or statute concerning towns or cities, it will be taken to mean a public way, unless the word "private" is prefixed or the context requires a different meaning; but when used in a deed it may mean a private alley.—Flaherty v. Fleming, 52 S.E. 857, 58 W.Va. 669, 3 L.R.A.N.S. 461.

Wis. 1981. With respect to constitutional provision regulating private, local and special legislation, a law is "local" if it applies to particular locality to exclusion of others and it is "private" if it applies to or affects a particular individual or entity. W.S.A.Const. Art. 4, § 18.—Soo Line R. Co. v. Department of Transp., Division of Highways, 303 N.W.2d 626, 101 Wis.2d 64.—Statut 77(1).

Wis. 1940. The Legislature may classify cities into four classes and enact legislation applicable only to the various classes of the cities without such enactments becoming "special", "private", or "local" laws. Const. art. 4, §§ 18, 31.—State ex rel. Teweles v. Public School Teachers' Annuity & Retirement Fund Trustees of City of Milwaukee, 291 N.W. 775, 235 Wis. 385.—Statut 92.

Wis. 1940. The statute limiting persons, benefited by previous amendment of Teachers' Retirement Act, to annuitants who retired after specified date, was not "special", "private", or "local" merely because applicable only to teachers' pensions in cities of the first class, and hence was not invalid because subject was not expressed in title. Laws 1931, c. 476; Const. art. 4, §§ 18, 31.—State ex rel. Teweles v. Public School Teachers' Annuity & Retirement Fund Trustees of City of Milwaukee, 291 N.W. 775, 235 Wis. 385.—Statut 106(2).

PRIVATE ACADEMIC SCHOOL

Pa.Super. 2000. Parochial schools fall within the statutory definition of a "private academic school" for purposes of statute providing that child support schedule does not take into consideration expenditures for private school tuition or other needs of a child which are not specifically addressed by the guidelines and if the court determines that one or more such needs are reasonable, the expense thereof shall be allocated between the parties in proportion to their net incomes. 24 P.S. § 6702; Rules Civ.Proc., Rule 1910.16-6(d), 42 Pa.C.S.A.—Knapp v. Knapp, 758 A.2d 1205.—Child S 148.

PRIVATE ACCOMMODATIONS

Fla.App. 1 Dist. 1968. Group medical coverage policy defining hospital expenses as charges made by hospital for board and room but providing that if private accommodations were used, any excess of daily board and room charges over applicable private room would be disregarded was not ambiguous with regard to the words "private accommodations," and that term denoted a private hospital room.—Aetna Life Ins. Co. v. Benjamin, 206 So.2d 444.—Insurance 2494(1).

PRIVATE ACT

Ill.App. 4 Dist. 1997. Forest preserve district's purchase of liability insurance was "private act" as public entity, rather than "public act," and, thus, five-year statute of limitations ran on claim against broker for overcharging premiums, even though district used public money; insurance did not make public safer or reduce likelihood of injury on district property, district had option of participating in risk management association or self-insurance pool, and decision to purchase insurance was corporate or business undertaking for district's own benefit. S.H.A. 70 ILCS 805/8b, 22; 735 ILCS 5/13-205; 745 ILCS 10/9-103.—Champaign County Forest Preserve Dist. v. King, 225 Ill.Dec. 477, 683 N.E.2d 980, 291 Ill.App.3d 197, appeal denied 228 Ill.Dec. 716, 689 N.E.2d 1137, 175 Ill.2d 524.—Lim of Act 11(0.5).

Miss. 1938. The statute authorizing Hancock county board of supervisors to borrow money to pay outstanding county warrants and accounts approved by board, validating warrants and accounts, and authorizing bond issue is not a "private act," but is a "local and public act," and the chancery court could take judicial notice of statute and its contents. Laws 1938, Ex.Sess., c. 134; Const.1890, §§ 87, 89.—Haas v. Hancock County, 184 So. 812, 183 Miss. 365.—Evid 29; Statut 68, 77(1).

N.Y.Sup. 1936. Act providing alternative form of government for counties having a population of not less than 300,000 nor more than 400,000 and not in excess of three towns held a "general," and not a "special," "local," or "private act," notwithstanding that at time of enactment allegedly only one county was actually included within confines of statutory provision. Laws 1936, c. 879, § 2601; Const. art. 3, § 26.—Burke v. Krug, 291 N.Y.S. 897, 161 Misc. 687.—Statut 93(3).

Vt. 1937. A state may, in discharge of a moral obligation, make an appropriation which must be regarded as being for a "public purpose" and within Legislature's constitutional powers, and fact that a private person may receive benefit of such appropriation does not constitute act of appropriation a "private act". Const. c. 1, arts. 7, 9.—Gross v. Gates, 194 A. 465, 109 Vt. 156.—States 119.

PRIVATE ACTION

C.A.6 (Ohio) 1992. Under "symbiotic relationship" or "nexus test", action of private party constitutes "state action", for purposes of § 1983, if there is sufficiently close nexus between state and challenged action of regulated entity that action may be fairly treated as that of state itself; merely because business is subject to state regulations does not make "private action" into state action. 42 U.S.C.A. § 1983.—Wolotsky v. Huhn, 960 F.2d 1331.—Civil R 1326(7).

S.D.N.Y. 1993. Determination of whether agency action is "federal action," as opposed to "private action," requiring agency to undertake environmental assessment of entire action depends primarily upon application of legal standard "major federal action" to relevant facts. National Environmental Policy Act of 1969, § 102, as amended, 42 U.S.C.A. § 4332.—Landmark West! v. U.S. Postal Service, 840 F.Supp. 994, affirmed 41 F.3d 1500.—Environ Law 587.

Cal. 1978. Nonjudicial foreclosure of deed of trust on real property constitutes "private action" authorized by contract and does not come within scope of due process clause of California Constitution. West's Ann.Const. art. 1, § 7.—Garfinkle v. Superior Court, 578 P.2d 925, 146 Cal.Rptr. 208, 21 Cal.3d 268, appeal dismissed 99 S.Ct. 343, 439 U.S. 949, 58 L.Ed.2d 340, rehearing denied 99 S.Ct. 886, 439 U.S. 1104, 59 L.Ed.2d 66.—Const Law 254(5).

La.App. 4 Cir. 1977. National bank's action of offset or compensation, in regard to freezing the balance in depositor's checking account after she became delinquent in her monthly payments on automobile loan and bank instituted suit on note and seized automobile, was a "private action," rather than a "state action," and, thus, the action was not subject to procedural due process requirements of Fourteenth Amendment. (Per Beer, J., with one Judge specially concurring.) U.S.C.A.Const. Amend. 14.—Hibernia Nat. Bank in New Orleans v. Lee, 344 So.2d 16.—Const Law 254(4).

Va. 1963. "State action" under Fourteenth Amendment of the United States Constitution is action taken by state or political subdivision, or by person or persons acting for state or political subdivision, or pursuant to their authority or direction, or in obedience to their requirement; "private action" is action taken voluntarily and not by state compulsion. U.S.C.A.Const. Amend. 14.—Brown v. City of Richmond, 132 S.E.2d 495, 204 Va. 471.—Const Law 213(4).

PRIVATE ACTIONS

S.D.N.Y. 1993. In determining whether certain actions involving both federal agencies and private parties are "private actions" outside scope of NEPA, district court must consider both de jure and de facto influence of agency, and federal actions with "cumulative or synergistic" impacts must be assessed in combination. National Environmental Policy Act of 1969, § 102, as amended, 42 U.S.C.A. § 4332.—Landmark West! v. U.S. Postal Service, 840 F.Supp. 994, affirmed 41 F.3d 1500.—Environ Law 689.

PRIVATE ACTOR

S.D.N.Y. 1993. Amtrak was "governmental actor," rather than "private actor," for purposes of determining whether its control of content of speech on its billboards violated First Amendment; despite private character in its employment contracts, its directors were appointed by United States President, its operations were financed by federal government, and its properties, in major part, were mortgaged to federal government. U.S.C.A. Const. Amend. 1; Rail Passenger Service Act, § 301, 45 U.S.C.A. § 501.—Lebron v. National R.R. Passenger Corp. (Amtrak), 811 F.Supp. 993, reversed 12 F.3d 388, certiorari granted 114 S.Ct. 2098, 511 U.S. 1105, 128 L.Ed.2d 661, reversed 115 S.Ct. 961, 513 U.S. 374, 130 L.Ed.2d 902, on remand 69 F.3d 650, opinion amended on denial of rehearing 89 F.3d 39, certiorari denied 116 S.Ct. 1675, 517 U.S. 1188, 134 L.Ed.2d 778, on remand 981 F.Supp. 279, certiorari denied 116 S.Ct. 1675, 517 U.S. 1188, 134 L.Ed.2d 778, reversed 69 F.3d 650, opinion amended on denial of reheari—Const Law 90.3.

PRIVATE ACTS

Okla. 1912. "Private acts" are those which operate only on particular persons and private concerns, in contradistinction to those which regard the whole community.—State v. Indian Territory Illuminating Oil Co., 123 P. 166, 32 Okla. 607, 1912 OK 300.

PRIVATE AFFAIRS

N.D.Ohio 2002. Records of hours that city employee worked at department store fragrance counter in full view of public were not "private affairs" for purposes of invasion of privacy claim under Ohio law.—Amadio v. Skovira, 191 F.Supp.2d 898.—Torts 332.

Wash. 2003. What is voluntarily exposed to the general public and observable without the use of enhancement devices from an unprotected area is not considered part of a person's "private affairs" within the meaning of state constitutional provision stating that no person shall be disturbed in his private affairs without authority of law. West's RCWA Const. Art. 1, § 7.—State v. Jackson, 76 P.3d 217, 150 Wash.2d 251.—Searches 26.

Wash. 2002. Generally, "private affairs," for purposes of the State constitutional right to privacy, are those privacy interests which citizens of Washington have held, and should be entitled to hold, safe from governmental trespass. West's RCWA Const. Art. 1, § 7.—State v. McKinney, 60 P.3d 46, 148 Wash.2d 20.—Searches 26.

Wash. 1994. Use of infrared thermal detection device to perform warrantless, infrared surveillance of defendant's home violated Washington Constitution's protection of defendant's "private affairs"; infrared device represented particularly intrusive means of observation that exceeded established surveillance limits and device disclosed information about activities occurring within confines of home which person is entitled to keep from disclosure absent a warrant. West's RCWA Const. Art. 1, § 7.—State v. Young, 867 P.2d 593, 123 Wash.2d 173.—Searches 53.1.

PRIVATE AFFAIRS INTEREST

Wash.App. Div. 3 2002. "Private affairs interest," constitutionally protected against State disturbance without authority of law, is object or matter personal to individual such that any intrusion on it would offend reasonable person. West's RCWA Const. Art. 1, § 7.—State v. Hepton, 54 P.3d 233, 113 Wash.App. 673, review denied 72 P.3d 762, 149 Wash.2d 1018.—Searches 26.

PRIVATE AGENCIES

Cal.Super. 1978. Neither the section of the Health and Safety Code which states that a district is a body corporate and politic and a public agency of the state nor the section that calls for districts to adopt rules and regulations "subject to the powers and duties of the state board" made the South Coast Air Quality Management District a "state agency" for purposes of the Administrative Code procedural requirements; the former section only stated that SCAQMD and other such districts were not "private agencies" while the latter section meant only that the State Air Resources Board maintained a superior position to that of the local districts. West's Ann.Health & Safety Code, §§ 40001, 40700; West's Ann.Gov.Code, §§ 11380, 11409, 11422.—People v. A-1 Roofing Service, Inc., 151 Cal.Rptr. 522, 87 Cal.App.3d Supp. 1.—Environ Law 290.

PRIVATE AGENCY OR INSTITUTION

Ariz.App. Div. 1 1997. Statute authorizing juvenile court to award delinquent child to "private agency or institution" affords juvenile court latitude to order juvenile who has been adjudicated delinquent and dependent to be placed in out-of-state private agency or institution when appropriate placement is unavailable in state. A.R.S. § 8-241, subd. A, par. 2(d).—Arizona Dept. of Economic

Sec. v. Gerald F., 945 P.2d 1321, 190 Ariz. 190.—Infants 229.

PRIVATE AGENT

Vt. 1979. Where a party assumes to give to an officer special instructions different from his legal duty in regard to execution of process in his hands, officer ceases to be a "public officer" in regard to business so entrusted to him and becomes a "private agent." 12 V.S.A. §§ 693, 2731; 24 V.S.A. § 293.—Dowlings, Inc. v. Mayo, 409 A.2d 588, 137 Vt. 548.—Execution 121.

Vt. 1937. Where a party assumes to give to an officer special instructions different from his legal duty in regard to execution of process in his hands, officer ceases to be a "public officer" in regard to business so intrusted to him and becomes a "private agent."—Gross v. Gates, 194 A. 465, 109 Vt. 156.—Sheriffs 87.

PRIVATE AGENT, EMPLOYEE, OR FIDUCIARY

E.D.La. 1986. Chairman of sovereign Indian tribe was "private agent, employee, or fiduciary" within meaning of Louisiana statute defining commercial bribery as giving or offering to give anything of value to any private agent, employee or fiduciary without knowledge and consent of principal or employer with intent to influence recipient's action relating to affairs of his employer. LSA-R.S. 14:73.—U.S. v. Tonry, 633 F.Supp. 643.—Brib 1(1).

PRIVATE AGENT'S

Vt. 1937. A deputy sheriff must be disinterested and impartial and hence lacks a "private agent's" usual characteristic implying an interest favorable to one party and adverse to the other.—Gross v. Gates, 194 A. 465, 109 Vt. 156.

PRIVATE AID TO NAVIGATION

N.D.Ill. 1980. The term "private aid to navigation" includes all marine aids to navigation operated in the navigable waters of the United States other than those operated by the federal Government or those operated in state waters for private aids to navigation. 14 U.S.C.A. §§ 2, 81.—Teich v. U.S. Government, 500 F.Supp. 891.—Ship 11.

PRIVATE ALLEY

Iowa 1907. A "private alley" is ordinarily an alley which has not been dedicated to the public use, and to which the general public is denied access, or which is set apart for some particular purpose. A private passage or way is sometimes referred to as a private alley, especially when bordered by trees or otherwise defined or inclosed. Alleys in cities and towns are usually public, and a private alley therein is exceptional. Under Code, § 916, requiring that land platted shall be divided by streets into blocks with alleys, and section 751 authorizing cities to widen, vacate, improve, and repair alleys, the word "alley," when used by one dealing with lots in platted ground and referring to an alley therein, presumptively means a public alley.—Talbert v. Mason, 113 N.W. 918, 136 Iowa 373, 14 L.R.A.N.S. 878, 125 Am.St.Rep. 259.

PRIVATE AND NONPOLITICAL

U.S.Dist.Col. 1964. Lawyer's work in litigating for a foreign government could not be characterized as only "financial or mercantile" activity, even though it could be regarded as "private and nonpolitical" activity, within Foreign Agents Registration Act provision exempting from registration anyone engaging in "private and nonpolitical, financial, or mercantile" activities in furtherance of trade or commerce of foreign principal. Foreign Agents Registration Act of 1938, § 3 as amended 22 U.S.C.A. § 613.—Rabinowitz v. Kennedy, 84 S.Ct. 919, 376 U.S. 605, 11 L.Ed.2d 940.—Intern Law 10.24.

U.S.Dist.Col. 1964. Interest of a foreign government in litigation could be labeled "financial or mercantile" but could not be deemed only "private and nonpolitical" within Foreign Agents Registration Act provision exempting from registration anyone engaging in private and nonpolitical financial or mercantile activities in furtherance of foreign principal's trade or commerce. Foreign Agents Registration Act of 1938, § 3 as amended 22 U.S.C.A. § 613.—Rabinowitz v. Kennedy, 84 S.Ct. 919, 376 U.S. 605, 11 L.Ed.2d 940.—Intern Law 10.24.

PRIVATE ANNUITY

C.A.5 2003. Non-transferrable lottery prize payable in seventeen annual installments was a "private annuity" properly valued, for estate tax purposes, in accordance with annuity tables governing private annuities; non-marketability did not render valuation under the tables unreasonable. 26 U.S.C.A. § 7520.—Cook v. Commissioner of I.R.S., 349 F.3d 850.—Int Rev 4183.10.

PRIVATE APPROACHES

Minn. 1974. Plain meaning of reference to "private approaches" to premises in homeowners policy covering insured's lake home did not include a public lake.—Torbert v. Anderson, 222 N.W.2d 341, 301 Minn. 339.—Insurance 1825.

PRIVATE AREA

Ark.App. 1991. Parking lot of apartment complex was area open to public, not "private area," and, therefore, exigent circumstances were not needed to validate search of automobile on reasonable cause to believe that contraband would be found; parking lot was not "private area," even though it may have been privately owned. U.S.C.A. Const.Amend. 4.—Haygood v. State, 807 S.W.2d 470, 34 Ark.App. 161.—Searches 25.1.

PRIVATE ATTORNEY

Mont. 1901. A "private attorney" is an attorney employed by and in the interest of private persons and one not paid out of public funds. He is one who has a special interest in the securing of a conviction, being employed by private persons to

prosecute.—State v. Whitworth, 66 P. 748, 26 Mont. 107.

PRIVATE ATTORNEY GENERAL

C.A.4 (N.C.) 1975. General "American Rule" is that attorney's fees are not taxed against the losing party absent a statutory provision or contractual obligation; however, the "obdurate obstinancy" and the "private attorney general" theory are exceptions thereto.—Thonen v. Jenkins, 517 F.2d 3, 31 A.L.R. Fed. 827.—Costs 194.16.

C.A.3 (Pa.) 1976. Attorney's fees may no longer be awarded to successful plaintiff under theory that plaintiff is bringing suit as "private attorney general." 42 U.S.C.A. § 1983; Act, Sept. 24, 1789, §§ 22, 23, 1 Stat. 73, 85.—Skehan v. Board of Trustees of Bloomsburg State College, 538 F.2d 53, certiorari denied 97 S.Ct. 490, 429 U.S. 979, 50 L.Ed.2d 588, on remand 431 F.Supp. 1379, affirmed 590 F.2d 470, certiorari denied 100 S.Ct. 61, 444 U.S. 832, 62 L.Ed.2d 41, on remand 501 F.Supp. 1360.—Fed Civ Proc 2737.2.

N.D.Ga. 1974. The "private attorney general" concept holds that a successful private party plaintiff is entitled to recovery of his legal expenses, including attorney fees, if he has advanced the policy inherent in public interest legislation on behalf of a significant class of persons.—Dasher v. Housing Authority of City of Atlanta, Ga., 64 F.R.D. 720, vacated and remanded 524 F.2d 238.—Fed Civ Proc 2737.2.

Ind.App. 1996. In "private attorney general" attorney fee situation, court compensates private party who brought suit to effectuate strong legislative policy.—Citizens Action Coalition of Indiana, Inc. v. PSI Energy, Inc., 664 N.E.2d 401, on remand In re PSI Energy, Inc., 1996 WL 482655, on remand 1996 WL 760101.—Costs 194.42.

Pa.Cmwlth. 1999. "Private attorney general" theory is where one party who may not carry substantial, direct, or immediate interest in subject matter of litigation may be conferred with standing because he shares common interest with citizens or taxpayers in general, and only challenge to action in question would derive from taxpayer's intervention.—Society Created to Reduce Urban Blight (SCRUB) v. Zoning Bd. of Adjustment of City of Philadelphia, 729 A.2d 117, reargument denied.—Action 13.

PRIVATE ATTORNEY GENERAL DOCTRINE

C.A.9 (Cal.) 2000. Under California law, an award of attorney's fees is appropriate under the "private attorney general doctrine" if three requirements are met: (1) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (2) the necessity and financial burden of private enforcement, or of enforcement by one public entity against another public entity, are such as to make the award appropriate, and (3) such fees should not in the interest of justice be paid out of the recovery, if any. West's Ann.Cal.C.C.P. § 1021.5.—Unocal Corp. v. U.S., 222 F.3d 528.—Costs 194.42.

D.Ariz. 1993. "Private attorney general doctrine" allows prevailing party to recover attorney fees under Arizona law absent statutory authority or agreement; under the doctrine, fees are recoverable where plaintiff is acting as a "private attorney general" and confers substantial benefits on the general public.—Yslava v. Hughes Aircraft Co., 845 F.Supp. 705.—Costs 194.42.

Ariz.App. Div. 1 1993. Under "private attorney general doctrine" awards may be made against state to private party that has vindicated right benefitting large number of people, requiring private enforcement, and of societal importance.—Kadish v. Arizona State Land Dept., 868 P.2d 335, 177 Ariz. 322, review denied.—States 215.

Cal.App. 2 Dist. 1987. "Private attorney general doctrine" is exception to general rule that each party must bear its own attorney's fees and rests upon recognition that privately initiated lawsuits are often essential to effectuation of fundamental public policies embodied in constitutional or statutory provisions and that, without some mechanism authorizing award of fees, private actions to enforce such important policies will as practical matter frequently be infeasible. West's Ann.Cal.C.C.P. § 1021.5.—Bouvia v. County of Los Angeles, 241 Cal.Rptr. 239, 195 Cal.App.3d 1075.—Costs 194.42.

Cal.App. 2 Dist. 1985. State Budget Act restriction on payment of attorney fees except for certain specified instances did not restrict payment of fees under 42 U.S.C.A. § 1988 to counsel who had obtained injunctive relief to require payment of AFDC funds from state's general revenue until state budget was enacted since "private attorney general doctrine" used in the budget limitation and did not include statutory codifications of that doctrine. St. 1982, ch. 326, § 2.00, Item 9810-001-001.—Coalition for Economic Survival v. Deukmejian, 217 Cal.Rptr. 621, 171 Cal.App.3d 954, review denied.—Civil R 1481.

Cal.App. 3 Dist. 1994. "Private attorney general doctrine" is designed to encourage lawsuit effectuating strong public policy by awarding attorney fees to those who bring such suits and thereby benefit public interest or broad class of people.—Hospital Systems, Inc. v. Office of Statewide Health etc. Development, 30 Cal.Rptr.2d 922, 25 Cal.App.4th 1686.—Costs 194.42.

Cal.App. 4 Dist. 2000. "Private attorney general doctrine," as statutorily codified, is designed to encourage private enforcement of important public rights and to ensure aggrieved citizens access to the judicial process where statutory or constitutional rights have been violated. West's Ann.Cal.C.C.P. § 1021.5.—Bell v. Vista Unified School Dist., 98 Cal.Rptr.2d 263, 82 Cal.App.4th 672, rehearing denied, and review denied, appeal after remand 2002 WL 1312744, unpublished/noncitable, and as modified on denial of rehearing, and review denied, appeal after remand 2004 WL 966186, unpublished/noncitable.—Costs 194.42.

Cal.App. 6 Dist. 1990. In order to invoke "private attorney general doctrine" to recover attorney fees, litigation must have resulted in enforcement of

important right affecting public interest, significant benefit must have been conferred upon general public or large class of persons, financial burden of private enforcement must make award of fees appropriate, and justice must require that attorney fees be paid by opposing party rather than out of litigation proceeds. West's Ann.Cal.C.C.P. § 1021.5.—Wallis v. Farmers Group, Inc., 269 Cal. Rptr. 299, 220 Cal.App.3d 718, rehearing denied, and review denied.—Costs 194.42.

Fla.App. 3 Dist. 1995. "Private attorney general doctrine" is exception to American Rule under which Congress has made specific and explicit provisions for allowance of attorney fees under selective statutes granting or protecting various federal rights.—Hilton Oil Transport v. Oil Transport Co., S.A., 659 So.2d 1141, rehearing denied.—Costs 194.42.

Idaho 2001. Under "private attorney general doctrine" doctrine, attorney fees are justified where: (1) the litigation vindicated an important or strong public policy, (2) private enforcement was necessary in order to vindicate the policy and was pursued at significant burden to the plaintiff, and (3) a significant number of people stand to benefit from the decision.—Smith v. Idaho Com'n on Redistricting, 38 P.3d 121, 136 Idaho 542.—Costs 194.42.

Ill.App. 5 Dist. 1993. "Private attorney general doctrine" is equitable rule which allows successful litigants to recover attorney fees when litigant has vindicated right that benefits large number of people, requires private enforcement, and is of societal importance.—Fischer v. Brombolich, 186 Ill.Dec. 553, 616 N.E.2d 743, 246 Ill.App.3d 660, appeal denied 191 Ill.Dec. 618, 624 N.E.2d 806, 153 Ill.2d 559.—Costs 194.42.

PRIVATE ATTORNEY GENERAL EXCEPTION

Ind.App. 1999. Three exceptions to rule that each party must pay his own attorney fees are recognized: "obdurate behavior exception" authorizes award of attorney fees where a party acted in bad faith, "common fund exception" allows fee award where the court wants to insure the beneficiaries of an action share the expenses of the action, and "private attorney general exception" applies where the court compensates a private party who brought suit to effectuate a strong legislative policy.—Morgan County v. Ferguson, 712 N.E.2d 1038.—Atty & C 155; Costs 194.42, 194.44.

PRIVATE ATTORNEY GENERAL STATUTE

Minn.App. 1985. Statute prohibiting employers from requesting polygraph examination of employees, under which teller brought action against bank, was a "private attorney general statute," such that public policy considerations, including need to eliminate financial barriers to vindicating teller's rights and the extent to which public interest was advanced by the suit, were relevant to determining attorney fee award. M.S.A. §§ 8.31, subds. 1, 3a, 181.75, 181.75, subd. 4.—Kamrath v. Suburban Nat. Bank, 363 N.W.2d 108.—Labor & Emp 880.

PRIVATE ATTORNEY GENERAL THEORY

C.A.9 (Wash.) 1994. "Private attorney general theory" allows attorney fee award under Washington statute prohibiting disability discrimination to exceed what reasonable individual would pay lawyer for benefit conferred. West's RCWA 49.60.030(2).—McGinnis v. Kentucky Fried Chicken of California, 51 F.3d 805.—Civil R 1772.

PRIVATE AUCTIONS

C.A.7 (Ill.) 1987. "Private auctions," at which secured creditor sold automobile dealer's inventory, were "private sales," rather than public sales, within meaning of statute describing type of notice to which debtors are entitled prior to disposition of collateral, and thus, creditor's notice to guarantor that disposition of the collateral would be "at private sale, on or after" April 12, 1980, was sufficient; attendance at the auctions was limited to retail automobile dealers, and fact that guarantor was also dealer and could have attended the auction did not change character of the auctions. Ill.S.H.A. ch. 26, ¶ 9–504(3).—Ford Motor Credit Co. v. Solway, 825 F.2d 1213.—Sec Tran 230.

PRIVATE AUTOMOBILE OF EXCLUSIVELY PLEASURE TYPE

La.App. 2 Cir. 1961. Pick-up truck of less than 1,500 pounds capacity was not "private automobile of exclusively pleasure type" within meaning of policy insuring life of insured while passenger in such automobile. LSA–C.C. arts. 1945–1962.—Gray v. North Am. Co. for Life, Acc. and Health Ins., 128 So.2d 223.—Insurance 2588(2).

PRIVATE AUTOMOBILE OF PLEASURE CAR TYPE

N.C. 1931. One and one-half ton truck, used principally for hauling milk, held not "private automobile of pleasure car type" within accident policy (Code 1927, § 2612).—Lloyd v. Columbus Mut. Life Ins. Co., 158 S.E. 386, 200 N.C. 722.—Insurance 2588(2).

PRIVATE BANK

C.A.8 (S.D.) 1988. Jury was properly permitted to find that defendants' business was "financial institution" because it was "private bank," in prosecution for intentionally violating statutes requiring any person acting as "financial institution" to file currency transaction report with IRS for every transaction involving more than $10,000 in currency, although defendants claimed instructions should not have included any reference to "bank" because the indictment did not; term "bank" was included among six definitions of "financial institution" in federal regulation, so indictment generally describing defendants as "financial institution" could also mean that they were "bank." 31 U.S.C.A. §§ 5313, 5322(a).—U.S. v. Hawley, 855 F.2d 595, certiorari denied 109 S.Ct. 1141, 489 U.S. 1020, 103 L.Ed.2d 202, rehearing denied 109 S.Ct. 1772, 490 U.S. 1032, 104 L.Ed.2d 207.—U S 34.

private state.—Barnett v. Vaughan Institute, 119 N.Y.S. 45, 134 A.D. 921, reargument denied 119 N.Y.S. 1113, 136 A.D. 887, affirmed 91 N.E. 1109, 197 N.Y. 541.—Covenants 103(2).

PRIVATE IMPROVEMENT

Va. 1974. Within statute providing that when convicts are "employed upon any work of public or private improvement" criminal proceedings against them may be in the circuit court of the county in which they are employed, word "improvement" contemplates employment of convicts either as labor hired out to private companies or as labor on a public project, and does not embrace "personal rehabilitation" within the term "private improvement". Code 1950, § 53–295.—Brown v. Com., 207 S.E.2d 833, 215 Va. 143.—Crim Law 108(1).

Wash. 1914. Under Const. art. 1, § 16, declaring that private property shall not be taken for private use, except for private ways of necessity, agricultural ditches, etc., and shall not be taken or damaged for private use without compensation, a county's taking of rights of way for a drainage improvement district under Laws 1913, p. 619, § 14, was a taking for a "public improvement," and not for a "private improvement," since it did not differ in its use or the extent of its benefits from any other improvement merely because its special benefits warranted the charging of the whole cost against the benefited property.—Pierce County v. Thompson, 144 P. 704, 82 Wash. 440.

PRIVATE INDIVIDUAL

D.D.C 1953. Provision of Federal Tort Claims Act to effect that United States shall be liable in respect to tort claims in same manner and to same extent as private individual under like circumstances, includes a municipal corporation within the term "private individual", and liability of United States for defect in streets under its control is same as liability of municipality in same jurisdiction, or liability of any other political subdivision in control of streets. 28 U.S.C.A. § 2674.—Gilroy v. U.S., 112 F.Supp. 664.—U S 78(3).

W.D.Ky. 1934. Incorporated adjustment bureau operated for profit of credit men's association, which was not organized for profit, under revocable voting trust which also restricted sale of stock to stockholders at book value, held operated for benefit of "private individual," and not a 'business league,' so as to be exempt from income tax (Revenue Act 1926, Sec. 231(7), 26 USCA 892(7); Revenue Act 1928, Sec. 103(7), 26 USCA 2103(7).—Louisville Credit Men's Adjustment Bureau v. U S, 6 F.Supp. 196.—Int Rev 4055.

Conn.App. 1987. Financial secretary of church was "private individual," rather than public figure, and, therefore, had to prove her defamation case and rebut defense of privilege only by preponderance of evidence; although relevant context to decide issue was membership society of church, financial secretary did not thrust herself to forefront of church's financial affairs and did not enjoy access to effective means of communication in which to rebut accusations made against her. U.S.C.A. Const.Amends. 1, 14.—Miles v. Perry, 529 A.2d 199, 11 Conn.App. 584.—Libel 48(1), 112(1).

N.Y.A.D. 4 Dept. 1937. Land owned by municipal corporation, but not used for public purpose, is held by owner as "private individual," and does not come within provision of Tax Law exempting property of municipal corporation "held for a public use". Tax Law, § 4, subd. 3.—Herkimer County v. Village of Herkimer, 295 N.Y.S. 629, 251 A.D. 126, affirmed 18 N.E.2d 854, 279 N.Y. 560.—Tax 2315.

Tex.App.–Houston [1 Dist.] 1983. Court reporter does not possess substantial responsibility for or control over conduct of governmental affairs; thus, court reporter is not "public official" for purposes of defamation; rather, she is "private individual" for whom standard of liability is negligence.—Houston Chronicle Pub. Co. v. Stewart, 668 S.W.2d 727, dismissed.—Libel 48(2).

Wis. 1938. A city was not entitled to maintain action to enjoin as a common-law nuisance the construction and maintenance of a bulk oil storage plant and filling station on ground that storage of gasoline was a menace to safety and security of citizens of the city, where under statute, actions to abate a nuisance must be prosecuted by Attorney General upon his own information or upon relation of private individual having first obtained leave therefor from the court, and leave of court was not obtained, city was not a "private individual," and no special injury to city was proved. St.1937, § 280.02.—City of Juneau v. Badger Co-op. Oil Co., 279 N.W. 666, 227 Wis. 620.—Nuis 82.

PRIVATE INDIVIDUAL IN LIKE CIRCUMSTANCES

C.A.9 (Cal.) 1986. Under Federal Tort Claims Act, "private individual in like circumstances" as those of United States would be in-state employer who had brought in some employees for temporary job in state, and thus, United States was immune from suit under California workers' compensation laws, where action giving rise to suit was accident between cars driven by federal secret service agents and county sheriff's patrol car. 28 U.S.C.A. §§ 1346(b), 2671–2680.—LaBarge v. Mariposa County, 798 F.2d 364, certiorari denied County of Mariposa v. U.S., 107 S.Ct. 1889, 481 U.S. 1014, 95 L.Ed.2d 497.—U S 78(3).

PRIVATE INDIVIDUAL PROPERTY

C.C.A.9 (Alaska) 1947. Indians' title to land in Alaska was not the equivalent of "private individual property" within meaning of Treaty between the United States and Russia ceding Alaska to the United States, since whatever title Indians had was in the tribe and not in the individuals, and therefor Indians' title to tidelands was extinguished by the Treaty. Treaty between United States and Russia, arts. 2, 6, 15 Stat. 539, 541, 542.—Miller v. U. S., 11 Alaska 285, 159 F.2d 997.—Indians 10.5.

D.Alaska Terr. 1955. Property in Alaska which was classed as "private individual property" at time of treaty ceding Alaska from Russia to United States and which has continued to be such would

for purposes of statute allowing stacking of underinsured motorist coverage for various vehicles. G.S. § 20–279.21(b)(4).—Aetna Cas. and Sur. Co. v. Fields, 414 S.E.2d 69, 105 N.C.App. 563, review denied 417 S.E.2d 788, 331 N.C. 383.—Insurance 2799.

PRIVATE PASSENGER TYPE AUTO

C.A.4 (N.C.) 1995. Under "type" test, which examines type of vehicle, as opposed to ownership, to determine whether to classify vehicles as commercial or private, cargo van used to transport videotapes for partnership's video rental business was not "private passenger type auto" within meaning of individual partner's personal blanket excess policy, even though van had bucket seats, radio, and air conditioning, and was classified as private passenger vehicle on its title application.—Harleysville Mut. Ins. Co. v. Packer, 60 F.3d 1116.—Insurance 2653.

C.A.4 (N.C.) 1995. Under hybrid type-and-use test, which examines both type of vehicle and ownership to determine whether to classify vehicles as private or commercial, cargo van used to transport videotapes for partnership's video rental business was not "private passenger type auto" within meaning of individual partner's personal blanket excess policy, even though the van was the only vehicle available to driver, who was managing partner's brother and employee, and even though driver used the van for his personal use, where van was purchased by the partnership with partnership funds to further the business of the partnership, and primary use of van was a commercial use.—Harleysville Mut. Ins. Co. v. Packer, 60 F.3d 1116.—Insurance 2653, 2684.

PRIVATE PASSENGER TYPE AUTOMOBILE

Ky. 1954. A sedan delivery vehicle, classified by its manufacturer as a truck or a commercial vehicle, licensed as a commercial vehicle, purchased and used for commercial purposes, was not "private passenger type automobile" within accident policy.—Senn's Adm'x v. Michigan Mut. Liability Co., 267 S.W.2d 526.—Insurance 2588(2).

PRIVATE PASSWAY

Conn. 1909. A "private passway" is a means of passage for one or more individuals from some place to some other place.—Seery v. City of Waterbury, 74 A. 908, 82 Conn. 567, 25 L.R.A.N.S. 681, 18 Am.Ann.Cas. 73.

PRIVATE PATH

S.C. 1902. A "private path" is a neighborhood road running from one public road to another; from a public place to another public place.—Kirby v. Southern Ry., 41 S.E. 765, 63 S.C. 494.

S.C. 1902. A "private way" is an individual right, while a "private path" is a neighborhood road.—Earle v. Poat, 41 S.E. 525, 63 S.C. 439.

PRIVATE PATIENT

Kan. 1962. "Private patient" is one who goes to University of Kansas Medical Center to receive specialized care and treatment of a particular physician and surgeon as his private patient, and who pays him for his professional services which he personally retains; in addition the private patient pays to the state the usual costs of hospitalization.—Capps v. Valk, 369 P.2d 238, 189 Kan. 287.—Health 576, 942.

Kan. 1962. Evidence established prima facie negligence on part of physician, whose services were engaged by "private patient" for removal of heavily impacted stone from kidney, and who did not check to see that resident physician had followed his instructions to remove from patient's body 8-inch drain tube which actually was not removed.—Capps v. Valk, 369 P.2d 238, 189 Kan. 287.—Health 823(5).

PRIVATE PERSON

C.A.9 (Alaska) 1954. The word "officer" in statute making felonious an embezzlement by any "officer", agent, clerk, employee, or servant of any "private person", co-partnership or corporation, means an officer of a "corporation" rather than an officer appointed by court, such as an administrator of an estate in probate; and on embezzling from such an estate one is not taking funds from a "private person." A.C.L.A.1949, § 65–5–61.—Coughlan v. U.S., 15 Alaska 153, 216 F.2d 324.—Embez 18.

C.A.9 (Alaska) 1954. When used in a criminal statute, the words "private person" must be strictly construed. A.C.L.A.1949, § 65–5–61.—Coughlan v. U.S., 15 Alaska 153, 216 F.2d 324.—Statut 241(2).

C.A.5 (Tex.) 1980. An off-duty serviceman on a four-day furlough driving a civilian vehicle towards his home off the military reservation was not acting "incident to service" when he was involved in collision with vehicle operated by another serviceman, and therefore Government would be liable like any "private person" and survivors were not barred from bringing action under Federal Tort Claims Act. 28 U.S.C.A. §§ 1346(b), 2671–2680.—Parker v. U.S., 611 F.2d 1007, rehearing denied 615 F.2d 919.—U S 78(16).

N.D.Cal. 1948. Under the Tort Claims Act permitting recovery where United States if a "private person" would be liable, quoted phrase does not mean that United States can be sued only if a private person can be sued under identical circumstances and does not determine relationship of government with employees, but determines relationship of government to third parties and gives consent to be treated by injured party as if it were a private individual amenable to court action without claim of immunity in all those cases not exempted by the act where negligence of agents, servants, or employees has caused injury or damage to third party. 28 U.S.C.A. §§ 2671, 2672, 2674, 2680.—Cerri v. U.S., 80 F.Supp. 831.—U S 78(3).

W.D.S.C. 1949. In Federal Tort Claims Act giving district courts exclusive jurisdiction of civil actions against the United States for damages caused by negligent or wrongful act or omission of any government employee while acting in scope of em-

ployment under circumstances where the United States if a "private person" would be liable, quoted phrase includes business corporations operating electric railways for their own use and purposes. 28 U.S.C.A. § 1346(b).—Carroll v. U.S., 87 F.Supp. 721.—U S 78(13).

Ariz.App. 1968. In statute authorizing private person to make arrest for misdemeanor amounting to breach of peace or felony committed in his presence, "private person" refers to a person who is a stranger to personal property which has been taken. A.R.S. §§ 13–674, 13–675, 13–1404.—State v. De Santi, 443 P.2d 439, 8 Ariz.App. 77.—Arrest 64.

Cal.App. 2 Dist. 1962. Phrase "private person" as used in statute providing that educational institution of collegiate grade is not conducted for profit and its property is exempt from taxation, when it is conducted exclusively for scientific and educational purposes and no part of its net income inures to benefit of any "private person" means person to whom profits would normally be distributable. West's Ann.Rev. & Tax.Code, § 203.—In re Letts' Estate, 19 Cal.Rptr. 502, 200 Cal.App.2d 708.—Tax 2353.

Neb. 1969. Term "private person" as used in embezzlement statute refers to natural person as distinguished from an artificial person such as corporation, copartnership or joint stock company, and conviction of embezzlement could be sustained against cashier who embezzled funds received by clerk of district court in his official capacity even though clerk was a public official. R.R.S.1943, § 28–538.—State v. Fields, 169 N.W.2d 437, 184 Neb. 565.—Embez 21.

Neb. 1930. Words "private person" in statute relating to embezzlement are used to distinguish natural person from artificial person. Laws 1923, c. 95, § 1.—Matters v. State, 232 N.W. 781, 120 Neb. 404.—Embez 10.

N.Y. 1908. Code Cr.Proc. § 395, provides that a confession, whether in the course of judicial proceedings or to a private person, may be proved against him unless made under the influence of fear produced by threats, or on a stipulation by the district attorney that he will not prosecute therefor, etc. *Held,* that "private person," so referred to, means any person not engaged in the conduct of a judicial proceeding including public officers having accused in custody at the time they procured the confession in question.—People v. Rogers, 85 N.E. 135, 22 N.Y.Crim.R. 376, 192 N.Y. 331, 15 Am. Ann.Cas. 177.—Crim Law 519(3).

PRIVATE PERSONNEL DATA

Minn.App. 1990. Identity of complainants on nonpending and noncurrent police department internal affairs complaint forms is "public government data" which is subject to disclosure under Minnesota Government Data Practices Act; information does not constitute "private personnel data." M.S.A. §§ 13.02, subd. 7, 13.43.—Demers v. City of Minneapolis, 458 N.W.2d 151, review granted, affirmed 468 N.W.2d 71.—Records 58.

PRIVATE PERSONS

N.C.App. 1999. Competitive local providers (CLPs) of telecommunication service were "private persons" within meaning of Public Records Act, for purposes of their claim that information they were required to file with Utilities Commission constituted "trade secrets," and was thus protected from public disclosure; although CLPs were subject to "fair regulation" by Commission, such regulation was not comprehensive and thus did not overshadow independent authority that CLPs exercised over operation of their own businesses. G.S. § 132–1.2(2).—State ex rel. Utilities Com'n v. MCI Telecommunications Corp., 514 S.E.2d 276, 132 N.C.App. 625.—Records 31.

PRIVATE PERSONS, PARTNERSHIPS, OR CORPORATIONS

Cal. 1912. Const. art. 15, § 3, providing that certain tidelands shall be withheld from grant or sale to "private persons, partnerships, or corporations," does not prohibit its grant to a municipal corporation, "private" qualifying each of the three words following it; though, when granted to a city, the prohibition protects it from grant or sale by the city to privates, except as it may be properly disposed of in furtherance of the trust on which it is held–that is, to subserve the public uses of navigation and fishery.—Cimpher v. City of Oakland, 121 P. 374, 162 Cal. 87.

PRIVATE PLACE

W.D.Tex. 2001. Casino on Indian reservation was not "private place" as defined by Texas Penal Code, but rather was public place to which general public was invited and had ready access, and thus social gambling defense was inapplicable to claims that gaming activity in casino was illegal under Texas law. V.T.C.A., Penal Code § 47.01(8).—Texas v. del Sur Pueblo, 220 F.Supp.2d 668, opinion modified, and reconsideration denied, affirmed State of Texas v. Pueblo, 69 Fed.Appx. 659, certiorari denied 124 S.Ct. 497, 540 U.S. 985, 157 L.Ed.2d 377.—Indians 32(12).

Ala.Crim.App. 2001. Definition of "private place," as that term is used in the criminal surveillance statutes, is intended to include private rooms within multiple occupant buildings that have other areas accessible to multiple occupants. Code 1975, § 13A-11-32.—J.F.C. v. City of Daphne, 844 So.2d 597, rehearing denied, reversed and remanded Ex parte J.F.C., 844 So.2d 604, on remand 844 So.2d 608.—Tresp 78.

Ala.Crim.App. 2001. For purposes of the offense of criminal surveillance, an individual standing at the window of another's apartment, peering into the apartment, is standing in a "private place," and further, even if such an individual is generally licensed and privileged to use the common areas of the property on which the apartment building is situated, that license and privilege does not extend to using the common areas in a manner so as to invade the privacy of the residents of other apartments located on the property. Code 1975, § 13A-11-32.—J.F.C. v. City of Daphne, 844 So.2d

PRIVATE PROGRAM

Pa.Cmwlth. 1987. Trust fund providing income and principal for care of mentally retarded beneficiary at private facility was a "private program" devoted to her care, so that neither state nor county funds were to be expended for beneficiary's interim care prior to admission to a state facility until such time as income and principal in the trust should be exhausted. 50 P.S. §§ 4501–4503, 4503(a), 4505, 4507(a)(4).—Nason v. Com., 520 A.2d 1223, 103 Pa.Cmwlth. 430, vacated 533 A.2d 435, 516 Pa. 517, modification denied 550 A.2d 536, 520 Pa. 67.—Mental H 78.1, 79.

PRIVATE PROJECT

Wash. 1980. Project involving county's rezoning of parcel and city's adopting of comprehensive plan and zoning property for regional shopping center prior to annexing property was not a "private project" within rule relating to environmental impact statement discussion of alternatives for private projects. West's RCWA 43.21C.030(2)(c)(iii), (2)(e).—Barrie v. Kitsap County, 613 P.2d 1148, 93 Wash.2d 843.—Environ Law 604(2).

PRIVATE PROPERTY

U.S.Md. 1930. Property of a public utility, though devoted to public service and impressed with a public interest, is still "private property," and neither corpus of that property nor use thereof constitutionally can be taken for compulsory price which falls below the measure of just compensation.—United Railways & Electric Co. of Baltimore v. West, 50 S.Ct. 123, 280 U.S. 234, 74 L.Ed. 390.

U.S.N.C. 1943. In condemnation proceedings under the Tennessee Valley Authority Act where landowner sought damages on theory that land condemned together with other lands as to which landowner had right of eminent domain was suitable for use as site of hydroelectric project, the landowner had no interest under the unexercised power of eminent domain which gave rise to an estate of "private property" within Fifth Amendment. Tennessee Valley Authority Act of 1933, § 25, 16 U.S.C.A. § 831x; U.S.C.A.Const. Amend. 5.—U. S. ex rel. and for Use of Tennessee Valley Authority v. Powelson, 63 S.Ct. 1047, 319 U.S. 266, 87 L.Ed. 1390, conformed to 138 F.2d 343, certiorari denied 64 S.Ct. 612, 321 U.S. 773, 88 L.Ed. 1067.—Em Dom 81.1.

C.A.D.C. 1994. In general, when government entity acts to create property rights but retains power to alter those rights, property right is not "private property" and exercise of retained power is not a "taking" for purposes of Fifth Amendment. U.S.C.A. Const.Amend. 5.—Democratic Cent. Committee of District of Columbia v. Washington Metropolitan Area Transit Com'n, 38 F.3d 603, 309 U.S.App.D.C. 28.—Em Dom 2.1.

C.A.11 (Fla.) 1996. "Private property" subject to Fifth Amendment's prohibition against taking without just compensation does not include every single property interest recognized by law. U.S.C.A. Const.Amend. 5.—Corn v. City of Lauderdale Lakes, 95 F.3d 1066, certiorari denied 118 S.Ct. 441, 522 U.S. 981, 139 L.Ed.2d 378.—Em Dom 81.1.

C.A.4 (Md.) 1990. Excess reserve funds held by state guaranty agencies for student loans were not "private property" within meaning of takings clause, and, thus, agencies could be required to transfer excess reserves to Secretary of Education; regulations completely controlling uses of reserve funds prevented agencies from acquiring ownership interest. Higher Education Act of 1965, §§ 101 et seq., 431(a), as amended, 20 U.S.C.A. §§ 1001 et seq., 1081(a); § 422(e)(2), (e)(2)(A-D), (e)(3), as amended, 20 U.S.C.(1988 Ed.) § 1072(e)(2), (e)(2)(A-D), (e)(3); U.S.C.A. Const.Amend. 5.—South Carolina State Educ. Assistance Authority v. Cavazos, 897 F.2d 1272, rehearing denied, certiorari denied Maryland Higher Educ. Loan Corp. v. Cavazos, 111 S.Ct. 243, 498 U.S. 895, 112 L.Ed.2d 202, certiorari denied 111 S.Ct. 243, 498 U.S. 895, 112 L.Ed.2d 202, certiorari denied North Carolina v. U.S., 111 S.Ct. 243, 498 U.S. 895, 112 L.Ed.2d 202.—Em Dom 81.1.

C.A.6 (Ohio) 1990. Excess reserves developed by state agency administering Guaranteed Student Loan Program (GSLP) did not constitute "private property," for purposes of claim that statute authorizing federal government's recovery of state student loan agencies' excess cash reserves constituted taking of property in violation of Fifth Amendment. Higher Education Act of 1965, § 422(e)(1), as amended, 20 U.S.C.(1982 Ed.Supp. V) § 1072(e)(1); U.S.C.A. Const.Amend. 5.—Ohio Student Loan Com'n v. Cavazos, 900 F.2d 894, certiorari denied 111 S.Ct. 245, 498 U.S. 895, 112 L.Ed.2d 203.—Colleges 9.25(2); Em Dom 81.1.

Ct.Cl. 1981. Federal mining claims are "private property" enjoying the protection of the Fifth Amendment against taking for public use without just compensation. U.S.C.A.Const. Amend. 5.—Freese v. U. S., 639 F.2d 754, 226 Ct.Cl. 252, certiorari denied 102 S.Ct. 119, 454 U.S. 827, 70 L.Ed.2d 103.—Em Dom 83.

C.C.A.7 (Ill.) 1944. The words "private property", as used in Illinois Constitution and eminent domain act authorizing taking of private property, include both realty and personalty. Smith-Hurd Stats.Ill. c. 47, § 1; Smith-Hurd Stats.Const.Ill. art. 2, § 13.—U.S. v. 19.86 Acres of Land in East St. Louis, St. Clair County, Ill., 141 F.2d 344, 151 A.L.R. 1423.—Em Dom 45.

C.C.A.8 (Minn.) 1933. All condemnations by United States are subject to constitutional prohibition forbidding taking of "private property" without compensation; "private property" including property which is ordinarily considered public property, such as streets or highways. U.S.C.A.Const. Amend. 5.—U.S. v. Wheeler Tp., 66 F.2d 977.—Em Dom 47(1).

C.C.A.8 (Minn.) 1933. Minnesota township highways are easements, or incorporeal hereditaments, or interests in land, and are "private property" which cannot be taken without compensation for public use by United States. Act May 22, 1926,

§ 1, 44 Stat. pt. 2, p. 617, as amended by Act April 18, 1928, § 1, 45 Stat. 431; 40 U.S.C.A. § 258; Const.Minn. art. 1, § 13; U.S.C.A.Const. Amend. 5.—U.S. v. Wheeler Tp., 66 F.2d 977.—Em Dom 47(1).

S.D.Ala. 1947. Where littoral proprietor reclaimed land, the taking of the reclaimed area was a taking of "private property" which could only be done for public purposes and for which just compensation was required.—U.S. v. Property on Pinto Island, 74 F.Supp. 92, reversed U.S. v. Turner, 175 F.2d 644, certiorari denied 70 S.Ct. 92, 338 U.S. 851, 94 L.Ed. 521.—Em Dom 83.

E.D.Cal. 1985. California public agency could possess "private property" within meaning of just compensation clause, which forbids taking of private property for public purpose without just compensation. U.S.C.A. Const.Amend. 5.—Public Agencies Opposed to Social Sec. Entrapment v. Heckler, 613 F.Supp. 558, probable jurisdiction noted 106 S.Ct. 521, 474 U.S. 1004, 88 L.Ed.2d 454, reversed Bowen v. Public Agencies Opposed To Social Sec. Entrapment, 106 S.Ct. 2390, 477 U.S. 41, 91 L.Ed.2d 35.—Em Dom 2.1.

W.D.Ky. 1948. A franchise to operate ferry upon a navigable river and the owner's ferry business did not constitute "private property" within the Fifth Amendment and such an integral part of the property taken, so that its value thereof must be included in an award to the owner, when the erection of a dam by the federal government, and as a consequence, the flooding and taking of the owner's riparian lands, completely and permanently frustrated further exercise of its ferry franchise and destroyed its ferry business. U.S.C.A. Const. art. 1, § 8; art. 6, cl. 2; Amend. 5.—U.S. ex rel. and for Use of Tennessee Valley Authority v. Birmingham Ferry Co., 79 F.Supp. 569.—Const Law 277(1); Em Dom 108.

D.Mont. 1946. The induction of plaintiff into the Armed Forces, as result of which he sustained injuries in combat which totally disabled him, was not a taking of "private property" within the Fifth Amendment so as to entitle plaintiff to compensation therefor. Selective Training and Service Act of 1940, § 1 et seq., 50 U.S.C.A.Appendix, § 301 et seq.; U.S.C.A.Const. Amends. 5, 7, 13.—Commers v. U.S., 66 F.Supp. 943, affirmed 159 F.2d 248, certiorari denied 67 S.Ct. 1189, 331 U.S. 807, 91 L.Ed. 1828.—Em Dom 2.24.

S.D.N.Y. 1996. "Private property" includes valid contracts for purposes of takings analysis; however, if regulatory statute is otherwise within powers of Congress, its application may not be defeated by private contractual provisions, and fact that legislation disregards or destroys existing contractual rights does not always transform regulation into illegal taking. U.S.C.A. Const.Amend. 5.—Sanitation and Recycling Industry, Inc. v. City of New York, 928 F.Supp. 407, affirmed 107 F.3d 985.—Em Dom 2.5, 81.1.

W.D.Pa. 1963. City's sewer collection system was "private property" within Fifth Amendment, and United States was liable for compensation for its damage and destruction resulting from lock and dam construction, which was work undertaken in furtherance of power of government over navigation but which resulted in raising ordinary high-water mark and normal pool level above pre-dam mark and level. U.S.C.A.Const. art. 1, § 8, cl. 3; U.S.C.A.Const. Amend. 5.—Borough of Ford City, Pa. v. U.S., 213 F.Supp. 248, reversed 345 F.2d 645, certiorari denied 86 S.Ct. 236, 382 U.S. 902, 15 L.Ed.2d 156.—Em Dom 82.

E.D.Va. 1960. Owners of oyster leases, which were alienable, descendible, renewable as of right for a definite term and constituted a valuable means of livelihood, had "private property" in oyster grounds and markers within meaning of Fifth Amendment. U.S.C.A.Const. Amend. 5; Code Va.1950, § 28–124(13).—Blake v. U. S., 181 F.Supp. 584, affirmed 295 F.2d 91.—Em Dom 84.

E.D.Va. 1960. Subject to government's dominant power over navigation, a lease of oyster grounds, pursuant to state law, on beds of navigable streams within the state, constitutes "private property" in the lessee. U.S.C.A.Const. Amend. 5; Code Va.1950, § 28–124(13).—Blake v. U. S., 181 F.Supp. 584, affirmed 295 F.2d 91.—Fish 7(2).

S.D.W.Va. 1944. The control of floods in navigable rivers is essentially the control of navigation, and the United States possesses a dominant easement in the waters of a navigable stream for flood control as phase of navigation control or improvement, is liable to no one for its use or nonuse, and exclusion of riparian owners from benefit of running water in navigable stream without compensation is entirely within the government's discretion, since the flow is not "private property". Flood Control Act of 1936, § 1, 33 U.S.C.A. § 701a.—U.S. v. West Virginia Power Co., 56 F.Supp. 298.—Em Dom 2.17(5); Nav Wat 2, 4.

Ala. 1953. The right of landlord of realty abutting public highway of access to highway is "private property" passing to tenant.—City of Bessemer v. Brantley, 65 So.2d 160, 258 Ala. 675.—Land & Ten 124(2).

Ariz. 1970. Direct access to a highway is not a "private property" right within constitutional provision that no private property shall be taken or damaged for public or private use without just compensation. A.R.S.Const. art. 2, § 17.—State ex rel. Herman v. Schaffer, 467 P.2d 66, 105 Ariz. 478, 42 A.L.R.3d 1.—Em Dom 85.

Cal. 1965. "Private property" within statute providing that private property appropriated to use of any irrigation district may not be taken by incorporated city while the property is so appropriated and used for public purposes is not limited in reference to private property devoted to use of public but refers to property owned by public agencies as well as that owned by private persons or corporations. West's Ann.Code Civ.Proc. § 1241, subd. 3.—City of Beaumont v. Beaumont Irrigation District, 405 P.2d 377, 46 Cal.Rptr. 465, 63 Cal.2d 291.—Em Dom 45.

Cal. 1919. A possessory right in public land is "private property," and may be assessed for purposes of taxation to the person in possession, although in point of law he may have no right as against the state, which owns the land.—San Pedro, L.A. & S.L.R. Co. v. City of Los Angeles, 179 P. 393, 180 Cal. 18.—Tax 2270.

Cal. 1907. The easement of a reclamation district for the construction of a levee is a right of way, within Code Civ.Proc. § 1240, enumerating the "private property" which may be taken under the right of eminent domain, and providing that rights of way shall be deemed private property for the purposes mentioned in section 1238, declaring that the right of eminent domain may be exercised in behalf of specified public uses, and hence the right of way procured by a reclamation district in the construction of a levee, together with the levee, may be taken by a railroad company under the right of eminent domain for its right of way, provided the right of way will not interfere with the right of way and levee of the district or affect the efficiency of its works.—Reclamation Dist. No. 551 v. Superior Court of Sacramento County, 90 P. 545, 151 Cal. 263.

Cal.App. 3 Dist. 1932. The right of a lessee under an oil and gas lease to extract oil is "private property" and a "claim to land," although not accompanied by actual physical possession of the subterranean deposit.—Jones v. Pier, 12 P.2d 646, 124 Cal.App. 444.

Cal.App. 3 Dist. 1905. The right of way of a railroad company is "private property," within a statute providing for the taking of "private property" for public use.—Boca & L.R. Co. v. Sierra Valleys Ry. Co., 84 P. 298, 2 Cal.App. 546.

Del.Ch. 1959. Property owned by a railroad although devoted in one sense to the public use is "private property" and entitled to the protection of the Fourteenth Amendment and hence when a street is laid out across a railroad's property the railroad is generally entitled to compensation and such ordinarily requires a condemnation proceeding. U.S.C.A.Const. Amend. 14.—Mayor and Council of Laurel v. Delaware R. Co., 154 A.2d 762, 38 Del.Ch. 496.—Const Law 280.

Fla.App. 3 Dist. 2003. Generally, when a government entity acts to create property rights yet retains the power to alter those rights, the property right is not considered "private property," and the exercise of the retained power is not considered a taking' for Fifth Amendment purposes. U.S.C.A. Const.Amend. 5.—Agripost, Inc. v. Metropolitan Miami-Dade County, 845 So.2d 918, rehearing denied, review denied 859 So.2d 513.—Em Dom 2.1.

Ga. 1985. Term "private property," as found in statute [O.C.G.A. § 32–3–4] authorizing Department of Transportation to condemn "private property" for public road purposes, does not include property owned by government or governmental entity.—Department of Transp. v. City of Atlanta, 337 S.E.2d 327, 255 Ga. 124.—Em Dom 47(1).

Ill. 1980. Monies coming into possession or control of county treasurer which belong to various governmental bodies do not constitute "private property," and therefore constitutional proscription against taking private property for public purposes would not prevent earnings from such funds from being used for county purposes. S.H.A.Const.1970, art. 1, § 15; U.S.C.A.Const. Amends. 5, 14.—Morton Grove Park Dist. v. American Nat. Bank and Trust Co., 35 Ill.Dec. 767, 399 N.E.2d 1295, 78 Ill.2d 353.—Em Dom 81.1.

Ill. 1908. "Private property," forbidden by the Constitution to be taken or damaged for public use without just compensation, is not limited to the tangible subject-matter or corpus of the property, but includes the right of user and enjoyment, and when such rights are destroyed or taken for public use the owner is entitled to compensation.—City of Belleville v. St. Clair County Turnpike Co., 84 N.E. 1049, 17 L.R.A.N.S. 1071, 234 Ill. 428.—Em Dom 85.

Iowa 1943. Accretion land under toll bridge over navigable river was "private property" of toll bridge company whether bridge was part of primary highway system or not.—Plattsmouth Bridge Co. v. Globe Oil & Refining Co., 7 N.W.2d 409, 232 Iowa 1118.—Nav Wat 44(3).

Kan. 1910. The water hydrants and electric light fixtures of the city are "private property" owned by it in its corporate capacity. They have a permanent situs within the drainage district and constitute "property" and "other property liable to assessment" within the meaning of chapter 80, Laws 1909.—State v. Board of Com'rs of Shawnee County, 110 P. 92, 83 Kan. 199.—Levees 23.

La. 1997. Immovable property owned by political subdivision in its capacity as public person is "public property," while immovable property owned by political subdivision in its capacity as private person is "private property."—City of New Orleans v. T.L. James & Co., 685 So.2d 111, 1996-1112 (La. 1/14/97).—Mun Corp 221.

La. 1968. Constitutional designation of "private property" as used in provision that private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid is not confined to any particular type of property and includes leases, even though lease rights are classified as personal. LSA–Const. art. 1, § 2.—Columbia Gulf Transmission Co. v. Hoyt, 215 So.2d 114, 252 La. 921.—Em Dom 82.

La. 1938. The property of housing authorities organized under the Slum Clearance or Housing Authority Act is "public property," within meaning of the term used in the section of the Constitution exempting all "public property" from taxation, and not "private property." Act No. 275 of 1936, LSA–R.S. 40:381 et seq.; Const.1921, art. 10, § 4.—State ex rel. Porterie v. Housing Authority of New Orleans, 182 So. 725, 190 La. 710.—Tax 2315.

La.App. 2 Cir. 1972. Constitutional designation of "private property", as used in provision that private property shall not be taken or damaged

except for public purposes after payment of just and adequate compensation, is not confined to any particular type of property and includes leases, even though lease rights may be classified as personal. LSA–Const. art. 1, § 2.—State Through Dept. of Highways v. Illinois Cent. R. Co., 256 So.2d 819, application denied 258 So.2d 381, 260 La. 1136.—Em Dom 82.

La.App. 4 Cir. 1996. Immovable property purchased by city, which city subsequently used as library, was "private property" for purposes of statutory two-year prescriptive period for actions involving private property damaged for public purposes and, thus, two-year, rather than one-year, prescriptive period applied to city's action against street and drainage improvement contractor, seeking damages for roof and structural damage to library allegedly caused by vibration of driving sheet-piles during contractor's construction work on street and drainage improvements; property was owned by private person before city acquired it, and, at time damage to property occurred, property was owned by city, but was neither subject to nor needed for public use, as building required renovation before opening as library. LSA-R.S. 9:5624.—City of New Orleans v. T.L. James & Co., 672 So.2d 1116, 1995-2193 (La.App. 4 Cir. 4/3/96).—Mun Corp 404(3).

Me. 1916. "Private property" including church property, is subject to the doctrine of prescriptive easements.—Thompson v. Bowes, 97 A. 1, 115 Me. 6, 1 A.L.R. 1365.—Ease 2.

Mass. 1916. The quotations of the stock exchange, collected and tabulated by the exchange, constitute its "private property," and are entitled to every protection afforded by law to private property.—W.U. Tel. Co. v. Foster, 113 N.E. 192, 224 Mass. 365, reversed 38 S.Ct. 438, 247 U.S. 105, 62 L.Ed. 1006, 1 A.L.R. 1278.

Mich. 1931. As regards condemnation, rights of owners of reversion and abutting property owners in ornamental parkway in middle of street constituted "private property."—City of Detroit v. Judge of Recorder's Court of City of Detroit, 234 N.W. 445, 253 Mich. 6.—Em Dom 47(6).

Mich. 1911. A valid building restriction is private property within Const.1908, art. 13, § 1, which forbids the taking of "private property" for public use without the necessity therefor being first determined, and just compensation therefor being first made or secured in such manner as shall be prescribed by law.—Allen v. City of Detroit, 133 N.W. 317, 167 Mich. 464, 36 L.R.A.N.S. 890.

Mich.App. 1996. In order to succeed on claim that statute effects an unconstitutional taking of property without just compensation, plaintiff must establish cognizable interest in some affected item of "private property," that is, something over which plaintiff has exclusive control or dominion. U.S.C.A. Const.Amend. 14; M.C.L.A. Const. Art. 10, § 2.—Heinz v. Chicago Road Inv. Co., 549 N.W.2d 47, 216 Mich.App. 289, appeal denied 567 N.W.2d 250, 455 Mich. 865.—Em Dom 284.

Minn. 1951. Where construction of drainage ditch would make it necessary for gas pipe line company to alter or reconstruct pipe line by either raising or lowering pipe at places where ditch would cross pipe line, so as to require a substantial expenditure by company, there was the taking or damaging of the "private property" of the company for public use within terms of drainage laws and provisions of state and federal Constitutions so as to entitle company to compensation. M.S.A. §§ 106.17, subd. 2, 106.151, 117.01, 117.02, subd. 2; M.S.A.Const. art. 1, § 13; U.S.C.A.Const. Amends. 5, 14.—Petition of Dreosch, 47 N.W.2d 106, 233 Minn. 274.—Em Dom 85.

Miss. 1967. A railroad is a "highway" in a certain sense and, as such, may be controlled by Legislature of state under its police power, but it is also "private property" entitled to constitutional protection so that it can only be taken under power of eminent domain with compensation. Const. art. 3, § 17.—White v. Mississippi Power & Light Co., 196 So.2d 343, 30 A.L.R.3d 754.—Em Dom 47(1); R R 223.

Miss. 1905. Statutes regulating and restricting the capture of creatures ferae naturae, not reduced to actual possession, are not violative of Const. § 17, declaring that "private property" shall not be taken without just compensation.—Ex parte Fritz, 38 So. 722, 86 Miss. 210, 109 Am.St.Rep. 700.

Mo. 1937. Taxes collected for support of school districts and such property as they may be converted into are "public property" and not "private property" of school district by which they may be held or in which they may be located. V.A.M.S. § 165.010; V.A.M.S.Const. art. 9, § 1.—School Dist. of Oakland v. School Dist. of Joplin, 102 S.W.2d 909, 340 Mo. 779.—Schools 65.

Mo. 1933. Kansas City charter providing for assessments against "private property" of special benefits resulting from public improvements did not authorize assessments against public school property, since it is not "private" but "public" property.—State ex rel. Kansas City v. School Dist. of Kansas City, 62 S.W.2d 813, 333 Mo. 288.—Mun Corp 426.

N.J.Sup. 1905. The interest which the grantee or lessee acquires after a grant or lease from the state of lands lying between high and low water mark is "private property" subject to condemnation.—Woodcliff Land Imp. Co. v. New Jersey Shore Line R. Co., 60 A. 44, 72 N.J.L. 137, 43 Vroom 137.

N.Y. 1928. Flow of navigable river is not "private property," within prohibition against taking for public use without compensation.—Little Falls Fibre Co. v. Henry Ford & Son, 164 N.E. 558, 249 N.Y. 495, certiorari granted 49 S.Ct. 348, 279 U.S. 829, 73 L.Ed. 980, affirmed 50 S.Ct. 140, 280 U.S. 369, 74 L.Ed. 483.—Em Dom 84.

N.Y.A.D. 1 Dept. 1908. An owner of property abutting on a public street has a right therein entitling him to have the same continued as a public street for the benefit of his property, and this right constitutes an easement in the bed of the

street, which attaches to the abutting property and is "private property," within the meaning of the Constitution, of which the owner cannot be deprived without compensation.—Gillender v. City of New York, 111 N.Y.S. 1051, 127 A.D. 612.—Em Dom 50.

N.Y.A.D. 4 Dept. 1910. The easement of abutting owners in a public highway is "private property" which cannot be taken for private use, and hence, where abutting owners upon a public highway owned a fee to the center of the street, a manufacturing corporation could not construct a switch through the street to its plant.—George Sweet Mfg. Co. v. Van Der Hoof, 121 N.Y.S. 842, 137 A.D. 492.—Em Dom 20(5).

N.Y.Dist.Ct. 1979. Records of patients of defendant dentist, who was charged with sexual abuse of patients during course of dental treatments, did not meet requirements of "required records doctrine," were not his "private property," and were not in his possession "in a purely personal capacity"; thus, defendant could not invoke privilege against self-incrimination so as to preclude production of patients' records relevant to prosecution's allegations. Public Health Law § 17; U.S.C.A.Const. Amend. 5; Const. art. 1, § 6.—People v. Cohen, 414 N.Y.S.2d 642, 98 Misc.2d 874.—Witn 298.

N.C. 1903. A public office is not "private property."—Mial v. Ellington, 46 S.E. 961, 134 N.C. 131, 65 L.R.A. 697.

Ohio 1895. The property of a private charitable corporation, though charged with the maintenance of a college or other public charity, is "private property" within the meaning and protection of that clause of the Constitution, art. 1, § 19, declaring that private property shall ever be held inviolate.—State ex rel. White v. Neff, 40 N.E. 720, 52 Ohio St. 375, 33 W.L.B. 264, 2 Ohio Leg. N. 498, 28 L.R.A. 209.

Ohio App. 9 Dist. 1943. A natural, nonnavigable inland lake is the subject of private ownership, and the bed of such lake being "private property", the public has no right to fish in or boat upon its waters.—Akron Canal & Hydraulic Co. v. Fontaine, 50 N.E.2d 897, 72 Ohio App. 93, 27 O.O. 13.—Waters 111, 113.

Okla. 1942. "Private property" necessarily includes everything that can be held or owned by private persons, and is not limited to a tangible subject matter or corpus, but includes the right of user and enjoyment thereof.—British-American Oil Producing Co. v. McClain, 126 P.2d 530, 191 Okla. 40, 1942 OK 89.—Propty 2.

Okla. 1936. Receiver appointed in foreclosure proceedings held entitled to enjoin construction of state highway on mortgaged property under easement granted by mortgagors, as against contention that mortgagee was not entitled to notice of condemnation proceeding, since mortgage lien is "private property" which may not be taken or damages for public use without just compensation. 69 Okl. St.Ann. §§ 46 and note, 47; 66 Okl.St.Ann. § 53; Okl.St.Ann.Const. art. 2, § 24.—Miller v. Durrill, 55 P.2d 953, 176 Okla. 402, 1936 OK 122.—Em Dom 274(1).

Or. 1943. The water taken into an artificial structure and reduced to possession is "private property" during period of possession, but when possession of actual water has been relinquished or lost, by overflow or discharge after use, property in it ceases.—Dry Gulch Ditch Co. v. Hutton, 133 P.2d 601, 170 Or. 656.—Waters 142.

S.C. 1906. Since a railroad company is a quasi public corporation, the property of the railroad is "private property" and cannot be taken for private use, and therefore Act 1905 (24 St. at Large, p. 596), providing that railroad companies shall build side tracks connecting industrial enterprises with their main lines for the delivery and receipt of freight, the cost thereof to be paid by the enterprises and repaid by the companies in annual installments of 20 per cent. of the freight collected, is violative of U.S.C.A.Const. Amend. art. 14, and Const. art. 1, §§ 5, 17, as authorizing the taking of private property for private use.—Mays v. Seaboard Air Line Ry., 56 S.E. 30, 75 S.C. 455.

Tex.Civ.App.–Eastland 1934. Access to public highway is incident to ownership of land abutting thereon, and right to such access is "private property" passing to lessee.—Adams v. Grapotte, 69 S.W.2d 460, affirmed 111 S.W.2d 690, 130 Tex. 587.—Land & Ten 124(2).

Utah Terr. 1889. In the fifth amendment of the Constitution of the United States, declaring that private property shall not be taken for public use, without just compensation, "private property" means "all kinds of private property."—People v. Daniels, 22 P. 159, 6 Utah 288, 5 L.R.A. 444.

Va. 1932. Tidelands, not shown to have been used as a common, held "private property" of riparian owners holding under grants from London Company or crown, made prior to 1780; therefore hunting thereon was illegal (Rev.Code 1819, c. 87; Code 1930, § 3305 (50).—Miller v. Com., 166 S.E. 557, 159 Va. 924.—Nav Wat 37(4).

Va. 1908. Code 1904, § 1294d, cl. 37, authorizes one railroad company to connect with another, and provides that the company making the connection must bear all expenses of operating the connection, etc., but does not require compensation to the company with which connection is made for the use of its property. Const.1902, § 58, prohibits a law whereby private property is taken or damaged for public uses without just compensation. Held, that since a railway right of way is "private property" even to the public, except as to an interest and benefit in its uses, the land of a company with which connection is sought cannot be taken upon which to construct the connecting track for joint use against its consent without compensation; the Code provision being subordinate, and not repugnant, to the constitutional provision.—Louisville & N.R. Co. v. Interstate R. Co., 62 S.E. 369, 108 Va. 502.

Wash. 1935. In performance of duty to remove trees from land dedicated to public use as streets,

city must proceed in lawful manner, but qualified ownership existing in abutting owner in tree standing in street does not constitute "private property" in sense that city must condemn right to interfere with such tree. Const. art. 1, § 16.—Shaw v. City of Yakima, 48 P.2d 630, 183 Wash. 200.—Mun Corp 663(3).

Wash. 1908. A landowner's right of egress and ingress to and from the street is private property, within Const. art. 1, § 16, providing that no "private property" shall be taken or damaged for public use without just compensation.—Lund v. Idaho & W.N.R.R., 97 P. 665, 50 Wash. 574, 126 Am.St.Rep. 916.

W.Va. 1904. The acquisition of a crossing by one railroad over another contemplates the taking of "private property" for public use, under the power of eminent domain.—Wellsburg & S.L.R. Co. v. Panhandle Traction Co., 48 S.E. 746, 56 W.Va. 18.

PRIVATE PROPERTY OPEN TO THE PUBLIC

Idaho 1999. Defendant driver, who was arrested on residential driveway for driving under the influence (DUI) following a party, was not on "private property open to the public," within the meaning of DUI statute, even though social guests and persons with business at the residence were permitted to use the driveway. I.C. § 18–8004; I.C. § 49–117(15) (Supp.1996).—State v. Knott, 974 P.2d 1105, 132 Idaho 476.—Autos 332.

PRIVATE PROPERTY RIGHT

Okla. 1944. Where state on relation of the state Employment Security Commission sought to recover contribution exacted of employers as provided by Unemployment Compensation Law, the state was acting in a "sovereign capacity" and was seeking enforcement of a "public" as distinguished from a "private property right" and was therefore immune from operation of general statute of limitations. 12 O.S.1951 § 95; 40 O.S.1951 §§ 211–229, 212, 224(b) (1) (4).—State ex rel. Oklahoma Employment Sec. Com'n v. Eddie, 154 P.2d 763, 195 Okla. 26.—Lim of Act 11(1).

PRIVATE PROPERTY SHALL NOT BE TAKEN

Mich. 1953. Constitutional provision that "private property shall not be taken," but also that title to private property shall not pass without just compensation being made or secured in such manner as shall be prescribed by law. Const. art. 13, § 1.—Ziegler v. Newstead, 59 N.W.2d 269, 337 Mich. 233.—Em Dom 320.

PRIVATE PROSECUTOR

Tex.Crim.App. 1945. As respects disqualification for jury duty, a "private prosecutor" is one who prefers an accusation against a party whom he suspects to be guilty.—Arnold v. State, 186 S.W.2d 995, 148 Tex.Crim. 310, 158 A.L.R. 1356.—Jury 83(1).

Tex.Crim.App. 1935. Attorney privately employed to assist state in murder prosecution held not "private prosecutor" within statute, and hence refusal to discharge juror related to such attorney within third degree was not error; "private prosecutor" being defined as one who instigates the prosecution or who files the complaint. Vernon's Ann. C.C.P. art. 616, subd. 10; Vernon's Ann.P.C. art. 8. Vernon's Ann.St.Const. art. 1, § 10.—Warren v. State, 94 S.W.2d 430, 130 Tex.Crim. 448.—Jury 91.

PRIVATE PROSECUTORS

Tex.Crim.App. 1945. Members of cattle raisers' association who had made contributions to expenses which association incurred in its activities were not "private prosecutors", so as to be disqualified from serving as grand or petit jurors in prosecution for cattle theft by reason that association had instituted the proceedings against defendant. Vernon's Ann.C.C.P. art. 362, subd. 2; art. 616.—Arnold v. State, 186 S.W.2d 995, 148 Tex.Crim. 310, 158 A.L.R. 1356.—Jury 88.

PRIVATE PURPOSE

D.N.J. 1928. The operation of ships is a public purpose, as distinguished from a "private purpose," in the sense in which such term is used in the laws of eminent domain.—U.S. v. City of Hoboken, N.J., 29 F.2d 932.

Ark. 1941. The Rice Development Commission Law, which imposes a tax of 2 cents per hundred pounds on all rice milled within the state, which contains no provision for regulation of mills, which contemplates no inspection other than examination of records to determine what the tax should be, and which gives to millers no direct return from the tax, is unconstitutional on ground that the tax is levied for a "private purpose", and that milling of rice is an occupation which cannot be taxed for state purposes. Acts 1941, Act 29.—Stuttgart Rice Mill Co. v. Crandall, 157 S.W.2d 205, 203 Ark. 281.—Licens 7(1).

Cal.App. 3 Dist. 1949. The proposed advancement of funds of Sacramento–Yolo Port District to federal government would be for "public" and not "private purpose" and hence would not be unconstitutional gift of public funds, where advancement was to enable Army Engineer to promptly proceed in advance of appropriation of federal funds with work on project for which federal government alone was responsible and which must be completed before district could proceed with construction of terminal facilities contemplated by the project. Harbors and Navigation Code, §§ 6800 et seq., 6900; St.1947, cc. 55, 1152; Act Cong. July 24, 1946, 60 Stat. 634; Const. art. 4, § 31.—Sacramento-Yolo Port Dist. v. Rodda, 204 P.2d 372, 90 Cal.App.2d 837.—Mun Corp 871.

Colo. 1940. Whether a tax or an appropriation is for a "public purpose" or "private purpose" is to be determined by the course and usage of government.—Bedford v. White, 106 P.2d 469, 106 Colo. 439.

Fla. 1939. Realty occupied and used by corporation in its business under lease contract from city providing for the construction of public and private

docks and terminal facilities at joint cost of the parties, and providing for the payment of rental by corporation and the payment of taxes by city, was not exempt from taxation as being used for a "municipal purpose," but it was being used purely for a "private purpose." Comp.Gen.Laws 1927, § 897; Const. art. 9, § 1; art. 16, § 16.—Panama City v. Pledger, 192 So. 470, 140 Fla. 629.—Tax 2315.

Idaho 1955. Where State Board of Education in 1950 issued and sold dormitory revenue bonds for construction of dormitory at the Northern Idaho College of Education, and in 1951 the Legislature made no appropriation for operation of the college and it ceased to operate until 1955 when the college was operated as the Lewis-Clark Normal School, Legislative Act of 1955 appropriating money to pay certain of the dormitory bonds and interest thereon does not violate constitutional provision that the credit of the state shall not, in any manner, be given, or loaned to, or in aid of any individual, association, municipality or corporation, since the act was for a "public purpose" and not for a "private purpose." Laws 1955, c. 277, Laws 1935, 1st. Ex.Sess., c. 55, § 15; I.C. §§ 33–3101, 33–3806(h), 33–3801 et seq., 33–3802, 33–3803, 33–3809, 33–3810; Const. art. 8, § 2, art. 9, § 2.—Davis v. Moon, 289 P.2d 614, 77 Idaho 146.—States 119.

Ill. 1952. The Blighted Areas Redevelopment Act of 1947 is constitutional on the ground that the redevelopment of slum and blighted areas constitutes a public purpose notwithstanding the proposed subsequent development of the property by a private corporation; such fact not making the taking as for a "private purpose". S.H.A. ch. 67½, §§ 63–91.—Chicago Land Clearance Commission v. White, 104 N.E.2d 236, 411 Ill. 310, certiorari denied 73 S.Ct. 23, 344 U.S. 824, 97 L.Ed. 641.—Em Dom 17.

Ill. 1942. The construction of a switch track by defendants along a street created by common law dedication, intended to extend from railroad company's right of way to defendants' property, would be for a "private purpose" and would not conform to a "public use", and defendants could not construct track in reliance on a certificate of convenience and necessity issued by the Illinois Commerce Commission or on a town ordinance authorizing use of street for track.—Greenlee Foundry Co. v. Borin Art Products Corporation, 41 N.E.2d 532, 379 Ill. 494.—Mun Corp 680(8); R R 75(1).

Ill. 1939. An arrangement between city and merchants and citizens protective association for joint employment of a police patrolman was not beyond corporate power of city as involving payment of public money for "private purpose," where evidence showed that patrolman protected not only the premises of the association's members but all business premises of city, and that patrolman was authorized to perform the duties of a regular patrolman.—Krawiec v. Industrial Commission, 25 N.E.2d 27, 372 Ill. 560.—Mun Corp 861.

Ill. 1939. The fact that Congress had made appropriations to widows or children of deceased presidents, and that Legislature had made appropriations to widows, children, mothers or estates of distinguished judges and members of General Assembly did not establish constitutionality of appropriations to widows of circuit judges, but could be considered in determining whether appropriations were for a "public" or "private purpose." S.H.A.Const. art. 4, § 20.—People ex rel. McDavid v. Barrett, 19 N.E.2d 356, 370 Ill. 478, 121 A.L.R. 1311.—States 119.

Iowa 1994. Condemnation of access route across private property to permit landlocked property owner to access public road was not taking for "private purpose," rather than "public purpose" in violation of State or Federal Constitutions, even though road would be used almost entirely for landlocked property owner's private benefit, where statute authorizing condemnation of access route conclusively established public character of roadway. U.S.C.A. Const.Amend. 5; I.C.A. Const. Art. 1, § 18; Code 1991, § 471.4, subd. 2.—Matter of Luloff, 512 N.W.2d 267.—Em Dom 61.

Iowa 1948. An act cannot be said to be for a "private purpose", contrary to constitutional provision that public moneys shall not be appropriated for a private purpose, where some principle of public policy underlies its passage, and whether an appropriation connected with a taxing statute is for a public purpose depends upon whether the remainder of the statute is for such purpose. Const. Iowa art. 3, § 31.—Dickinson v. Porter, 35 N.W.2d 66, 240 Iowa 393, appeal dismissed 70 S.Ct. 88, 338 U.S. 843, 94 L.Ed. 515.—States 119.

Iowa 1941. Any contribution by state, or any subdivision thereof, by way of taxation or other public money, to retirement or disability funds, is not a donation for a "private purpose", but is a proper outlay for a "public purpose", which purpose is to bring about a better or more efficient service in various departments by improving their personnel and morale through retention of faithful and experienced employees.—Talbott v. Independent School Dist. of Des Moines, 299 N.W. 556, 230 Iowa 949, 137 A.L.R. 234.—Mun Corp 861; States 114.

Kan. 1955. The hunting of ducks is "public purpose" and not a "private purpose", so that the Fish and Game Commission has power on payment of compensation, to appropriate private property for the purpose of creating duck hunting grounds. G.S.1949, §§ 32–213, 32–212, 32–214; G.S.1953 Supp. 74–3302.—Ottawa Hunting Ass'n v. State, 289 P.2d 754, 178 Kan. 460, appeal dismissed 77 S.Ct. 31, 352 U.S. 804, 1 L.Ed.2d 38.—Em Dom 41.

Mass. 1937. Proposed statute providing for purchase of land by city of Salem for memorial to sailors of Salem, and authorizing conveyance thereof to federal government without consideration under federal act providing for preservation of historic American sites, would not be violative of constitutional provision prohibiting giving or loaning of credit of commonwealth for "private purpose". 16

U.S.C.A. § 461 et seq.; Const. Amend. art. 62, § 1.—In re Opinion of the Justices, 8 N.E.2d 753, 297 Mass. 567.—Em Dom 41; States 119.

Miss. 1944. The retirement benefits provided for under the Firemen's and Policemen's Pension Act are not "gratuities" nor for a "private purpose", nor the "lending of credit", nor are they "extra compensation" within constitutional prohibitions. Laws 1940, c. 287; Const.1890, §§ 20, 93, 108, 267.—Mayor and Aldermen of City of Vicksburg v. Crichlow, 16 So.2d 749, 196 Miss. 259.—Mun Corp 176(3.1), 871.

N.Y.A.D. 2 Dept. 1926. Laying of water pipes in private roads, under permanent easements, to supply water to taxpayers of water district who bear their share of cost of water supply in district, and payment therefor from proceeds of water bonds under Town Law, art. 13, held not expenditure of public moneys for "private purpose," in violation of Const. art. 8, § 10, in view of Town Law, §§ 271-279, 295, section 281, as amended by Laws 1925, c. 471, and section 282, as amended by Laws 1925, c. 146.—Horsfall v. Schuler, 216 N.Y.S. 391, 217 A.D. 146.

Ohio 1942. Where dwellings were leased by Housing Authority to family units for the purposes of private homes, the use of such dwellings was for a "private purpose" and not for a "public purpose" within meaning of the constitutional provision that general laws may be passed to exempt from taxation public property used exclusively for any public purpose, and hence dwellings were not exempt from taxation. Gen.Code, § 1078-29 et seq.; Const. art. 12, § 2.—Columbus Metropolitan Housing Authority v. Thatcher, 42 N.E.2d 437, 140 Ohio St. 38, 23 O.O. 252.—Tax 2315.

Ohio Com.Pl. 1946. The bestowal of care at public expense on children of those whose financial condition does not require it, is an improper expenditure of public funds for a "private purpose."—Ferrie v. Sweeney, 72 N.E.2d 128, 34 O.O. 272, 48 Ohio Law Abs. 138.—Mun Corp 861.

R.I. 1961. Where bill proposed to amend statute by increasing fees for motor vehicle operators' and chauffeurs' licenses and section 2 provided that certain licensee should be given a refund of amount of increase exacted from him by statute, and to accomplish the result it was necessary to appropriate money from the general treasury, the appropriation was not for a "public purpose" but was for a "private purpose" requiring the assent of two thirds of the members of the General Assembly. Gen. Laws 1956, §§ 31-10-30, 31-10-31, 35-4-8; Const. art. 4, § 14.—Opinion to the Governor, 170 A.2d 284, 92 R.I. 489.—Statut 21.

S.C. 1940. A "municipal purpose", within constitutional provision permitting the exemption from taxation of property for "municipal purposes", is a "public or governmental purpose", as distinguished from a "private purpose", a purpose intended to embrace some of the functions of government, local or general; word "municipal" being frequently used in connection with cities and towns, but its meaning is much more extensive. Const. art. 10, § 1.—Ellerbe v. David, 8 S.E.2d 518, 193 S.C. 332.—Tax 2291.

Tex.Civ.App.–Austin 1913. In view of Const. art. 16, § 39, permitting the Legislature to make appropriations to perpetuate memorials of Texas history, and section 45, requiring it to preserve documents, etc., relating to Texas history, House Concurrent Resolution No. 18, passed by the Twenty-Eighth Legislature, Acts 28th Leg. p. 250, permitting the Daughters of the Confederacy to use a room in the state capitol for depositing the relics of the Confederacy, etc., was for a quasi public purpose, and not for a "private purpose," within Rev. St.1911, art. 6389, providing that no room or office in said building shall be used for private purposes.—Conley v. Texas Division of United Daughters of the Confederacy, 164 S.W. 24, writ refused.

Tex.Civ.App.–Galveston 1938. The authorization of bonds for the construction and maintenance of hospitals by county units for the care of the sick constitutes a "public purpose" as distinguished from a "private purpose" as respects constitutional validity of statute. Vernon's Ann.Civ.St. arts. 718 et seq., 4478; Vernon's Ann.St.Const. art. 3, § 52.—Seydler v. Border, 115 S.W.2d 702, writ refused.—Counties 174.

Vt. 1937. An act appropriating money for widow of deputy sheriff murdered while serving statutory civil writ containing capias on person under arrest and in his custody was not unconstitutional as enacted for a "private purpose," even though deputy was not in state's direct service, since writ's command was not that of plaintiff in cause but of the law, and deputy was performing a public function which he could not refuse. Acts 1937, No. 246; P.L. 1494, 1495, 1499, 1500, 3403, 3405, 3389; Const. c. 1, arts. 7, 9.—Gross v. Gates, 194 A. 465, 109 Vt. 156.—States 119.

W.Va. 1949. The statute levying a tax on commercial apples is unconstitutional because tax was levied for a "private purpose." Acts 1947, c. 5, § 4.—Lingamfelter v. Brown, 52 S.E.2d 687, 132 W.Va. 566.—Tax 2028.

W.Va. 1948. The legislature is without power to levy taxes or appropriate public revenues for purely private purposes, but it has power to make appropriation to private person in discharge of a moral obligation of state, and such an appropriation is for a "public" and not a "private purpose". Const. art. 10, § 6.—State ex rel. Bennett v. Sims, 48 S.E.2d 13, 131 W.Va. 312.—States 114; Tax 2119.

Wis. 1942. The 1941 amendment to employees' retirement system law providing for increase in retirement allowance of member and that such provision should apply to all persons who were formerly active members of the system is invalid as appropriating public funds for a "private purpose" as applied to employee who had retired on January 1, 1941, since he was not a "member" of the employees' retirement system at time the amendment became effective. Laws 1937, c. 396, §§ 3(6), 5(1) (b) 4, 5 added by Laws 1941, c. 308.—State ex rel. Smith v. Annuity and Pension Bd. of City of

Milwaukee, 6 N.W.2d 676, 241 Wis. 625.—States 114.

PRIVATE PURPOSE OR BENEFIT

C.A.D.C. 1954. "Private purpose or benefit" as respects duty of invitor to invitees includes much more than direct pecuniary return to the invitor and includes any substantial or appreciable interest or advantage which an owner or occupant considers sufficient incentive to cause him to plan public gatherings or other events and to invite others to participate therein upon premises owned or occupied by him in order to carry out the purpose.—Watford by Johnston v. Evening Star Newspaper Co., 211 F.2d 31, 93 U.S.App.D.C. 260.—Neglig 1037(2).

PRIVATE PURPOSES

Mont. 1941. The statute providing for creation by cities of a special improvement district revolving fund for purpose of making loans to improvement district does not levy tax for "private purposes" within constitutional prohibition, though part of project in furtherance of improvement within city is located outside the city. Rev.Codes 1935, §§ 5277.1 to 5277.5; Const.Mont. art. 12, § 11.—Hansen v. City of Havre, 114 P.2d 1053, 112 Mont. 207, 135 A.L.R. 1278.—Mun Corp 957(1).

N.H. 1947. Proposed act providing state aid for low-rent housing would not be invalid as appropriating public money for "private purposes," notwithstanding that private persons would benefit by establishment of low-rent housing projects and slum clearance projects such as are contemplated by the bill. R.L. c. 169, § 1 et seq., as amended by Laws 1947, cc. 169, 286.—In re Opinion of the Justices, 53 A.2d 194, 94 N.H. 515.—States 119.

PRIVATE RECREATIONAL USE

La.App. 4 Cir. 1975. "Private recreational use," allowed in residential districts by provision of zoning ordinance permitting "private recreational uses such as tennis courts, swimming pools, golf courses, operated exclusively for private use," is not limited to uses such as backyard swimming pool by individual and members of his family, but includes private recreational use by private, noncommercial association of individuals.—Henderson v. Zoning Appeals Bd. of Jefferson Parish, 328 So.2d 175, certiorari denied 331 So.2d 474.—Zoning 278.1.

PRIVATE RECREATION PURPOSES

N.D. 1996. Homeowners' deck was structure used for "private recreation purposes" within meaning of ordinance that permits such structures that are not more than two feet high to occupy entire required side yard of property; deck was less than two feet high, homeowners' daughters used deck for sunbathing, and homeowners barbequed, read, and sat in lawn chairs on deck. Fargo, N.D., Ordinance § 20-0321(H).—City of Fargo v. Ness, 551 N.W.2d 790.—Zoning 252.

PRIVATE RELIGIOUS SPEECH

D.Colo. 2005. Contemplated expressive activities of pro-life organization and its volunteer, including their anti-abortion leafleting and placard display on campus of higher education center, were either "private religious speech" or "secular private expression" and as such were protected under the First Amendment free speech clause. U.S.C.A. Const.Amend. 1.—Mason v. Wolf, 356 F.Supp.2d 1147.—Colleges 6(5); Const Law 90.1(1.4).

PRIVATE REPUBLICATION

C.A.1 (Puerto Rico) 1996. Puerto Rico legislators' decision to use public funds to finance live telecasts of hearings investigating possible murders of arrestees by police was authorization of "legislative disclosure," rather than "private republication," and thus, legislators were clothed with absolute legislative immunity from suit under § 1983 with respect to that decision. 42 U.S.C.A. § 1983.—Romero-Barcelo v. Hernandez-Agosto, 75 F.3d 23.—Territories 19.

PRIVATE RESIDENCE

D.Virgin Islands 1965. "Private residence" within restrictive covenant meant residence which is private wherein individual person or family lives, which may be apartment or apartment house; terms "single family residence" and "single family detached dwelling" refer to dwelling wherein individual or family lives, but preclude more than one family from residing.—Jones v. Smith, 241 F.Supp. 913.—Covenants 51(2).

Ala. 1983. When word "private" is used in connection with word "residence" in restrictive covenant, "private residence" means single family residence.—Hines v. Heisler, 439 So.2d 4, 43 A.L.R.4th 65.—Covenants 51(2).

Cal.App. 2 Dist. 1919. Covenant providing that "no building or structure whatever, other than a first-class private residence," should be erected, placed, or permitted on premises, held to prohibit the construction and use on the premises of a duplex to be used by two families; such building not being "a residence," and not being a "private residence."—Walker v. Haslett, 186 P. 622, 44 Cal. App. 394.—Covenants 51(2).

Colo. 1953. Restrictive covenant in deed providing that no building should be constructed upon the premises conveyed other than for "private residence" purposes, prohibited construction of a duplex on such premises.—Flaks v. Wichman, 260 P.2d 737, 128 Colo. 45.—Covenants 51(1).

Mich. 1918. Defendant, who stored liquors in garage, rear room in building containing pool room, defendant and wife keeping house on second floor, violated Pub.Acts 1913, No. 381, § 4, prohibiting storing of liquors where sale is prohibited, except in "private residence," not covering entire curtilage.—People v. Vail, 168 N.W. 453, 202 Mich. 521.—Int Liq 139.

Mich. 1918. Defendant, who stored liquors in garage disconnected from dwelling house, violated

Pub.Acts 1913, No. 381, § 4, prohibiting storing of liquors in county where sale is prohibited, except in a "private residence," which means actual dwelling house, and not all buildings within curtilage.—People v. Labbe, 168 N.W. 451, 202 Mich. 513.—Int Liq 139.

N.J.Ch. 1910. The distinction between "private dwelling house" or a "private residence" on the one side and a house built or occupied as a residence for two or more families is obvious, and a covenant by a grantee not to use the premises for any other purpose except for a private residence is violated by constructing a dwelling house designed to accommodate two families, and allowing two families to occupy the same.—Koch v. Gorruflo, 75 A. 767, 77 N.J.Eq. 172, 140 Am.St.Rep. 552.

Okla.Crim.App. 1942. A building containing a filling station, a dance hall, and a restaurant did not constitute a "private residence" occupied as such because defendant, charged with unlawful possession of intoxicating liquor, and his wife, slept in filling station and kept part of their clothes there and part of them in restaurant, and hence affidavit for search warrant, stating that premises described were not the private residence of defendant or any other person, was not insufficient for failure to allege that premises were a place of public resort or used as a place of storage. 37 Okl.St.Ann. § 88.—Staley v. State, 121 P.2d 324, 73 Okla.Crim. 355.—Int Liq 248.

Pa. 1940. A house occupied by two or more families is a "community house". The families living there occupy "apartments" separate and distinct from each other and the house becomes not a "private residence" but a collection of "apartments," leased to different tenants.—Fox v. Sumerson, 13 A.2d 1, 338 Pa. 545.

Pa.Super. 1943. A three-family apartment was not a "private residence."—Pehlert v. Neff, 31 A.2d 446, 152 Pa.Super. 84.

Tex.Crim.App. 1947. Uncontradicted proof that prosecuting witness operated a business in front part of building containing a bar and dance hall and that he and his wife occupied rooms as sleeping and living quarters in the back of the building, and that breaking and entering into the building was through a window in dance hall, was sufficient to support conviction for burglary under a statute dealing with entry of a "house" rather than burglary of a "private residence." Vernon's Ann.P.C. art. 1389.—Rich v. State, 199 S.W.2d 178, 150 Tex.Crim. 167.—Burg 41(8).

Tex.Crim.App. 1935. Cabin constructed on automobile chassis held "private residence," so that stranger entering it by force thirty minutes after sundown would be guilty of burglary of "private residence" at night.—Luce v. State, 81 S.W.2d 93, 128 Tex.Crim. 287.—Burg 4.

Tex.Crim.App. 1935. Cabin constructed on automobile chassis held "private residence," so that stranger entering it by force thirty minutes after sundown would be guilty of burglary of "private residence" at night and could not be convicted under indictment charging ordinary burglary.—Luce v. State, 81 S.W.2d 93, 128 Tex.Crim. 287.—Ind & Inf 191(2).

Tex.Crim.App. 1933. Burglary at night of tent in which family lived held burglary of "private residence" in nighttime; hence conviction for ordinary burglary was not supported.—Martin v. State, 57 S.W.2d 1104, 123 Tex.Crim. 82.—Ind & Inf 192.

Tex.Crim.App. 1932. Room used as hotel office and connected with proprietor's sleeping quarters held not "private residence" so as to make entry therein burglary of private residence.—Escarino v. State, 55 S.W.2d 565, 122 Tex.Crim. 341.—Burg 4.

Tex.Crim.App. 1930. Indictment was fatally defective, since, under Vernon's Ann.P.C. art. 1391, denouncing burglary of private residence, distinguishing characteristic of offense is fact that building was private residence, occupied and actually used as such at time of burglary; "private residence" signifying in common parlance only house or building, such as is commonly used for residential purposes, and "occupancy," under statute, not necessarily meaning "residence."—Sims v. State, 34 S.W.2d 1098, 117 Tex.Crim. 88.

Tex.Crim.App. 1927. Room in tourist camp occupied by defendant and another held "private residence" and not subject to search without warrant.—Gorman v. State, 296 S.W. 533, 107 Tex. Crim. 250.—Searches 7(10).

Tex.Crim.App. 1925. Premises held not a "private residence" within statute so that parties might play at cards without punishment.—Luttrell v. State, 273 S.W. 597, 100 Tex.Crim. 406.—Gaming 72(6).

Tex.Crim.App. 1914. Where, in a prosecution for rudely displaying a deadly weapon in a manner calculated to disturb the inhabitants of a private residence, it appeared that the tenant who had occupied the residence had loaded all his household articles preparatory to moving off the premises, but had not left the premises when trouble arose, and defendant displayed his rifle in such a way as to frighten the tenant's wife and children, the place was properly found to have been the "private residence" of the tenant at the time of the offense.—Ward v. State, 167 S.W. 343, 74 Tex.Crim. 94.

Tex.Crim.App. 1913. A jewelry store in which was a little gallery about 10 feet above the floor curtained off as a sleeping apartment, with a railing around the gallery next to the store part, but without any partition, was not a "private residence" within the statute, which makes a distinction between ordinary burglary and the offense of breaking into a private residence.—Shornweber v. State, 156 S.W. 222, 70 Tex.Crim. 389.

Tex.Crim.App. 1911. An instruction in a prosecution for burglary which defines "private residence" as "a building actually occupied and used as a place of residence" is not erroneous, since placing the word "actually" before the word "occupied," instead of before the word "used," as in the statute does not give to the words any different meaning.—

Dowling v. State, 140 S.W. 224, 63 Tex.Crim. 366.—Burg 46(5).

Tex.Crim.App. 1911. The house burglarized consisted of a storeroom which was subdivided by a partition, the front room being a restaurant, the middle room being used as a kitchen, and the rear room as a sleeping apartment for the tenant, his wife, and daughter, and the entry was made in the middle room and the articles stolen therefrom. Held, that the only part of the building used as a "private residence" was the sleeping apartment, so that the burglary was not a burglary of a private residence.—Alinis v. State, 139 S.W. 980, 63 Tex. Crim. 272.

Tex.Crim.App. 1908. Under Acts 26th Leg. (Laws 1899) p. 318, c. 178; article 839a, Pen.Code 1895, defining "burglary of a private residence"; article 845a, providing punishment therefor different from that provided for "burglary"; article 845c, defining a "private residence" as a building or room actually used at the time of the offense by any person or persons as a place of residence; and article 845b, providing that article 839a should be construed not as repealing articles 838 and 839 [Vernon's Ann.P.C. arts. 1389, 1390], relating to ordinary "burglary," but as making "burglary of a private residence" a separate and distinct offense from "burglary"—an indictment in a prosecution for "burglary of a private residence," which charged that the house burglarized was occupied and actually used by a family as a private residence and that the house was occupied and controlled by a named person, was defective in not directly charging that the person named, or his family, actually occupied and used the house as a private residence.—Lewis v. State, 114 S.W. 818, 54 Tex.Crim. 636.—Burg 21.

Tex.Crim.App. 1907. "Private residence," within a statute prohibiting gaming in a place other than a private residence, includes a tent, owned by a saloonkeeper and situated near the saloon, occupied by an employe, who slept there, and occupied by no one else, though the public would go in and out of the tent.—Hooper v. State, 105 S.W. 816.

Tex.Crim.App. 1907. Pen.Code 1895, art. 839 [Vernon's Ann.P.C. art. 1390], provides that one who with intent to commit a felony breaks and enters a house in the daytime is guilty of burglary. Laws 1899, p. 318, c. 178 (Pen.Code 1895, art. 839a), provides that the offense of burglary of a private residence is constituted by entering a private residence, etc. Article 845b makes burglary of a private residence a distinct offense. One count of an indictment charged that defendant by force, etc., in the daytime, did burglariously and fraudulently break and enter a house then and there at the time of the commission of the offense occupied by W. as a private residence, etc. Held, that the use of the words "private residence" in that count did not bring the charge within the purview of article 839a.—Martinez v. State, 103 S.W. 930, 51 Tex. Crim. 584.—Burg 18.

Tex.Crim.App. 1906. Though a private residence is commonly resorted to for gaming, it is a "private residence," within Pen.Code 1895, art. 388 [Vernon's Ann.P.C. arts. 615-618, 624], providing that no person shall be indicted for playing at a game at a private residence.—Thompson v. State, 96 S.W. 1085.—Gaming 72(6).

Tex.Crim.App. 1906. An indictment under Acts 1899, p. 318, c. 178, making it a separate and distinct offense to burglarize a private residence at night, and defining a "private residence" as any building or room occupied and actually used at the time of the offense as a place of residence, must allege that the building or room was occupied and actually used at the time of the offense as a place of residence, and an allegation that the house was a private residence is insufficient.—Jones v. State, 96 S.W. 44, 50 Tex.Crim. 100.

Tex.Crim.App. 1904. Under White's Ann.Pen. Code, art. 845c, providing that the term "private residence" shall be construed to mean any building or room occupied and actually used at the time of the offense as a residence, it is not necessary, to constitute the offense of burglary of a private residence, that the family be personally present at the time of the burglary, but it is sufficient if the house is actually used at the time as a private residence, though the family are temporarily absent.—Handy v. State, 80 S.W. 526, 46 Tex.Crim. 406.—Burg 6.

Tex.Crim.App. 1903. A camp occupied by a man and his son, which was the only home they had, and which constituted their home for the time being, was a "private residence" within the statute punishing all character of gaming at any place, except at a private residence occupied by a family.—Hipp v. State, 75 S.W. 28, 45 Tex.Crim. 200, 62 L.R.A. 973.

Tex.Crim.App. 1903. In ordinary parlance a store, or hotel, or saloon is not a "private residence," and the allegation of gaming in one of these places, in an indictment, of itself contravenes and negatives the idea that it is a private residence, so that the repetition that such a house named is not a private residence would only be putting the allegation in another form.—Hodges v. State, 72 S.W. 179, 44 Tex.Crim. 444.

Wash. 1996. For purposes of determining propriety of state trooper's warrantless search, incident to defendant's arrest, of pouch found on wall of sleeper compartment in cab of tractor-trailer defendant had been driving, compartment was not "private residence" entitled to highest degree of protection against warrantless searches under state constitutional provision protecting against invasion of person's private affairs or home without authority of law; broad regulation of vehicles traveling on public highways did not afford defendant same heightened privacy protection in sleeper that he would have had in fixed residence. West's RCWA Const. Art. 1, § 7.—State v. Johnson, 909 P.2d 293, 128 Wash.2d 431.—Arrest 71.1(5).

Wis. 1959. "Private residence", or dwelling house means dwelling house for single family.—Joyce v. Conway, 96 N.W.2d 530, 7 Wis.2d 247.

PRIVATE RESIDENCE OCCUPIED BY A FAMILY

Tex.Crim.App. 1909. The place at which defendant, a bachelor and farmer, played cards, a house occupied by him alone except that a man, who was a stone mason, was stopping with him, was not a "private residence occupied by a family," within the exception to the gaming law (Laws 1907, p. 107, c. 49).—Robbins v. State, 121 S.W. 504, 57 Tex.Crim. 8.—Gaming 72(6).

Tex.Crim.App. 1909. A one-room house on a bachelor's land occupied solely by him is not within the exception of Acts 1901, p. 26, c. 22, punishing gaming at any place except a "private residence occupied by a family."—Patterson v. State, 116 S.W. 1151, 55 Tex.Crim. 393.—Gaming 72(6).

Tex.Crim.App. 1906. A room back of a shop, in which a bachelor lives alone, is not a "private residence occupied by a family," within Acts 1901, p. 26, c. 22, arts. 379, 381, punishing gaming at any place other than at such a residence.—Beard v. State, 101 S.W. 796, 51 Tex.Crim. 61.—Gaming 72(6).

PRIVATE RESIDENCE PURPOSES

Del.Ch. 1958. Use of lots in subdivision for sample houses violated building restriction limiting use of lots in subdivision to "private residence purposes."—Shields v. Welshire Development Co., 144 A.2d 759, 37 Del.Ch. 439.—Covenants 51(2).

PRIVATE RESIDENCE PURPOSES ONLY

Ohio App. 9 Dist. 1929. Phrase "private residence purposes only" in restrictive covenant limiting use of property does not expressly or impliedly have reference to the number, but only to the kind, of buildings to be erected upon the lots in question, and the purpose for which lots are to be used.—Goodyear Heights Realty Co. v. Furry, 170 N.E. 23, 33 Ohio App. 432, 30 Ohio Law Rep. 577, 8 Ohio Law Abs. 70.

PRIVATE RESIDENCES

Ill. 1973. Buildings which were to be two-story apartment buildings with each floor a separate residence were not exempt as "private residences" from statutes, exempting such from requirements that floors be capable of bearing a live load of 50 pounds for every square foot of surface and that owners display placards stating load capability. S.H.A. ch. 48, §§ 60–62.—Juliano v. Oravec, 293 N.E.2d 897, 53 Ill.2d 566.—Neglig 1204(7).

Va. 1940. Boarding houses are not "private residences," and on principle, it makes no difference if boarder stays one day or two, and thus one conducting a tourist home in residential district was violating restrictive covenant that land should not be used except for residential purposes.—Deitrick v. Leadbetter, 8 S.E.2d 276, 175 Va. 170, 127 A.L.R. 849.—Covenants 49.

PRIVATE RESTRICTION

La.App.Orleans 1941. Although in general persons dealing with corporations are bound by charter limitations, with respect to right of an employee of minor importance, such as a physiotherapist employed by hospital, to recover on a contract of employment for a definite period of several months, a charter provision, requiring a special resolution of board of managers to authorize contract of employment for a period of more than one month, would be considered a "private restriction", by which employee would not be bound unless he had notice thereof.—Harrosh v. Fife Bros. Health Ass'n, 1 So.2d 323.—Health 266.

PRIVATE RETIREMENT PLAN

C.A.9 (Cal.) 2001. Ten-year stream of income to which Chapter 7 debtor was entitled pursuant to noncompetition agreement into which he entered in connection with the sale of his business and retirement did not qualify as "private retirement plan" under California statute providing exemption for private retirement plans; statute was intended to exempt retirement plans established or maintained by private employers or employee organizations, and not arrangements by individuals to use specified assets for retirement purposes. West's Ann. Cal.C.C.P. § 704.115(a)(1).—In re Lieberman, 245 F.3d 1090.—Exemp 49.

Bkrtcy.C.D.Cal. 1993. Profit-sharing plan may constitute a "private retirement plan," within meaning of California exemption for benefits payable as proceeds of such a plan, if profit-sharing plan is designed and used for retirement purposes. West's Ann.Cal.C.C.P. § 704.115.—In re Crosby, 162 B.R. 276.—Exemp 49.

Bkrtcy.E.D.Cal. 2002. Under California law, annuity which debtors purchased, on eve of their Chapter 7 filing, with proceeds from sale of their home was not exempt from claims of their creditors as "private retirement plan," notwithstanding that debtors may have subjectively intended to use annuity to fund their retirement; annuity, which debtors purchased instantaneously with lump sum payment and did not gradually accumulate over time, did not qualify as "private retirement plan" under California exemption statute based solely on debtors' alleged subjective intent. West's Ann.Cal. C.C.P. § 704.115(b).—In re Barnes, 275 B.R. 889.—Exemp 49.

Bkrtcy.E.D.Cal. 2002. Protection provided by California exemption for debtor's beneficial interest in "private retirement plan" does not extend to anything which debtor unilaterally chooses to claim as intended for retirement purposes. West's Ann. Cal.C.C.P. § 704.115(b).—In re Barnes, 275 B.R. 889.—Exemp 49.

Bkrtcy.E.D.Cal. 2002. Under California law, subjective intent alone is insufficient for creation of exemptible "private retirement plan." West's Ann. Cal.C.C.P. § 704.115(b).—In re Barnes, 275 B.R. 889.—Exemp 49.

Bkrtcy.N.D.Cal. 1997. Chapter 13 debtors' informal retirement plan was not "private retirement plan," within meaning of California exemption; plan was not established by writing and debtors used assets purportedly transferred informally to plan for purposes not related to their retirement. West's Ann.Cal.C.C.P. § 704.115(a)—In re Phillips, 206 B.R. 196, corrected, affirmed 218 B.R. 520.—Exemp 49.

Bkrtcy.N.D.Cal. 1997. Revocable trust established by Chapter 13 debtors was not "private retirement plan," within meaning of California exemption; evidence indicated that trust was created for estate planning purposes and debtors were very informal about how they dealt with trust assets. West's Ann.Cal.C.C.P. § 704.115(a).—In re Phillips, 206 B.R. 196, corrected, affirmed 218 B.R. 520.—Exemp 49.

Bkrtcy.N.D.Cal. 1997. Chapter 13 debtors' retirement plan was not "private retirement plan," within meaning of California exemption; plan had no income stream in any meaningful sense, and debtors designed and used plan to frustrate enforcement of fraud judgment against them, instead of to provide for their later years. West's Ann.Cal. C.C.P. § 704.115(a).—In re Phillips, 206 B.R. 196, corrected, affirmed 218 B.R. 520.—Exemp 49.

Cal.App. 2 Dist. 1996. Control exercised by judgment debtor over employer-established benefit plan was not such as to prevent plan from qualifying as exempt "private retirement plan," on theory that it was not actually used for retirement purposes, where debtor took no loans or disbursements, did not contribute more than he was entitled to plan, and had no part in administering plan. West's Ann.Cal.C.C.P. § 704.115(a)(1, 2).—Schwartzman v. Wilshinsky, 57 Cal.Rptr.2d 790, 50 Cal.App.4th 619.—Exemp 49.

PRIVATE RETIREMENT PLANS

C.A.9 1996. Section 403(b) retirement plan annuities of Chapter 7 debtors, employees of nonprofit hospital, were "private retirement plans" that were fully exempt from bankruptcy estate, under California law, and were not subject to "necessary for retirement" limitation applicable to exempt self-employed retirement plans and individual retirement accounts (IRAs). 26 U.S.C.A. § 403(b); West's Ann.Cal.C.C.P. § 704.115(a)(1), (b, e).—In re MacIntyre, 74 F.3d 186, corrected.—Exemp 49.

Bkrtcy.C.D.Cal. 2000. Individual retirement accounts (IRAs) that Chapter 7 debtors established with funds rolled over from private retirement plans that were fully qualified under the Employee Retirement Income Security Act (ERISA) did not retain their status as "private retirement plans" following rollover, such as debtors would be able to exempt under California law without regard to whether plan funds were necessary to provide for their support; rather, these accounts could be exempted only as "[s]elf-employed retirement plans and individual retirement annuities or accounts," and only to extent necessary to provide for debtors' support, though debtors allegedly maintained integrity of plans by not making any future deposits following rollover. West's Ann.Cal.C.C.P. § 704.115(a)(1, 3), (b), (d), (e).—In re Mooney, 248 B.R. 391.—Exemp 49.

Bkrtcy.S.D.Cal. 1998. Whatever California legislature may have meant to encompass within exemption for "private retirement plans," provision does not extend to protect anything a debtor unilaterally chooses to claim as intended for retirement purposes. West's Ann.Cal.C.C.P. § 704.115(a)(1).—In re Rogers, 222 B.R. 348.—Exemp 49.

PRIVATE RIGHT

S.D.N.Y. 1943. Action to recover overtime pay under Fair Labor Standards Act is an action to enforce a "public" and not a "private right", hence fact that no claim for additional compensation was ever made by plaintiff is immaterial. Fair Labor Standards Act of 1938, § 7(a), 29 U.S.C.A. § 207(a).—Greenberg v. Arsenal Bldg. Corp., 50 F.Supp. 700, modified 144 F.2d 292, certiorari granted 65 S.Ct. 116, 323 U.S. 698, 89 L.Ed. 564, reversed in part Brooklyn Sav. Bank v. O'Neil, 65 S.Ct. 895, 324 U.S. 697, 89 L.Ed. 1296, rehearing denied Brooklyn Savings Bank v. O'Neil., 65 S.Ct. 1189, 325 U.S. 893, 89 L.Ed. 2005.—Labor & Emp 2363.

E.D.N.C. 1994. Examples of "private right," as required for Seventh Amendment right to jury trial to apply, include wholly private tort, contract, and property cases, but in contrast, "public right" implicates governmental interests in addition to interests of private parties. U.S.C.A. Const.Amend. 7.—In re Hudson, 170 B.R. 868.—Jury 12(1).

Bkrtcy.D.N.J. 1996. Where claim in adversary proceeding involves resolution of state-created private rights brought to augment bankruptcy estate, such as tort claim for damages, claim is "private right" and Congress may not abrogate right to jury trial. U.S.C.A. Const. Art. 3, § 1 et seq.; Amend. 7.—In re Lands End Leasing, Inc., 193 B.R. 426.—Bankr 2130; Jury 19(9).

Bkrtcy.W.D.Pa. 1991. Chapter 7 trustee's statutory right to recover postpetition fraudulent transfers of estate property implicated "private right," rather than "public right," and therefore adversary proceeding defendants could not be deprived of jury trial. Bankr.Code, 11 U.S.C.A. § 549; U.S.C.A. Const.Amend. 7.—In re Roberts, 126 B.R. 678.—Jury 19(9).

Ill. 1941. In a petition by residents and property owners for leave to file complaint in quo warranto against city to test legality of annexation proceedings, allegations that city had removed water pipes, fire hydrants and fire fighting equipment from original city to annexed territory, that city had expended gasoline tax funds and liquor license revenue in annexed territory, and that it had failed to keep levee in repair, to injury of residents of old city, did not show violation of a "private right" or to individual "interest" but a wrong common to all persons residing in tie old part of city, and order denying leave to file complaint was proper. Smith-Hurd

Stats. c. 112 §§ 1, 10.—Rowan v. City of Shawneetown, 38 N.E.2d 2, 378 Ill. 289.—Quo W 43.

Ill.App. 4 Dist. 1940. A consent judgment obtained by bank against village and based on warrants which did not authorize the entry of such judgment could not change the character of the right of the village from a "public right", to a "private right" so as to make applicable the doctrine of laches, and hence bank could not set up defense of laches in action by village against bank to have the judgment set aside. S.H.A. ch. 24, §§ 15–3, 84–94, 808.25.—Village of Hartford v. First Nat. Bank of Wood River, 30 N.E.2d 524, 307 Ill.App. 447.—Mun Corp 905.

Ky. 1939. Statute requiring governing boards of cities to provide for sale of franchise similar to expiring franchise, unless no public necessity for utility exists and discontinuance of service is desired, created "public right" for benefit of inhabitants of city and "private right" for benefit of utility holding expiring franchise. Ky.St.1930, § 2741m–1.—City of Paris v. Kentucky Utilities Co., 133 S.W.2d 559, 280 Ky. 492.—Mun Corp 683(2).

Minn. 1953. The term "trespass or other invasion of private right" not amounting to a crime within statute defining manslaughter in second degree means some physical act against person killed in nature of transgression of duty owed to others involving some violence however slight, and term "private right" means some power or privilege to which one is entitled upon principles of morality, religion, law or the like. M.S.A. § 619.18.—State v. Pankratz, 57 N.W.2d 635, 238 Minn. 517.—Homic 661(3).

Mo.App. 1939. As respects right of taxpayers of town school district to maintain suit against member of district board of directors for recovery of money which he had received as driver of school bus, taxpayers could not have maintained injunction suit against director, since right sought to be enforced was not a "private right" but a "public right" which must be enforced by school board or by public officers. V.A.M.S. § 165.360.—Smith v. Hendricks, 136 S.W.2d 449.—Schools 111.

Ohio App. 2 Dist. 1997. Party holding right created by contract, also known as "private right," is entitled to the benefit of it unless right is prohibited by law, and absent certain exceptions court may not adjust enforcement of that right to suit equities involved.—Langer v. Langer, 704 N.E.2d 275, 123 Ohio App.3d 348, cause dismissed 687 N.E.2d 470, 80 Ohio St.3d 1473.—Contracts 1, 143(1).

Okla. 1940. The investment of county sinking funds in securities as provided by law is a "governmental function," and hence five-year statute of limitations did not run against county's right to recover principal and interest due on bridge bonds issued by township, since generally a state and its political subdivisions are exempt from operation of limitations where a "public right" is involved as distinguished from a "private right." Okl.St.Ann. Const. art. 10, §§ 26, 28; 12 Okl.St.Ann. § 95, subd. 1; 62 Okl.St.Ann. §§ 432, 434, 435.—Board of Com'rs of Oklahoma County v. Good Tp., Harper County, 107 P.2d 805, 188 Okla. 151, 1940 OK 450.—Lim of Act 11(2).

Tex.Civ.App.–San Antonio 1946. Where relators as citizens, in proceeding to oust county sheriff did not allege that relators had suffered or were threatened with some damage peculiar to themselves as individuals as a result of the alleged acts of the sheriff complained of, the right involved was a "public right" as distinguished from a "private right", and the district attorney had a right to discontinue the suit over the relators' protests. Vernon's Ann.St.Const. art. 5, § 24.—State ex rel. Hancock v. Ennis, 195 S.W.2d 151, ref. n.r.e.—Sheriffs 6.

PRIVATE RIGHT OF ACTION

S.D.Cal. 2004. Congress impliedly created "private right of action" for commercial mobile radio service providers under subsection of Telecommunications Act (TCA) that precluded state or local governments from having effect of prohibiting ability of any entity to provide any interstate or intrastate telecommunications service, since providers were among class for whose especial benefit subsection was enacted, legislative history indicated that challenges to subsection were to take place in district courts, allowing private action was more consistent with underlying purpose of legislative scheme, and matter involved was not area of law of prevailing concern to states. Communications Act of 1934, § 253(a), as amended, 47 U.S.C.A. § 253(a).—Sprint Telephony PCS, L.P. v. County of San Diego, 311 F.Supp.2d 898, opinion clarified 2004 WL 859333.—Action 3.

PRIVATE RIGHT OF WAY

Cal.App. 1 Dist. 1932. "Private right of way" is interest in land that may be acquired by prescription.—Lemos v. Farmin, 17 P.2d 148, 128 Cal.App. 195.

PRIVATE RIGHTS

C.A.5 (Miss.) 1969. "Private rights", which may not be vindicated by federal injunction staying state court action, are those relating to citizen in his capacity as one of the governed, i.e., his subjectivity to criminal laws and government regulation and his rights to governmental protection for his purely private affairs such as contract and tort; First Amendment rights are not private rights as much as they are rights of general public. 28 U.S.C.A. § 2283; U.S.C.A.Const. Amend. 1.—Machesky v. Bizzell, 414 F.2d 283.—Courts 508(1).

E.D.Va. 1986. "Private rights," which cannot be finally adjudicated by bankruptcy court, but rather, over which Article III courts must exercise de novo review, involve claims that rely predominantly on traditional state common-law rules of decision and have weak nexus to any statutory scheme enacted by Congress pursuant to specialized grant of constitutional authority. U.S.C.A. Const. Art. 3, § 1 et seq.—Addison v. O'Leary, 68 B.R. 487.—Bankr 2041.1.

Bkrtcy.N.D.Cal. 1991. Owner's removed state court complaint seeking to recover environmental damages from Chapter 11 debtors was tantamount to filing proof of claim in bankruptcy court, and debtors' answer to complaint in state court was analogous to objection to claim, so that proceeding was transmuted into "claims resolution proceeding" for which no Seventh Amendment right to jury trial existed; proceeding was one that was integral to restructuring debtor-creditor relationship, and thus involved "public rights" rather than "private rights". U.S.C.A. Const.Amend. 7.—In re Marshland Development, Inc., 129 B.R. 626.—Jury 19(9).

Bkrtcy.E.D.Mo. 1992. Chapter 11 debtor's cause alleging violation of automatic stay involved "public rights," as opposed to "private rights," and therefore Seventh Amendment jury trial right was inapplicable. U.S.C.A. Const.Amend. 7.—In re Valley Steel Products Co., Inc., 147 B.R. 189.—Jury 19(9).

Bkrtcy.S.D.N.Y. 1994. Bankruptcy courts have limited jurisdiction to hear state law contract actions and other proceedings involving so-called "private rights," i.e., rights concerning liability between individuals.—In re U.S. Lines, Inc., 169 B.R. 804, reversed 220 B.R. 5, reversed 197 F.3d 631.—Bankr 2041.1, 2049.

Bkrtcy.S.D.Ohio 1992. Dispute as to whether fiduciary liability policy provided coverage of Chapter 11 debtor's liabilities to retirement program and to the Internal Revenue Service (IRS) as result of tax deficiencies involved contract law and insurance law, which were traditionally "private rights," and thus, insurer had Seventh Amendment right to jury trial, even though proceeding was core proceeding. U.S.C.A. Const.Amend. 7.—Matter of Federated Dept. Stores, Inc., 144 B.R. 993.—Jury 19(9).

Ga. 1938. Under section of Constitution providing that laws should have a general operation and no general law affecting private rights should be varied in any particular case by special legislation except with the free consent in writing of all persons to be affected thereby, "private rights" are confined to such rights, when applied to property, as persons may possess unconnected with and not essentially affecting the public interest or growing out of a public institution of society. Const.1868, art. 1, § 26.—Board of Ed. and Orphanage for Bibb County v. State Bd. of Ed., 197 S.E. 261, 186 Ga. 200.—Statut 75.

Ill.App. 2 Dist. 1950. "Public rights" or uses are those in which the public has an interest in common with people of municipality whereas "private rights" or uses are those which inhabitants of a local district enjoy exclusively and public has no interest therein.—Savoie v. Town of Bourbonnais, 90 N.E.2d 645, 339 Ill.App. 551.—Mun Corp 57.

Ill.App. 4 Dist. 1940. If a municipality's rights involved are such as are limited to a particular locality, they are deemed to be "private rights", while if they are such as belong to all people of the state, or in which all people of the state are interested, the rights are deemed to be "public rights", and the doctrine of laches is not deemed to be applicable.—Village of Hartford v. First Nat. Bank of Wood River, 30 N.E.2d 524, 307 Ill.App. 447.—Mun Corp 1025.

Mass. 1942. The statute authorizing the State Ballot Law Commission to reject an initiative petition on ground that petition had not been signed by required number of voters because signatures had been obtained by fraud related to a "public right" and not to "private rights", and hence the statute was not unconstitutional on ground of denial of "due process of law" because there is no provision for appeal or judicial review of the Commission's action. G.L.(Ter.Ed.) c. 53, § 22A, as amended by St.1938, c. 192; Const.Amend. 48, Initiative, pt. 2, §§ 3, 4, pt. 5, § 1, General Provisions, pt. 3; U.S.C.A.Const.Amend. 14.—Morrissey v. State Ballot Law Commission, 43 N.E.2d 385, 312 Mass. 121.—Const Law 318(7); Statut 302.

Mo. 1949. The act setting up Police Retirement System of City of St. Louis confers upon a beneficiary legal rights in pension fund which board of trustees of system may not deny without due process, and such rights are "private rights" within constitutional provision subjecting to direct review by courts, final orders of administrative body existing under constitution or by-law, which are judicial or quasi judicial and affect private rights. Mo. R.S.A. §§ 9464–9476; V.A.M.S. § 86.010 et seq.; V.A.M.S. Const.1945, art. 5, § 22.—State ex rel. Police Retirement System of City of St. Louis v. Murphy, 224 S.W.2d 68, 359 Mo. 854.—Admin Law 701; Const Law 278.4(4); Mun Corp 187(10).

Ohio App. 2 Dist. 1997. Distinction exists between "public rights," which are conferred by operation of law, and "private rights," which are created by contract.—Langer v. Langer, 704 N.E.2d 275, 123 Ohio App.3d 348, cause dismissed 687 N.E.2d 470, 80 Ohio St.3d 1473.—Contracts 1.

Ohio App. 10 Dist. 1992. Decision by State Employment Relations Board (SERB) to dismiss petition for representation election by representative for city school employees, on procedural grounds, decided "private rights," and was not "ministerial in nature," and thus was appealable, even though dismissal was entered without prejudice. R.C. § 119.12.—Springfield City School Support Personnel v. State Emp. Relations Bd., 616 N.E.2d 983, 84 Ohio App.3d 294.—Admin Law 701; Labor & Emp 1857.

Okla. 1915. "Private rights" of a municipal corporation, as affecting the running of the statute of limitations, are such as only that part of the municipality included within the corporate limits of a municipality are interested in.—Board of Com'rs of Woodward County v. Willett, 152 P. 365, 49 Okla. 254, 1915 OK 788, L.R.A. 1916E,92.

PRIVATE RIGHTS, PRIVILEGES AND INTERESTS

W.Va. 1994. In our society use of tobacco was sufficiently customary that total ban on use of tobacco affects "private rights, privileges and interests" as contemplated by Administrative Procedure Act; however, regional jail administrator may limit

smoking in such reasonable way that smoke will not intrude on nonsmokers, and may limit use of smokeless tobacco to those who dispose of smokeless tobacco in sanitary manner.—State ex rel. Kincaid v. Parsons, 447 S.E.2d 543, 191 W.Va. 608.—Prisons 4(5), 9.

PRIVATE ROAD

C.A.6 (Tenn.) 1969. Evidence that highway on which plaintiff passenger's host vehicle was traveling at time of collision had not been formally opened for public use but was being used generally by vehicular traffic would not support instruction based on premise that highway might be considered as a "private road" or "driveway". T.C.A. §§ 59–801, 59–831.—Thompson v. Underwood, 407 F.2d 994.—Autos 246(54).

D.Or. 1946. Even if rules of the road laid down by Oregon statute were applicable to a road upon lands of which United States was sole proprietor but which were within boundaries of state of Oregon, a road maintained by United States in a federal forest reserve where large logging operations were being conducted under contract with the United States was a "private road". ORS 164.650, 164.660, 166.630, 483.002 to 483.050, 483.102 to 483.140, 483.202 to 483.234, 483.302 to 483.338, 483.402 to 483.460, 483.538 to 483.540, 483.602 to 483.630, 483.990, 483.992, 649.080, 649.990.—King v. Edward Hines Lumber Co., 68 F.Supp. 1019.—High 172.

Ala. 1939. The designation of a road as a "settlement road" does not necessarily mean it is not also a "public road" as distinguished from a "private road," it being the character rather than the quantum of use that controls, and although the chief users be a few families having a special need therefor, this does not necessarily stamp it as a "private way."—Moore v. Cruit, 191 So. 252, 238 Ala. 414.—High 5.

Ark. 1993. Road created by county court's exercise of eminent domain power to create access to landlocked parcel was "private road" so that party who petitioned for establishment of road was responsible for its maintenance, even though road was located within city limits and was "public road" in sense that anyone could use road who has occasion to do so; city did not have to accept control, supervision, and concurrent cost of maintenance of road unless city so chose. A.C.A. §§ 14–301–102, 27–66–401; Const. Art. 7, § 28.—Yates v. Sturgis, 846 S.W.2d 633, 311 Ark. 618.—Priv Roads 5.

Cal. 1956. Roadway within airport owned and operated by city in its proprietary capacity was a "private road" and not a "public street."—City of Oakland v. Burns, 296 P.2d 333, 46 Cal.2d 401.—Mun Corp 646.

Cal. 1903. A "private road," so called, within Pol. Code, § 2692, authorizing the condemnation of land for private roads, is but a public road by another name, and the term is used by the Legislature merely for the purposes of classification. The Legislature has for such purpose divided roads into public and private, and provides how they may be laid out, established, and maintained. The former are to be laid out and maintained at the expense of the county or road district at large, and are therefore public; the latter at the expense of such people as are more especially and directly interested in them, and therefore called private. But the latter are as much public as the former, for any one can travel them who has occasion to, and no more can be said of the former.—Madera County v. Raymond Granite Co., 72 P. 915, 139 Cal. 128, rehearing denied 72 P. 989, 139 Cal. 128.

Cal. 1890. The term "private road" as used in Pol.Code, § 2692 (repealed. See Water Code, §§ 7021–7026), providing for "private or byroads," designates a particular kind of public road.—Monterey County v. Cushing, 23 P. 700, 83 Cal. 507.—Priv Roads 1.

Cal.App. 1 Dist. 1963. Where county had nothing to do with laying out and construction of road, reference in deeds to roadway as "private road" was not reference to private roads constructed by county under statute. West's Ann.Streets & High. Code, § 1128.—Flavio v. McKenzie, 32 Cal.Rptr. 535, 218 Cal.App.2d 549.—Dedi 18(2).

Cal.App. 4 Dist. 1939. In action for injuries sustained in automobile collision, evidence held to show that road on which collision occurred was not open to public use as matter of right for vehicular travel, and hence was not public "street" or "highway," but "private road." West's Ann.Vehicle Code, §§ 490, 590.—Sills v. Forbes, 91 P.2d 246, 33 Cal.App.2d 219.—Autos 244(3).

Fla. 1940. Whether a road is a "public road" or a "private road" is determined by extent of right to use it and not by the extent to which the right is exercised, and if all the people have a right to use it, it is a "public road", notwithstanding that the number who have occasion to exercise the right is small.—Hillsborough County v. Highway Engineering & Const. Co., 199 So. 499, 145 Fla. 83.—High 1.

Ga.App. 1970. In absence of evidence in death action that portion of interstate highway under construction was open to use of public, trial court correctly charged that portion was a "private road" within rule requiring driver about to enter or cross highway from private road to yield right-of-way. Code, § 68–1653.—Ledbetter Bros., Inc. v. Holmes, 177 S.E.2d 824, 122 Ga.App. 514.—Autos 246(9).

Kan. 1905. There is no such thing, in the state of Kansas, as a "private road," in the sense that the land of one person can be appropriated to the exclusive use and ownership of another. The words "private road," therefore, when used in such sense, is an expression without force or meaning, and the mere fact that the word "private" is used in a petition and other papers, and proceedings relative to the establishment of the road, under Gen.St. 1901, § 6044, as a part of the description thereof, will not affect the validity of a road so established.—Johnson County Com'rs v. Minnear, 83 P. 828, 72 Kan. 326.

Minn. 1943. A driveway leading from parking lot, which was located on prison site and which was