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NEGLIGENCE—GUEST STATUTES—APPLICABILITY TO OPERATION OF AUTOMOBILE ON HOST'S PREMISES—Plaintiff accompanied a friend to defendant's garage to park the friend's automobile and later returned alone, without a claim check, to obtain a package she had left in the automobile. An attendant, who was about to park another automobile, invited her to ride to the second floor to secure the package herself. Plaintiff was injured when the attendant negligently drove the automobile against an elevator. *Held*, judgment for defendant affirmed. Plaintiff was a guest within the meaning of the Ohio guest statute¹ and could not recover for injuries unless caused by willful or wanton misconduct. *Kilgore v. U-Drive-It Co.*, 149 Ohio St. 505, 79 N.E. (2d) 908 (1948).

The relationship between plaintiff and defendant was of a dual character: (1) upon entering the premises of the defendant, plaintiff became a licensee; (2) upon entering the automobile, plaintiff became a "guest."² As a property owner aware of the presence of a licensee, defendant was required to exercise ordinary care to avoid injury to plaintiff through its own or its servants' active negligence.³ However, if the Ohio guest statute is applicable, defendant was liable as an automobile operator only for injuries caused by willful or wanton misconduct. Because of this dual relationship exacting two different degrees of care, the applicability of the guest statute to operations upon the premises of the owner or operator of the vehicle becomes important. Aside from a prior Ohio decision construing this statute as including operations upon both public and private ways,⁴ the bearing of the place of operation upon the applicability of the guest statutes has never been directly considered. A Massachusetts case,⁵ in which the court considered the problem of the commencement and duration of the host-guest relationship, tends to support the conclusion reached by the Ohio court. In that case, plaintiff had accepted a free ride in defendant's automobile. Upon leaving the automobile, which was parked in defendant's driveway, plaintiff stepped into a hole in the driveway and was injured. Recovery was denied on the ground that the host-guest relationship had not terminated when plaintiff stepped out of the car. It was implicit in the decision, therefore, that mere entry upon the premises of the defendant did not, of itself, terminate the relationship. Policy considerations behind the limitation of liability of hosts indicate the Massachusetts decision and the principal case reach the correct result. Statutory protection of hosts has been based on two main considerations: (1) that it is unjust to impose liability upon one who offers a free ride for his guest's convenience and is then sued by the recipient of his

¹Ohio Gen. Code (Page, 1945) § 6308-6. "The owner. . . of a motor vehicle shall not be liable for. . . injuries to. . . a guest while being transported without payment therefor. . . unless . . . caused by the willful or wanton misconduct of such . . . owner."

²See 95 A.L.R. 1180 (1935), and *Voelkl v. Latin*, 58 Ohio App. 245, 16 N.E. (2d) 519 (1938), for relevant factors in determining who are guests.

³156 A.L.R. 1226 (1945); *Union News Co. v. Freeborn*, 111 Ohio St. 105, 144 N.E. 595 (1924).

⁴*Kitchens v. Duffield*, 149 Ohio St. 500, 79 N.E. (2d) 906 (1948). The private way was not located upon defendant's premises, however.

⁵*Adams v. Baker*, 317 Mass. 748, 59 N.E. (2d) 701 (1945). In Massachusetts, the common law has reached a result similar to that of the guest statutes.

hospitality in an action which may well turn upon a close question of negligence;⁶ (2) that there is a peculiar opportunity for collusion between host and guest, both desiring to establish liability in order to defraud insurance companies.⁷ The guest's conduct in attempting to recover for injuries sustained during the course of a free ride should be equally reprehensible, in the ordinary case, whether the injury occurred upon a public or private way; and there is even greater danger of collusion when the injury occurs upon the host's premises, because the relationship between the litigants may be more intimate. Since the policy considerations are the same whether the injury occurs upon a public or private way and since the Ohio statute is not expressly limited to injuries occurring on public ways,⁸ the court's conclusion that any distinction between the two situations must be drawn by the legislature appears sound. In the principal case, plaintiff's claim seems neither unfair nor suggestive of collusion; nevertheless, the likelihood of either element's being present in this class of cases must be recognized, and a statute should not be construed in the light of the equities of a particular plaintiff.

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⁶ *Crawford v. Foster*, 110 Cal. App. 81 at 87, 293 P. 841 (1930); *Dobbs v. Sugioka*, 117 Colo. 218 at 220, 185 P. (2d) 784 (1947).

⁷ *Taylor v. Taug*, 17 Wash. (2d) 533 at 536, 136 P. (2d) 176 (1943); *Ward v. George*, 195 Ark. 216 at 220, 112 S.W. (2d) 30 (1937). See 27 GEO. L.J. 624 (1939), to the effect that the arguments in favor of the enactments are not meritorious and that guests have been left virtually remediless.

⁸ See MALCOLM, *AUTOMOBILE GUEST LAW* (1937), for a compilation of guests statutes. While the guests statutes of a few states are limited in terms to operations upon the public highway, the majority are not so limited.