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NEGLIGENCE—DUTY OF CARE—DETERMINATION OF PLAINTIFF'S STATUS UNDER GUEST STATUTE—Plaintiff, a boy scout, was assisting in a paper collection for the benefit of his troop, and while so doing, was injured when he attempted to regain his position on a utility trailer attached to the assistant scoutmaster's automobile. Plaintiff brought suit against the assistant scoutmaster, alleging negligent operation of the automobile. Defendant's motion for judgment on the pleadings was granted in the lower court, but this ruling was reversed in the court of appeals. On appeal to the Supreme Court of Ohio, *held*, affirmed, three judges dissenting. Defendant was deemed to have been benefited by plaintiff's activities to a sufficient extent to take plaintiff out of the "guest" classification and render him a "passenger for hire" under the Ohio Automobile Guest Statute.¹ *Vest v. Kramer*, 158 Ohio St. 78, 107 N. E. (2d) 105 (1952).

Determinations of who is a "guest" under the guest statutes have produced no firm principles² in spite of the copious litigation on the subject.³ This variance is not due to any distinction between the statutes of various states, as the statutes are quite similar in their wording. Where a slight difference in

¹ The Ohio Guest Statute reads: "The owner, operator or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest while being transported without payment therefor in or upon said motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the willful or wanton misconduct of such operator, owner or person responsible for the operation of said motor vehicle." Ohio Gen. Code (1948) §6308-6.

² The primary purposes behind the guest statutes are to prevent collusion among friends to defraud insurance companies, and to deny recovery to ungrateful strangers who have been generously given transportation. See, Weber, "Guest Statutes," 11 UNIV. CIN. L. REV. 24 (1937).

³ For collections of cases in this field, see 82 A.L.R. 1365 (1933); 95 A.L.R. 1180 (1935); 10 A.L.R. (2d) 1351 (1950).

statutory language⁴ exists, judicial interpretation of the language has been more or less uniform. Some courts, however, have pointed out that the guest statutes, being in derogation of the common law, should be strictly construed,⁵ a principle which would render the automobile occupant a "passenger for hire" in consequence of the slightest benefit accruing to the driver as a result of the occupant's being in the car. An opposing line of authority maintains that a liberal interpretation of the guest statute should be made, to effectuate the purposes for which the statutes were enacted. It is well to point out that much of the support given to the strict theory has been by way of dictum or criticism,⁶ while the courts announcing the liberal theory have determined more cases on that basis.⁷ Although such broad rules of construction have been announced, the majority of the courts have determined the issue by an initial inquiry as to whether the plaintiff's status in the automobile was in pursuit of a business or a social purpose.⁸ If it is decided that the occupancy was for a business purpose, any payment made by the plaintiff or benefit accruing to the driver will probably be held to be such payment as to take the plaintiff out of the purview of the guest statute. If, on the other hand, the purpose seems to be social, the occupant will be deemed a "guest" notwithstanding the fact that some slight benefit may accrue to the driver by virtue of the occupant's presence in the car.⁹ This approach seems to be consistent with the alleviation of the problems which brought about the guest statutes.¹⁰ The broad proposition which thus has

⁴ Representative statutes define a "guest" as one who, "... accepts a ride ... without giving compensation for such ride. . . ." [Vehicle Cal. Code Ann. (1935) §403], or who is "... transported ... without payment for such transportation . . ." [2 Mich. Comp. Laws (1948) §256.29], or who rides "... by invitation and not for hire . . ." [Iowa Code Ann. (1949) §321.494].

⁵ *Miller v. Fairley*, 141 Ohio St. 327, 48 N.E. (2d) 217 (1943); *Kitchens v. Duffield*, 149 Ohio St. 500, 79 N.E. (2d) 906 (1948).

⁶ See cases cited in note 5 supra (where issues presented certainly required no strict construction of the statute), both of which were relied upon in the case under consideration. See also 12 *Rocky Mtn. L. Rev.* 292 (1940).

⁷ *Scotvold v. Scotvold*, 68 S.D. 53, 298 N.W. 266 (1941); *Albert McGann Securities Co. v. Coen*, 114 Ind. App. 60, 48 N.E. (2d) 58 (1943); *Chaplowe v. Powsner*, 119 Conn. 188, 175 A. 470 (1934).

⁸ The peculiar relationship of the parties in each case must, of course, determine the nature of the purpose.

⁹ In the following cases, in which plaintiff was held to be a "guest," the court initially determined that the purpose of the ride (so far as plaintiff was concerned) was primarily social. *Snyder v. Milligan*, 52 Ohio App. 185, 3 N.E. (2d) 633 (1936) (plaintiff was to direct defendant to roadhouse); *Pilcher v. Emy*, 155 Kan. 257, 124 P. (2d) 461 (1942) (plaintiff, a seamstress, had insisted defendant not pay her for sewing work she had done so as to compensate for transportation given plaintiff); *Audia v. DeAngelis*, 121 Conn. 336, 185 A. 78 (1936) (plaintiff, a young boy, had often helped defendant make grocery deliveries); *Vogrin v. Bigger*, 159 Kan. 271, 154 P. (2d) 111 (1944) (during ride, plaintiff agreed to assist defendant in closing real estate transaction); *Melcher v. Adams*, 174 Ore. 75, 146 P. (2d) 354 (1944) (plaintiff helped defendant lift a "gear" in and out of the automobile, while accompanying him on the delivery); *Duncan v. Hutchinson*, 139 Ohio St. 185, 39 N.E. (2d) 140 (1942) (prior to ride, plaintiff stated that she would pay her share of gas and oil expenses).

¹⁰ See note 2 supra.

evolved from the litigation in this field is that the occupant of the car is a "guest" within the meaning of the statutes, unless the benefit that accrues to the driver by virtue of the occupant's presence is the motivating influence of the transportation furnished the plaintiff.¹¹ It is therefore submitted that the dissent in the present case appears to be on sounder grounds.¹² It could hardly be contended that the defendant, in volunteering his services as a scoutmaster, was engaged in a business enterprise, or that the assistance of the plaintiff in collecting the scrap paper was such a benefit to defendant as to be the motivating influence for the transportation which the plaintiff received.¹³ Rather it would seem that defendant scoutmaster must necessarily have been acting from purely charitable motives. When charity motivates the transportation furnished by the defendant, the occupants are not thereby removed from the "guest" class.¹⁴ But since it is conceded that no clear line of authority will support either stand on this question, it would appear that in doubtful cases it might be well to submit the question of the plaintiff's status under the guest statute to the jury, upon proper instruction. Although the determination of the duty question in the tort field has been peculiarly one for the court, there is authority for this proposition.¹⁵

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¹¹ In *Fuller v. Tucker*, 4 Wash. (2d) 426, 103 P. (2d) 1086 (1940), the Supreme Court of Washington has set out the requirements of a benefit sufficient to render a plaintiff a "passenger for hire" as (1) an actual or potential benefit in a material or business sense which results or will result to the owner of the vehicle, and (2) that the transportation must be motivated by the expectation of such benefit. See also 3 Wyo. L.J. 225 (1949).

¹² See language of Taft, J., in principal case.

¹³ In other cases where the plaintiff was a boy scout, *Humphreys v. San Francisco Area Council, Boy Scouts of America*, 22 Cal. (2d) 436, 139 P. (2d) 941 (1943) and *Woodman v. Hemet Union High School Dist. of Riverside County*, 136 Cal. App. 544, 29 P. (2d) 257 (1934), he was held to be a "passenger for hire" and able to recover for ordinary negligence (in the former, because the ride was deemed to be part of the compensation he was to receive for counseling work performed, and in the latter, because of his dues paying status in the organization).

¹⁴ *Iles v. Lamphere*, 60 Ohio App. 4, 18 N.E. (2d) 989 (1938); *Rauch v. Stecklein*, 142 Ore. 286, 20 P. (2d) 387 (1933). However, consider, *contra*, *Woodman v. Hemet Union High School Dist. of Riverside County*, note 13 *supra*, and more recently, *Kitzel v. Atkison*, 173 Kan. 198, 245 P. (2d) 170 (1952), which would appear to hold that lack of benefit to the owner (who may be motivated by charitable purposes) will not necessarily preclude the plaintiff from being a "passenger for hire" where some payment had been made by the plaintiff.

¹⁵ Although the question of duty in the following cases was not patently presented to the jury, the action taken by the jury in effect determined the plaintiff's status under the statute. *Chaplowe v. Powsner*, *supra* note 7, in affirming decision of trial court, the court said, at 472, ". . . question whether she was a guest within the meaning of the statute was, at best, one of fact for the trial court . . ."; *Knutson v. Lurie*, 217 Iowa 192, 251 N.W. 147 (1933) (although reversed on another ground, decision of jury that plaintiff and defendant were mutually benefited by the ride, upheld). See also 1 ALA. L. REV. 301 (1949).