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## AUTOMOBILES - GUEST STATUTES - PROPOSAL TO SHARE EXPENSES OF SOCIAL TRIP

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## RECENT DECISIONS

**AUTOMOBILES — GUEST STATUTES — PROPOSAL TO SHARE EXPENSES OF SOCIAL TRIP** — Plaintiff was one of a party of three young married couples riding to a birthday party at a nearby night club in defendant's automobile. No previous arrangement concerning expense sharing had been made, but upon getting into the automobile plaintiff proposed to pay her share and defendant informed her that he would let her know the amount when they returned. En route, defendant ran into another car, and plaintiff sued to recover for injuries sustained. There was no charge that defendant was guilty of wilful or wanton misconduct. No payment had ever been made to defendant for the expenses of the trip. *Held*, that plaintiff was a guest under the Ohio guest statute<sup>1</sup> and defendant was not liable in the absence of wilful or wanton misconduct. Plaintiff's proposal to pay for her share of the gasoline and oil did not constitute payment for the transportation so as to change her status as a guest. *Duncan v. Hutchinson*, 139 Ohio St. 185, 39 N. E. (2d) 140 (1942).

At common law the decided weight of authority was to the effect that the driver of an automobile owed to his gratuitous guest the obligation of using ordinary care for his safety.<sup>2</sup> This has been changed in a number of states by guest statutes, which impose liability on the driver for injury to a guest only for gross, wilful, or wanton misconduct.<sup>3</sup> These have given rise to the difficult problem of distinguishing a guest from a passenger for the purposes of the statute.<sup>4</sup> It is clear that one is a passenger when the relation between him and the driver has a business aspect and the transportation is for their mutual benefit, or for the

<sup>1</sup> Ohio Gen. Code (Page, 1938), § 6308-6: "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."

<sup>2</sup> HARPER, TORTS 201 (1933) and cases cited therein; HUDDY, AUTOMOBILES, 6th ed., 877 (1922); see also, Prosser, "Business Visitors and Invitees," 26 MINN. L. REV. 573 at 602 et seq. (1942).

<sup>3</sup> See 36 MICH. L. REV. 268 (1937), at note 3, which lists the nineteen states that have enacted such statutes. The same result has been reached by judicial decisions, without statutes, in the following states: Massachusetts, *Massaletti v. Fitzroy*, 228 Mass. 487, 118 N. E. 168 (1917); Virginia, *Boggs v. Plybon*, 157 Va. 30, 160 S. E. 77 (1931); Georgia, *Epps v. Parrish*, 26 Ga. App. 399, 106 S. E. 297 (1921). The change wrought by the statutes has been justified on several grounds. See Crawford v. Foster, 110 Cal. App. 81 at 87, 293 P. 841 (1930), setting out the analogy to the ingratitude of the dog that bites the hand that feeds him. Also MALCOLM, AUTOMOBILE GUEST LAW, § 4 (1937), pointing out that the statutes aim to prevent collusive suits by driver and guest against insurance companies. 20 VA. L. REV. 485 (1934) suggests the theory that one acting gratuitously should not be held to as high a standard as one who is being paid. But see criticism of this view by White, "The Liability of an Automobile Driver to a Non-Paying Passenger," 20 VA. L. REV. 326 (1934). Also see Weber, "Guest Statutes," 11 UNIV. CIN. L. REV. 24 (1937).

<sup>4</sup> See 95 A. L. R. 1180 (1935), discussing classification of guests.

benefit of the driver.<sup>5</sup> Where the trip is a purely social one, it is hard to draw the line between payment for the transportation sufficient to render one a passenger and a gesture of social hospitality by a guest. Some courts hold that the agreement to share expenses on a social trip must be of a contractual nature to render the party a passenger,<sup>6</sup> and although the courts do not expressly so state, an examination of the cases suggests that in determining whether a contract exists considerable weight is given to the fact that the agreement to share the expenses was made before starting on the trip.<sup>7</sup> However, a majority of courts agree that sharing gasoline and oil expenses on a trip taken purely for social purposes is merely an expression of a reciprocal courtesy by the guest and is not to be deemed payment for the transportation, whether made before or after the trip.<sup>8</sup> This

<sup>5</sup> *McCann v. Hoffman*, 9 Cal. (2d) 279, 70 P. (2d) 909 (1937); *Riley v. Berkeley Motors*, 1 Cal. App. (2d) 217, 36 P. (2d) 398 (1934). Prospective car purchaser injured while riding with demonstrator is not a guest. *Dorn v. Village of North Olmsted*, 133 Ohio St. 375, 14 N. E. (2d) 11 (1938) (plaintiff not a guest when given a ride for the sole purpose of pointing out to the driver a certain house a short distance away); *Jensen v. Hansen*, 12 Cal. App. (2d) 678, 55 P. (2d) 1201 (1936) (plaintiff held to be a passenger where plaintiff, defendant driver, and another passenger were engaged in making appraisements and could not receive compensation therefor until appraisements were signed by all three); *Bookhart v. Greenlease-Lied Motor Co.*, 215 Iowa 8, 244 N. W. 721 (1932); *Sigel v. Gordon*, 117 Conn. 271, 167 A. 719 (1933) (plaintiff and defendant, employees of the same corporation on a business trip for mutual benefit of both, were not in a host-guest relationship). See also cases cited in note 10, *infra*.

<sup>6</sup> *Askowith v. Massell*, 260 Mass. 202, 156 N. E. 875 (1927) (where the car was not being operated under an express or implied contract that the driver should be paid for the transportation as a separate and distinct charge, the understanding that gasoline, oil, and garage bills were to be shared did not render the plaintiffs passengers). See also *Rogers v. Vreeland*, 16 Cal. App. (2d) 364, 60 P. (2d) 585 (1936); *Master v. Horowitz*, 237 App. Div. 237, 261 N. Y. S. 722 (1933), *affd.* 262 N. Y. 609, 188 N. E. 86 (1932); *Olefsky v. Ludwig*, 242 App. Div. 637, 272 N. Y. S. 158 (1934); *Smith v. Clute*, 251 App. Div. 625, 297 N. Y. S. 866 (1937); *Gage v. Chapin Motors*, 115 Conn. 546, 162 A. 17 (1932).

<sup>7</sup> *Voekl v. Latin*, 58 Ohio App. 245, 16 N. E. (2d) 519 (1938). But see *Potter v. Juarez*, 189 Wash. 476, 66 P. (2d) 290 (1937), where an agreement between strangers, made before the trip, to share the expenses of the trip was held to remove plaintiff from the classification of guest, and *Teders v. Rothermel*, 205 Minn. 470, 286 N. W. 353 (1939), where an agreement in advance to share trip expenses was held to render plaintiff a passenger, the court ruling that mere payment sufficed and compensation was not required. Note *Reed v. Bloom*, (D. C. Okla. 1936) 15 F. Supp. 600, holding that in absence of an agreement prior to the trip to share expenses, insured was not carrying a passenger for consideration. This case is discussed in 36 *MICH. L. REV.* 147 (1937).

<sup>8</sup> *McCann v. Hoffman*, 9 Cal. (2d) 279, 70 P. (2d) 909 (1937), where the court suggests that even if there had been an agreement to share expenses, this would have been a mere social courtesy; *Eubanks v. Kielsmeier*, 171 Wash. 484, 18 P. (2d) 48 (1933); *Chaplowe v. Powsner*, 119 Conn. 188, 175 A. 470 (1934); *Morgan v. Tourangeau*, 259 Mich. 598, 244 N. W. 173 (1932); *Clendenning v. Simerman*, 220 Iowa 739, 263 N. W. 248 (1935). *Contra*, *Lloyd v. Mowery*, 158 Wash. 341, 290 P. 710 (1930), in which two friends on a fishing trip, using the car of a third, were

would seem to be in accord with the objective of the statute in protecting the friendly host; <sup>9</sup> for token payments for gasoline and oil are not usually the motivating force behind the driver's offer of accommodation to the plaintiff. Since the case under discussion involved a purely social trip, without any definite prior arrangement as to sharing expenses, the mere proposal of plaintiff to pay her share of the gasoline and oil did not operate to make her a passenger under any of the tests applicable. Cases arising under the guest statutes will probably increase as a result of the present rubber shortage, with accompanying shortage of tires available to motorists, for this has caused many drivers to enter into arrangements pooling their cars with their fellow workers in going to and from work, either sharing the cost or alternating in the use of each other's cars. In the light of the decisions, it would seem that the business purpose involved in going to and from work would place those so riding in the class of passengers.<sup>10</sup>

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held to be engaged in a joint venture by virtue of sharing expenses; *O'Brien v. Woldson*, 149 Wash. 192, 270 P. 304 (1928). 51 HARV. L. REV. 545 (1938) discusses the social or business purpose of the trip as determining the status of one sharing expenses.

<sup>9</sup> Richards, "The Washington Guest Statutes," 15 WASH. L. REV. 87 (1940) suggests two requirements to be met before payment is deemed to be made for the transportation: first, that an actual or potential benefit in a material or business sense result to the driver; and second, that the payment motivate the transportation.

<sup>10</sup> *Bree v. Lamb*, 120 Conn. 1, 178 A. 919 (1935) (Sears Roebuck employees going to a company meeting in the car of one of the employees held to be passengers, not guests, since the driver received a benefit through his position in the company); *Peccolo v. City of Los Angeles*, 8 Cal. 532, 66 P. (2d) 651 (1937) (utility company employee and city employee riding together under a plan of alternate weekly use of each other's cars for business deemed not to be in a guest-host relationship); *Kelly v. Simoutis*, 90 N. H. 87, 4 A. (2d) 868 (1939) (workman being taken to work by a fellow workman, for payment of two dollars a week as share of expenses of the car, held not a guest); *Maryland Casualty Co. v. Martin*, 88 N. H. 346, 189 A. 162 (1937).