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Liability under Automobile Guest Statutes

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NOTES

LIABILITY UNDER AUTOMOBILE GUEST STATUTES

The development of the automobile has brought with it a pattern of litigation in which the principal party, the injured non-paying guest, seeks to recover damages from the owner or operator of the vehicle. The common law duty of the owner or operator of the vehicle was to exercise care for the safety of the guest, which was reasonable under the circumstances; and for a breach of that duty, which constituted negligence, the guest could recover, provided his injuries were the proximate result.[1] With the passage of time, the increased use of the automobile, and the growing rate of litigation involving the host and the guest, sentiment against recovery for ordinary negligence began to form, and took shape in the guest statutes, the first of which was passed by Connecticut in 1927. This act, which has been held constitutional,[2] provided recovery only for damages arising out of an intentional act, or which were caused by heedlessness or reckless disregard of the guest's rights.[3]

The motive which prompted this type of legislation is a desire to prevent co-operation between the guest and the host in proving ordinary negligence. "Ordinary negligence is not hard to prove if guest and host co-operate to that end. It is conceivable that such actions are not always unattended by collusion,

1. Perkins v. Galloway, 194 Ala. 265, 69 So. 875 (1915); Bauer v. Griess, 105 Neb. 381, 181 N.W. 156 (1920); Central Copper Co. v. Klefisch, 34 Ariz. 230, 270 Pac. 629 (1928).
2. Silver v. Silver, 108 Conn. 371, 143 Atl. 240 (1927), on appeal, 50 Sup. Ct. 57 (1929); Contra; Stewart v. Houk, 127 Ore. 589, 271 Pac. 998 (1928), on petition for rehearing, 127 Ore. 509, 272 Pac. 893.
3. Conn. Gen. Stat. sec. 1628 (1930), repealed 1937, Conn. Gen. Stat. sec. 540 E (1939 Supp.).

perjury, and consequent fraud upon the court."[4] The insurance companies, as well as the motor owning public, have a definite interest in the results of such cases, which is reflected in the liability insurance rates. The problem also has its social aspects. The driver may well hesitate before extending the convenience and courtesy of his machine to a deserving neighbor, or likewise to assist a hitch-hiker along his way. Also the sentiment has been expressed "that such suits should be discouraged, inasmuch as they are unsportsmanlike and an abuse of hospitality; they saddle the owner or driver of a car with an unreasonable burden and thereby discourage invitations to guests, thus preventing those who can't afford to own an automobile from obtaining the health and pleasure derived from their use."[5] Automobile guest statutes have been enacted under the "impetus of a feeling that the gratuitous guest is entitled to no claim against his host for the ordinary mishaps of modern traffic, and under the influence of the claim of liability insurance companies that frequent collusion between host and guest have increased insurance rates."[6]

The Wyoming statute provides "No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such owner or operator for injury, death or loss, in case of accident, unless such accident shall have been caused by the gross negligence or wilful and wanton mis-conduct of the owner or operator of such motor vehicle and unless such gross negligence or wilful and wanton misconduct contributed to the injury, death or loss for which the action is brought."[7] This statutory rule was intended to relieve the owner or operator of the motor car from the "consequences of accidents as regards guests invited by and traveling with him as a matter of courtesy or convenience, occasioned by failure of such owner or operator to use ordinary care in the manipulation of the vehicle."[8]

The present day guest statutes contain variations in language. States having guest statutes similar to that of Wyoming, which stipulate gross negligence as an element of recovery are: Idaho,[9] Kansas,[10] Michigan,[11] Nebraska,[12] Oregon,[13] North Dakota,[14] Montana,[15] Vermont,[16] Georgia,[17] Nevada,[18] and South Dakota.[19] What, then, is gross negligence, and how does it differ from ordinary negligence?

The orthodox view appears to be that it is conduct which continues to partake of the character of negligence, and differs from ordinary negligence only in

4. Naudzius v. Lahr, 253 Mich. 216, 234 N.W. 581, 584 (1931).
5. 18 Calif. L. Rev. 184 (1930).
6. Prosser, Torts 634 (1941).
7. Wyo. Comp. Stat. 1945 sec. 60-1201.
8. Mitchell v. Walters, 55 Wyo. 317, 100 P. (2d) 102 (1940).
9. Idaho Code Ann. 1932 sec. 48-901.
10. Kan. Rev. Stat. 1931 Supp. sec. 8-122B.
11. Mich. Comp. Laws. 1921 sec. 4648.
12. Neb. Rev. Stat. 1943 sec. 79-740.
13. Ore. Comp. Laws Ann. 1940 sec. 115-1101.
14. N. D. Laws of 1931 c. 184.
15. Mont. Laws of 1931 c. 195.
16. Vt. Public Laws of 1933 sec. 5113.
17. Ga. Park's Ann. Code 1932 Supp. sec. 3473.
18. Nev. Laws of 1933 p. 29-30.
19. S. D. Laws of 1933 c. 147.

degree, and not in kind.[20] No tangible definition of the term "gross negligence" may be found which assumes the meaning is based on the conduct of some person recognized as a standard by the common law, as is true for the term "negligence" which is based on the conduct of that "excellent but odious character,"[21] the reasonably prudent man, "unless it be possibly the conduct of a careless, thoughtless or inattentive person."[22] "The law furnishes no definition of gross negligence," said the Massachusetts court, "as distinguished from want of reasonable and ordinary care which can be of practical utility. The question of reasonable care must always depend on the special circumstances of each case and is almost of necessity a question of fact rather than of law."[23] And again the same court has said, "Of course the greater includes the less, and where there is gross negligence there is always negligence. The line between due care and negligence may be stated clearly enough for the practical administration of the law, but when one leaves the shore of due care and plunges into the sea of negligence, how far out can he go before he crosses the dividing line between what is called ordinary negligence and gross negligence? The most that can be said, perhaps, is that gross negligence is further from due care than ordinary negligence."[24] It has been held to be negligence in a very high degree, and an absence of slight care.[25] It is great or excessive negligence,[26] and "something more than ordinary negligence."[27] Conduct which amounts to an "extreme departure from the ordinary standard of care,"[28] and a smaller amount of "watchfulness and circumspection than the circumstances require of a person of ordinary prudence,"[29] has likewise been called gross negligence. In this manner it transcends ordinary negligence, but does not necessarily extend to wilfulness or wantonness.[30] However it is quite clear that an inadvertent act is not gross negligence, as where a driver "lost his head" and the car made a sharp movement to the left and back to the right and headed for an embankment.[31] And likewise where the driver looked at his watch and ran off the road, such conduct was held not gross negligence.[32] But when the conduct appears to be continued, as where the driver drove zig-zag at great speed and hit a bridge, gross negligence has been found,[33] or where the driver could have seen the tail light of the truck some two hundred feet distance at night before hitting it.[34]

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20. Altman v. Aronson, 231 Mass. 588, 121 N.E. 505 (1919).
21. Prosser, Torts 225 (1941).
22. Storla v. Spokane, Portland & Seattle Transportation Co., 136 Ore. 315, 297 Pac. 367, 371 (1931).
23. Gill v. Middleton, 105 Mass. 477, 480 (1870).
24. Evensen v. Lexington & B. St. Ry. Co. 187 Mass. 77, 72 N.E. 355 (1904).
25. Shaw v. Moore, 104 Vt. 529, 162 Atl. 373 (1932); Fairman v. Cook, 142 Neb. 893, 8 N.W. (2d) 315 (1933); Gilbert v. Bryant, 125 Neb. 731, 251 N.W. 823 (1933).
26. Mierendorf v. Saalfeld, 138 Neb. 876, 295 N.W. 901 (1941).
27. Nangle v. Northern P. Ry. Co. 96 Mont. 512, 32 P. (2d) 11 (1934).
28. Prosser, Torts 635 (1941).
29. Altman v. Aronson, 231 Mass. 588, 591, 592, 121 N.E. 505 (1919).
30. Sterns v. Hellerich, 130 Neb. 251, 264 N.W. 677 (1936); Gosnell v. Montgomery, 133 Neb. 871, 277 N.W. 429 (1938); Malone v. Clemow, 111 Cal. App. 13, 295 Pac. 70 (1931).
31. Rauch v. Stecklein, 142 Ore. 286, 20 P. (2d) 387 (1933).
32. Abbott v. Cavalli, 114 Cal. App. 379, 300 Pac. 67 (1931).
33. Gilbert v. Bryant, 125 Neb. 731, 251 N.W. 823 (1933).
34. Malone v. Clemow, 111 Cal. App. 13, 295 Pac. 70 (1931).

The words wilful and wanton are used in guest statutes in various ways. Wyoming,[35] Michigan,[36] South Dakota,[37] and Illinois,[38] use the phrase "wilful and wanton misconduct." In Colorado, it is "wilful and wanton disregard of the rights of others."[39] The California,[40] Nevada,[41] North Dakota,[42] and Utah[43] statutes apply "wilful misconduct." Vermont[44] uses "wilful negligence" and the Kansas statute[45] provides for "gross and wanton negligence."

Strictly speaking, wilful misconduct is characterized by intent to injure, while wantonness implies indifference as to whether an act will injure another,[46] or willingness to injure without intent to cause harm.[47] The difference between wilfulness and wantonness is that between casting a missile with intent to strike another, and casting a missile with reason to believe that it will strike another, but with indifference as to whether it does or does not.[48] But under the guest statutes, there is actually small difference if any between the meaning of the terms "wilful" and "wanton" when used separately or together. The conduct which is characterized by these terms is that which is done intentionally, and with knowledge that injury may occur as a result of that conduct. "Wilful misconduct" is the intentional doing of an act with knowledge, express or implied,[49] that injury is probable, as distinguished from possible.[50] "Wanton negligence" denotes an intentional act likely to result in injury committed with a disregard of its consequences.[51] "Wilful and wanton misconduct" indicates an act which is intentionally done, but with knowledge that injury to the guest will probably, as distinguished from possibly, result from such act.[52]

There are states which hold that gross negligence has a meaning which is synonomous with wilfulness and wantonness,[53] or with wantonness.[54] So again we have conduct which differs in kind from negligence, and which refers to a conscious failure to avert a threatened danger when, to the ordinary mind, the consequences will probably prove disastrous.

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35. Wyo. Comp. Stat. 1945 sec. 60-1201.
36. Mich. Comp. Laws 1921 sec. 4648.
37. S. D. Laws of 1933 c. 147.
38. Ill. Laws 1931 p. 779.
39. Colo. Stat. Ann. 1935 vol. 2, c. 16, sec. 371.
40. Calif. 1935 Vehicle Code sec. 403.
41. Nev. Laws of 1933 p. 29-30.
42. N. D. Laws of 1931 c. 184.
43. Utah Laws 1935 c. 52.
44. Vt. Public Laws of 1933 sec. 5113.
45. Kan. Rev. Stat. 1931 Supp. sec. 8-122B.
46. Atchison, T. & S. F. R. Co. v. Baker, 79 Kan. 183, 98 Pac. 804 (1908).
47. Reserve Trucking Co. v. Fairchild, 128 Ohio St. 519, 191 N.E. 745 (1934).
48. Crossman v. Southern Pac. Co., 44 Nev. 286, 194 Pac. 839 (1921).
49. Turner v. Standard Oil Co. of California, 134 Cal. App. 622, 626, 25 P. (2d) 988, 990 (1933).
50. Meek v. Fowler, 3 Cal. (2d) 420, 45 P. (2d) 194, 197 (1935); Weir v. Lukes, 13 Cal. App. (2d) 312, 56 P. (2d) 987 (1936); Horn v. Volko, 13 Cal. App. (2d) 582, 57 P. (2d) 175 (1936).
51. Sayre v. Malcom, 139 Kan. 378, 31 P. (2d) 8 (1934); Leabo v. Willett, 162 Kan. 236, 175 P. (2d) 109 (1946).
52. Mitchell v. Walters, 55 Wyo. 317, 100 P. (2d) 102 (1940); Melby v. Anderson, 64 S. D. 249, 266 N.W. 135, 137 (1936).
53. Melby v. Anderson, 64 S. D. 249, 266 N.W. 135, 137 (1936).
54. Stout v. Gallemore, 138 Kan. 385, 26 P. (2d) 573, 577 (1933); Sayre v. Malcom, 139 Kan. 378, 31 P. (2d) 8 (1934).

In the first and only Wyoming case[55] construing the guest statute the court adhered to the conventional view of gross negligence, and wilful and wanton misconduct. Whereas gross negligent conduct is greater than ordinary negligence it does not comprehend an error in judgment or an act of momentary inattention. Hence neither the defendant's failure to see an approaching car with which he collided, nor an erroneous calculation as to the margin of space between the cars for safe passage make out a case under the statute.

The present rule that the host owes to his gratuitous guest a duty of only slight care is archaic. Historically the rule is based upon those cases wherein one was injured while a licensee on another's land or damaged while his goods or moneys were placed gratuitously in another's safe keeping. Such rules should not be extended to automobile cases.

It has been said that such rule was designed to protect insurance companies from fraud or collusion by persons seeking to recover damages for negligence. The interest of the public is to be balanced against that of the insurance companies. The newspapers and accident records bear witness to the truth that the automobile as a dangerous instrumentality kills, cripples, or disfigures scores of people annually. In view of such poignant testimony one can't honestly say that the operator of a vehicle should be clothed with immunity for the results of his negligent driving. The interests of many should not be penalized to protect against the alleged evil design of a few.

The law is anomalous in that it holds the operator to a duty of reasonable care for the benefit of other persons using the highway, but not as to the guest who rides with him. If the guest were to change vehicles his rights would be correspondingly raised from that of slight care to that of reasonable care. One entering a car has a right to expect the host to be reasonable in his driving. The social interests of today demand that the operator's duty to the guest be elevated to one of reasonableness.

Connecticut, the first state to adopt the gross negligence rule has repealed it. Such is evidence of its undesirability. Since less than half the states of the Union have adopted the rule, additional weight of its oppressive nature is indicated. The recent financial responsibility law passed by the Wyoming legislature is an effective concession to provide further ease of recovery for automobile accident victims, and though the law has not included gratuitous guests it is increased evidence of the public desire to extend aid to automobile victims.[56]

It is submitted that under a rational system of government the driver of a car should owe no less duty to avoid injurying and maiming his guests than he owes to a stranger on the highway. The time has arrived for an open and determined effort to remove this anomalous doctrine. Our laws must, in order to meet the highway problems of today, charge the driver with the duty of reasonable care in the interest of his guest's welfare.

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55. Mitchell v. Walters, 55 Wyo. 317, 100 P. (2d) 102 (1940).
56. Wyo. Sess. Laws 1947 c. 160.