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Who Is a Guest within Meaning of Automobile Guest Statutes

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it along with a statement by the person making the statements acknowledging said recording would work satisfactorily. At any rate, the court has before it the persons authenticating the recording and it would seem that their testimony is as reliable as that relating to any other matter sought o be inroduced. To preclude recordings because of the possibility of alterations would seem as logical as saying that nobody should be permitted to testify for fear that they may tell an untruth.

WILLIAM T. HARVEY

WHO IS A GUEST WITHIN MEANING OF AUTOMOBILE GUEST STATUTES

A large percent of the litigation resulting from motor vehicle accidents involves a class of legislation commonly called "guest statutes". Generally, such a statute provides that an owner or operator of an automobile is absolved from liability to a guest unless he is guilty of some degree of conduct greater than ordinary negligence.[1] Of the 26[2] states that have enacted such statutes, 17[3] of them have attempted to define a "guest". Most of these statutary definitions are similar in nature but contain slight variations of terms. Thus, one who rides gratuitously in some states is a guest,[4] while others who are carried without compensation,[5] or free of charge,[6] or without payment therefor,[7] are guests under the statutes of other jurisdictions. The remaining states simply use the word guest.[8]

1. See 2 Wyo. L. J. 182 (1947) for discussion on degrees of care required under the various statutes. For general discussion on liability to a guest see 94 A. L. R. 1221; 20 Va. L. Rev. 326 (1934).
2. Ala. Code 1940 tit. 36 sec. 95; Pope's Digest of Ark. Stat. 1937 sec. 1302-04; Vehicle Code of Cal. 1935 sec. 403; Colo. Stat. Ann. 1935 c. 16, sec. 371; Del. Rev. Code 1935 sec. 5713; Fla. Stat. 1941 sec. 320.59; Idaho Code Ann. 1932 sec. 48-901; Ill. Rev. Stat. 1947 c. 95½ Par. 58a; Burn's Ind. Stat. Ann. 1938 sec. 47-1021; Gen. Stat. of Kan. 1935 sec. 8-122b; Mich. Comp. Laws 1929 sec. 4648; Mont. Rev. Code 1935 sec. 1748.1; Rev. Stat. Neb. 1935 sec. 39174; Nev. Comp. Laws 1929 Supp. 1941 sec. 4439; N. M. Stat. Ann. 1941 sec. 68-1001; N. D. Rev. Code 1943 sec. 39-1501; Throckmorton's Ohio Code Ann. 1936 sec. 6308-6; Ore. Comp. Laws Ann. 1940 sec. 115-1001; S. C. Code 1932 sec. 5908; S. D. Code 1939 sec. 44.0362; Vernon's Tex. Stat. 1948 sec. 6701b; Utah Code Ann. 1943 Tit. 57, c. 11, sec. 7; Vt. Public Laws 1933 sec. 5113; Michie's Code Va. 1942 sec. 2154-232; Wyo. Comp. Stat. 1945 sec. 60-1201; Rem. Rev. Stat. of Wash. sec. 6360-121.
3. N. D. Rev. Code 1943 sec. 39-1501; S. D. Code 1939 sec. 44.0362; Ill. Rev. Stat. 1947 c. 95½ par. 58a; Gen. Stat. of Kan. 1935 sec. 8-122b; Nev. Comp. Laws 1929 Supp. 1941, sec. 4439; Vt. Public Laws 1933 sec. 5113; S. C. Code 1932 sec. 5908; Idaho Code Ann. 1932 sec. 48-901; Burn's Ind. Stat. Ann. 1938 sec. 47-1021; Ala. Code 1940 Tit. 36 sec. 95; Vernon's Tex. Stat. 1948 sec. 6701b; Throckmorton's Code of Ohio Ann. 1936 sec. 6308-6; Ore. Comp. Laws Ann. 1940 sec. 115-1001; Utah Code Ann. 1943 Tit. 57, c. 11, sec. 7; N. M. Stat. Ann. 1941 sec. 68-1001; Del. Rev. Code 1935 sec. 5713; Wyo. Comp. Stat. 1945 sec. 60-1201.
4. Burn's Ind. Stat. Ann. 1938 sec. 47-1021; Ala. Code 1940 Tit. 36 sec. 95; Vernon's Tex. Stat. 1948 sec. 6708-6; Ore. Comp. Laws Ann. 1940 sec. 115-1001.
5. Utah Code Ann. 1943 Tit. 57, c. 11, sec. 7.
6. N. M. Stat. Ann. 1941 sec. 68-1001.
7. N. D. Rev. Code 1943 sec. 39-1501; S. D. Code 1939 sec. 44.0362; Vt. Public Laws 1933 sec. 5113; Ill. Rev. Stat. 1947 c. 95½ par. 58a; Del. Rev. Code 1935 sec. 5713; Gen. Stat. of Kan. 1935 sec. 8-122b; Nev. Comp. Laws 1929 Supp. 1941, sec. 4439; Wyo. Comp. Stat. 1945 sec. 60-1201; S. C. Code 1932 sec. 5908; Idaho Code Ann. 1932 sec. 48-901.
8. Fla. Stat. 1931 Supp. 1947, sec. 320.59; Pope's Digest of Ark. Stat. 1937 sec. 1302-04; Vehicle Code of Cal. 1935 sec. 403; Colo. Stat. Ann. 1935 vol. 2, c. 16, sec. 371. Michie's Code Va. 1942 sec. 2154-232; Mich. Comp. Laws 1929 sec. 4648; Mont. Rev. Code 1935 sec. 1748.1; Rev. Stat. Neb. 1935 sec. 39174.

It is evident, whether there has been an attempted definition, or the mere use of the word guest, that the language used was intended to allow flexibility of application to the great variety of factual situations that have and can arise. However, it is because of this ambiguous language, that difficulties of interpretation have arisen. As a result, volumes of judicial decisions could be assembled concerning definitions of guests. Such legislative and judicial definitions are inadequate standing alone, and it is the purpose of this article to put into several categories the types of factual situations that have been considered by the courts in arriving at their ultimate decisions.

In every jurisdiction where the statutes have been construed, the courts have agreed that before the occupant is taken out of the guest class, some benefit to the owner or operator must accrue. The benefit may be pecuniary but does not necessarily have to be so.[9] The benefit must be tangible and the motivating influence in offering the ride.[10] It need not be a present benefit, but an expectation of one is sufficient,[11] and it may be paid by someone other than the occupant in his behalf.[12] In determining whether the owner or operator has received such a benefit, the facts and circumstances of each case are taken into consideration.[13] However great the variety of the factual situations may seem, taken as a whole, these situations can be divided without difficulty into three somewhat overlapping but distinct categories.

The first of these is when the ride is purely social. When the ride was offered and accepted with nothing in mind other than for social purposes, it has been uniformly held that the occupant is a guest. Thus, when a driver escorted his girl friend to a dance[14] or when a mother, acting as a chaperon, accompanied her daughter to a school prom,[15] the statute has been applied and the occupant considered a guest. A visit to a mutual friend to dine out,[16] or an invitation to a football game,[17] or evening of Rook,[18] are other such social purposes. A case of this type is seldom presented because the plaintiff or occupant almost invariably attempts to show that the driver was benefitted in such a manner that the statute does not apply.

A second type of case with which the courts have been confronted, involves the situation when the ride is offered for the sole gain of the occupant. A hitchhiker thumbing a ride,[19] an occupant requesting to be taken to a particular place,[20] or a person accepting an offer of a ride part way to his destination[21] have

9. Melcher v. Adams, 174 Ore. 75, 146 P. (2d) 354 (1944).
10. McCann v. Hoffman, 9 Cal. (2d) 279, 70 P. (2d) 909 (1937).
11. Van Auker v. Steckley's Hybrid Seed Corn Co., 143 Neb. 24, 8 N. W. (2d) 451 (1943).
12. Elliott v. Behner, 146 Kan. 827, 73 P. (2d) 1116 (1937).
13. Humphrey's v. San Francisco Area Boy Scouts of America, 22 Cal. (2d) 36, 139 P. (2d) 941 (1943).
14. Shea v. Olson, 185 Wash. 143, 53 P. (2d) 615 (1936).
15. Syverson v. Berg, 194 Wash. 86, 77 P. (2d) 382 (1938).
16. Boyd v. Mueller, 320 Ill. App. 303, 50 N. E. (2d) 847 (1943).
17. Dibble v. Harper's Estate, 294 Mich. 453, 293 N. W. 715 (1940).
18. Swinney v. Roler, 113 Ind. App. 367, 47 N. E. (2d) 846 (1943).
19. Tilghman v. Rightor, 211 Ark. 222, 199 S. W. (2d) 943 (1947).
20. Langford v. Rogers, 278 Mich. 310, 270 N. W. 692 (1936).
21. Lassiter v. Shell Oil Co., 188 Wash. 371, 62 P. (2d) 1096 (1936).

all been considered guests. It is interesting to note a line of causes in this category in which the driver has been compensated by payment for a collateral thing, such as carriage of a patient to a hospital with a friend or relative accompanying,[22] or transportation of a horse to a farm with the owner of the horse riding along.[23] It has been held in these cases that the carriage for hire does not extend to the occupant and he is riding for his own benefit and consequently is a guest.

It is when some benefit to the owner is claimed through the transportation that the difficulty arises. If the benefit incurred is an "incident to hospitality, companionship, or the like",[24] or one which arises "from social relations and courtesies",[25] it is not enough to constitute payment or compensation as set forth and defined by statute. One doing part of the driving at the operator's request is a guest, because "the benefit conferred is too trivial to change the relationship".[26] A night's lodging at the expense of the occupant,[27] or the assistance in pushing the automobile out of the snow,[28] or lifting a gear into and out of a trunk[29] is not adequate benefit to change the occupant's status as a guest. Part payment of expenses is also a benefit of this sort, and in most cases where the ride had in its inception a social purpose, the courts have held that, "such a social invitee is a guest even though he may contribute toward expenses of the journey."[30] One going on a fishing trip and purchasing part of the gasoline,[31] or an agreement that the driver would pay the toll fare one way and the occupant pay the return fare,[32] or arrangement by which the occupant was to pay one-third of the costs of the trip and furnish the lunch,[33] would not change the relationship and the occupants have been deemed guests.

A benefit incidental in the sense it is not sufficient to constitute payment or compensation under the statutes may, however, ripen into a tangible benefit. Under the condition that the occupant promises to drive and the trip would not have been attempted but for that promise, a special tangible benefit will have occurred under the California guest law.[34] In those cases in which the courts have held that the payment of expenses actually constitutes a substantial benefit, it has been found that payment has been made or offered through a prearranged plan[35] or, being the motivating factor in affording the transportation,[36] amounted to direct payment for such transportation. Also, if the driver insists or requests that the

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22. Morales v. Employer's Liability Assurance Co., 202 La. 755, 12 So. (2d) 804 (1943).
23. Miller v. Miller, 395 Ill. 273, 69 N. E. (2d) 878 (1946).
24. Connett v. Winget, 374 Ill. 531, 30 N. E. (2d) 1 (1940).
25. Boyd v. Mueller, 320 Ill. App. 303, 50 N. E. (2d) 847 (1943).
26. Albrecht v. Safeway Stores, 159 Ore. 331, 80 P. (2d) 62 (1938).
27. Drea v. Drea, 292 Mass. 477, 198 N. E. 743 (1935).
28. Ruel v. Langelier, 299 Mass. 240, 12 N. E. (2d) 735 (1938).
29. Melcher v. Adams, 174 Ore. 75, 146 P. (2d) 354 (1944).
30. Doherty v. Edwards, 227 Iowa 1264, 290 N. W. 672 (1940).
31. Barnard v. Heather, 135 Neb. 513, 282 N. W. 534 (1938).
32. Starkweather v. Hession, 23 Cal. App. (2d) 336, 73 P. (2d) 247 (1937).
33. McCormick v. Pickerell, 225 Iowa 1076, 283 N. W. 899 (1939).
34. Druzanich v. Crilery, 19 Cal. (2d) 439, 122 P. (2d) 53 Sup. Ct. (1942); cf. Kruzie v. Sanders, 23 Cal. (2d) 237, 143 P. (2d) 704 Sup. Ct. (1943).
35. Teders v. Rothermel, 205 Minn. 470, 286 N. W. 353 (1939) (construing Florida Statute).
36. cf. Kruzie v. Sanders, Supra note 34.

occupant pay his share,[37] payment of such will also amount to consideration for the transportation and the case will not fall within the statute. ". . . the exception should apply only where the payment was the chief motivating cause for the trip or carriage. . . ."[38]

Under the general classification of benefit to the driver there are a group of cases in which a "share a ride arrangement" has been effectuated. This type of arrangement consists of reciprocal use of the automobile to save tires, gasoline, or for convenience. During the last war much litigation arose from these claims, and in industrial areas today this type of "share-a-ride" arrangement is still much used. The numerical majority seems to hold that when such an arrangement exists, the occupant is not a guest.[39] There are, however, several cases in which an opposite conclusion has been reached.[40]

In addition to this general category, there are situations where the ride is offered and accepted for the purpose of performing a gratuitous service to the driver or owner. A person invited into an automobile by the driver for the sole purpose of pointing out a particular location was not a guest under the Ohio statute.[41] One being induced to render an opinion, whether as to the physical condition of a mutual relative[42] or as to the location of a future business site,[43] is not considered a guest. Nor is one who accepts a ride for the purpose of interviewing his employer about getting a job for the owner of the automobile.[44]

Another type of benefit to the driver or owner is when the transportation is offered in the business of the operator. When the driver is attempting to sell real estate to the occupant thereby rendering the invitation with an eye to an anticipated profit,[45] the decisions clearly indicate that the occupant is not a guest.[46] In several jurisdictions the statutes specifically exempt prospective purchasers of an automobile, in which the occupant is the buyer, from its effects.[47] It has been held, in fact, that the presence of any one other than the purchaser that will enhance the possibilities of the sale will be payment enough to take him out of the guest class.[48] It has been similarly decided that when the trip is for the mutual business benefit of both the driver and occupant, the occupant is not a guest.[49]

Many decisions seem to advance the proposition that the relationship of the

37. McMahon v. DeKraay, 70 S. D. 180, 16 N. W. (2d) 308 (1944) (construing Arkansas statute).
38. Pilcher v. Erney, 155 Kan. 257, 124 P. (2d) 461 (1942).
39. Coerver v. Haab, 23 Wash. (2d) 481, 161 P. (2d) 194 (1945); Ott v. Perrin, 116 Ind. App. 315, 63 N. E. (2d) 163 (1945).
40. Everett v. Burg, 301 Mich. 734, 4 N. W. (2d) 63, 146 A. L. R. 639 (1942).
41. Dorn v. Village of North Olmstead, 133 Ohio St. 375, 14 N. E. (2d) 11 (1938).
42. Ohgan v. Byron, 33 A. (2d) 779 (Pa. Super. Ct. 1943) (construing Ohio statute).
43. Cardnal v. Reinecke, 290 Mich. 15, 273 N. W. 330 (1937).
44. Fachadio v. Krovitz, 62 Cal. App. (2d) 362, 144 P. (2d) 646 (Dist. Ct. of App. 1st Dist. 1944).
45. Supra note 24.
46. Robb v. Ramey Associates, 1 Tory's Rep. (Del.) 520, 14 A. (2d) 394 (Super. Ct. 1940).
47. Idaho Code Ann. 1932 sec. 48-902; Vernon's Tex. Stat. 1948 sec. 6701b; Rem. Rev. Stat. Wash. sec. 6360-121; N. M. Stat. Ann. 1941 sec. 68-1002; Burn's Ind. Stat. Ann. 1934 sec. 11265.
48. Mitchell v. Heaton, 231 Iowa 260, 1 N. W. (2d) 284 (1941).
49. Ark. Valley Co-op. Rural Electric Co. v. Elkine, 200 Ark. 883, 141 S. W. (2d) 538 (1940).

parties is a material factor in determining whether one is a guest or not,[50] but the relationships of employer-employee,[51] husband and wife, or members of the same family, would seem of little importance. Because the driver and occupant are members of the same family does not exclude the occupant from being a guest or does not necessarily make him one,[52] and one is a guest within the meaning of the statutes when he is being transported by his employer if a substantial benefit accrues.[53]

In every jurisdiction where this type of statute has been enacted compensation or benefit to the driver has been the determining factor in deciding whether one is a guest. It is obvious that this compensation can be of several somewhat standardized types. It is because of this that the statutes have been criticized. What might be sufficient compensation in the drivers own mind, in many instances, will not even be considered by the courts. It seems rather harsh and even cruel at times to deny a recovery to a person whose presence in the car for reasons of companionship and friendship, has been desired. The courts must follow the legislature, however, and in so doing they must use objective standards in deciding what is or is not compensation within the statutes. There must be some test or some standardized method by which it can be determined by extrinsic evidence whether the passenger is a guest or not.

There is no doubt that the evils to be corrected by these statutes, to prevent collusion among close friends to defraud insurance companies and to prevent recovery by ungrateful strangers who have generously been given a ride by a motorist, have been corrected to a great extent. However, the statutes having attained their purposes, do not stop there. Recovery is denied in every case where it is shown that the occupant is a gratuitous passenger. As a result, many claims where no fraud is attempted or no ungratefulness shown are forbidden in their inception. This should not be so. Since the first inquiry in every case under these statutes is whether one is a guest or not and since the answer to this is dependent on the various judicial definitions of compensation or payment, the courts by construing the statutory language should and can, without frustrating the intent of the legislature, take a more liberal and equitable view of the various situations and, if necessary, in the particular case, allow claims of otherwise gratuitous passengers by finding compensation.

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50. Richard v. Parks, 19 Tenn. App. 615, 93 S. W. (2d) 639 (1936).
51. Long v. Archer, 221 Ind. 186, 46 N. E. (2d) 818 (1943).
52. Finn v. Drtina, 194 P. (2d) 347 (Wash. 1948).
53. Peery v. Mershon, 149 Fla. 351, 5 So. (2d) 694 (1942).