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## Terminating the Status of Guest under Statutes

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ever, the reasoning is correct and leads to justice, it should also lead to such compensation for permanent taking to the extent the good will of the business is damaged by change of location or difficulty and loss of time in obtaining a new location, with full payment for it in case of impossibility in finding such location. This case seems to be a first step toward a reversal of policy in payment for business good will, even in a taking of the fee, and were the policy reversed the conflict existing as to whether the government pays for what it gets or for what the owner loses would be resolved in favor of the latter.

Virginia Van Benschoten.

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#### TERMINATING THE STATUS OF GUEST UNDER GUEST STATUTES

Plaintiff's daughter, while riding in an automobile with defendant upon his invitation, discovered that he was drinking, and demanded loudly to be let out of the car. This demand was ignored, defendant speeded up and, while attempting to pass a truck, collided with another truck, causing the injuries complained of. Plaintiff, as guardian ad litem for her minor daughter, sued for damages arising out of personal injuries sustained by her daughter as result of defendant's negligence. Defendant's general demurrer, based upon the guest statute,<sup>1</sup> was sustained and plaintiff appealed. *Held*, that the guest statute is applicable, for, when she became a guest of the driver, she became a guest for the entire journey and did not terminate the host-guest relationship by her demands. *Akins v. Hemphill*, 207 P. (2d) 195 (Wash. 1949).

In the instant case there is a strong dissent based upon the grounds that the status of invited guest terminated upon appellant's demand to be let out of the automobile, she therefore being in the position of a person being forcibly abducted.<sup>2</sup>

The case is not without precedent. A previous decision by the same court, under similar facts, reached the same conclusion.<sup>3</sup> However, that case received

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1. (Wash. 1937) Rem. Rev. Stat. Ann vol. 7A, sec. 6360-121: "No person transported by the owner or operator of a motor vehicle as an invited guest or licensee, without payment for such transportation, shall have cause of action for damages against such owner or operator for injuries, death or loss, in case of accident, unless such accident shall have been intentional on part of said owner or operator; Provided That this section shall not relieve any owner or operator of a motor vehicle from liability while the same is being demonstrated to a prospective purchaser."

2. *Akins v. Hemphill*, 207 P. (2d) 195, 197 (Wash. 1949).

3. *Taylor v. Taug*, 17 Wash. (2d) 533, 136 P. (2d) 176 (1943), is different from the instant case in that the acceptance of the ride was with knowledge of the driver's drinking and consequently the court held that the guest assumed the risk and was guilty of contributory negligence, whereas in the instant case the court admitted the evidence would justify a claim that appellant did not assume the risk and was not guilty of contributory negligence, but was nevertheless a guest. Also, assuming that a request to stop the auto and let the guest out would terminate the relationship, there was no evidence of such a request or failure of driver to comply. However, with all the above noted distinctions, the court in the *Akins* case followed the *Taylor* case.

serious criticism<sup>4</sup> for the reason that such interpretation of the guest statute created a trap for the guest who is unable to escape from the status of guest until the end of the journey. There seem to be very few decisions on this precise point. In the first decision, and apparently the only one reaching a contrary result,<sup>5</sup> a Georgia court arrived at the conclusion that the driver's refusing invitee's request to be allowed to leave the automobile before the accident changed the legal relation of invitee of the driver so that the rule of gross negligence does not apply.<sup>6</sup> In Iowa,<sup>7</sup> the court held that the party riding under protest was a guest as a matter of law, that it was not a question for the jury.

A consideration of the previously mentioned decisions raises the question, "How may the status of guest be terminated?" A guest is generally defined by statutes,<sup>8</sup> and cases,<sup>9</sup> as one who is invited, directly or impliedly, to enjoy the driver's hospitality, and accepts and takes the ride, without conferring any benefit upon the driver other than the guest's company. Thus, from the very definition of a guest, within the guest statutes, it can readily be seen that the driver can terminate the status of guest by accepting pay or services,<sup>10</sup> or anticipating profit after<sup>11</sup> completion of the trip, because to come under guest statutes there must be a gratuitous undertaking by the driver. Also, drivers have been held to lose the benefits of the guest statutes if the relationship of guest could not have been legally created, such as violation of a statute in allowing persons to ride in the vehicle,<sup>12</sup> or transporting one who does not accept the ride<sup>13</sup> and

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4. Richards, Another Decade Under the Guest Statute, 24 Wash. L. Rev. 101, 107 (1949).
  5. Blanchard v. Ogletree, 41 Ga. App. 4, 152 S.E. 116 (1930).
  6. Georgia has no guest statute but, by court decisions, the precedent has been established that, to be liable to a guest, the driver must be guilty of gross negligence.
  7. Vance v. Grohe, 223 Iowa 1109, 274 N. W. 902, 116 A.L.R. 332 (1937). Plaintiff requested that the court submit the issue of whether plaintiff's decedent was, or was not a guest to the jury and the court refused. Held, that the trial court was correct, but reversed upon other grounds.
  8. In all guest statutes there must be a gratuitous undertaking, the Wyoming guest statute reading in part: "No person transported by the owner or operator of a motor vehicle as his guest without payment for such transportation. . . . Wyo. Comp. Stat. 1945 sec. 60-1201.
  9. Crawford v. Foster, 110 Cal. App. 81, 293 P. 841 (1930), cited in Summer v. Edmunds, 130 Cal. App. 770, 21 P. (2d) 159 (1933), McCown v. Schram, 139 Neb. 738, 298 N. W. 681 (1941).
  10. Loading truck, Thunte v. Hart, 234 Iowa 1294, 15 N. W. (2d) 622 (1944); cranking car, Hunter v. Baldwin, 268 Mich. 106, 255 N. W. 431 (1934); see Agnew v. Wenstrand, 33 Cal. App. (2d) 21, 90 P. (2d) 813 (1939). But pushing car to start it was not sufficient to require ruling that owners undertaking had ceased to be gratuitous. Ruel v. Langelier, 299 Mass. 240, 12 N.E. (2d) 735 (1938).
  11. A good discussion of this point may be found in Whitechat et. al. v. Guyette, 19 Cal. (2d) 428, 122 P. (2d) 47, 49 (1942), holding that where the driver invited another to ride with hope of some future profit (here an oral executory contract to pay \$5.00) there is compensation within the meaning of the statute.
  12. Upchurch v. Hubbart, 29 Wash. (2d) 559, 188 P. (2d) 82 (1947), held that permitting a boy to ride upon a mail truck, in itself unlawful, precluded licenser-licensee relationship under guest statute.
  13. Five year old child cannot accept, Rocha v. Hulén 64 Cal. App. (2d) 245, 44 P. (2d) 478 (1935); Kastel v. Stieber et al., 215 Cal. 37, 297 P. 932 (1931), which held that an eight year old child, who did not voluntarily accept the ride, but strenuously objected, was not a guest within guest statute, superceded in 8 P. (2d) 474, in which the court on rehearing affirmed the lower courts decision but did not expressly pass on the question of whether the minor was a guest.

against his express desire not to go.<sup>14</sup> In addition, some actions of a guest have been held to remove the status of guest, such as mailing a letter,<sup>15</sup> spending time away from the host's automobile,<sup>16</sup> changing a tire<sup>17</sup> or checking the oil.<sup>18</sup> Even though repeated protests against driver's recklessness, not accompanied by a demand to be let out of car, is not sufficient to change legal relationship,<sup>19</sup> it is evidence of willful misconduct.<sup>20</sup> In another jurisdiction,<sup>21</sup> refusing a demand to be let out is actionable as false imprisonment.

Thus it can be seen that there are several alternatives open to Wyoming courts on the question of the guest's ability to terminate his status, there being, apparently, no Wyoming case upon this precise point. They may follow the principle case,<sup>22</sup> which seems to be in numerical majority, but the precedent upon which it is based has been seriously criticized.<sup>23</sup> Or they may follow the apparently sole case holding that the request of the guest to be allowed out of the car terminates the host-guest relationship.<sup>24</sup> A third possibility, is that the host-guest relationship is terminated by the illegal acts of the driver, i.e., false imprisonment<sup>25</sup> of the guest. The latter theory would still maintain the intention of the statute<sup>26</sup> and yet not create a trap for the guest,<sup>27</sup> who, frightened by the host's negligent acts, honestly desires to get out of the vehicle. It would also give the guest a basis for recovery without the necessity of a terrible accident<sup>28</sup> resulting from attempting to leave the car while in motion and help to eliminate decisions like the principle case which the court itself admits is harsh and unjust.<sup>29</sup>

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14. *Ibid.*

15. *Harrison et al. v. Gamatero et al.*, 52 Cal. App. (2d) 178, 135 P. (2d) 904 (1942).

16. *Hunter v. Baldwin et al.*, 268 Mich. 106, 255 N. W. 431 (1934). Here the person had been driven to town. Then he went shopping, came back to the car and was injured in cranking it. Held, not to be guest.

17. *Rohr v. Employers Liability Assur. Corp. Ltd., of London*, 243 Wis. 113, 9 N. W. (2d) 627 (1943), holding that plaintiff was not a guest at time of accident, as both parties were outside of the car, and the guest relationship had terminated.

18. *Stewart v. McGarvey*, 348 Pa. 221, 34 A. (2d) 901 (1943).

19. *Wachtel v. Bloch*, 43 Ga. A. App. 688, 160 S. E. 97, (1931). Here there were repeated protests about excessive speed but no demand to be let out of the vehicle. But for the latter facts the court indicated that it would follow the Ogletree case.

20. *Parsons v. Fuller*, 8 Cal. (2d) 463, 60 P. (2d) 549 (1936), subsequent opinion 66 P. (2d) 430 (1937), in which, after repeated warnings, driver continued to drive at excessive speed, driver was held guilty of willful misconduct, but did not change the guest's relationship.

21. *Cieplinski v. Severn*, 269 Mass. 261, 168 N. E. 722 (1929).

22. *Akins v. Hemphill*, 207 P. (2d) 195 (Wash. 1949).

23. *Richards, Another Decade Under the Guest Statute*, 24 Wash. L. Rev. 101, 107 (1949).

24. *Blanchard v. Ogletree*, 41 Ga. App. 4, 152 S. E. 116 (1930).

25. *Cieplinski v. Severn*, 269 Mass. 261, 168 N. E. 722 (1929).

26. The purpose of guest statutes is to prevent litigation by close relatives or friends arising out of automobile accidents of collusive nature to the detriment of insurer: *Walker v. Adamson*, 9 Cal. (2d) 287, 62 P. (2d) 199, 201 (1936).

27. *Richards, Another Decade Under the Guest Statute*, 24 Wash. L. Rev. 101, 107 (1949).

28. *Cieplinski v. Severn*, 296 Mass. 261, 168 N. E. 722, (1929).

29. *Akins v. Hemphill*, 207 P. (2d) 195, 197 (Wash. 1949).