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Guest Statute--The Involuntary Guest

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GUEST STATUTE — THE INVOLUNTARY GUEST

The plaintiff while in a state of intoxication so complete that she lost control of her faculties and the ability to account for her actions, was taken for a ride by the defendant in his automobile without her consent or knowledge. During the course of the ride in damp and foggy weather, the defendant negligently drove off the road into a tree, injuring the plaintiff. The plaintiff alleged no wilful or wanton misconduct on the part of the defendant driver, which elements are required under the Ohio guest statute in order to hold a host driver liable for injury to a guest.[1] Both the trial court and the court of appeals found the plaintiff not to be a guest within the meaning of the statute. The Ohio Supreme Court reversed the court of appeals and entered final judgment for the defendant driver.[2]

The sole issue for the determination of the court was the applicability of the Ohio guest statute to an involuntary and non consenting rider. A number of earlier Ohio decisions have indicated that the element of acceptance was an inherent part of being a guest.[3] The Ohio Supreme Court approved the definition of the word guest taken directly from the decision of a California court:[4]

> A guest is one who is invited, either directly or by implication to enjoy the hospitality of the driver of a car, who *accepts* such hospitality and takes a ride . . . for his own pleasure . . .

However, in none of the earlier Ohio cases was the question of acceptance before the court. The courts of other jurisdictions have entertained the problem of consent, but these cases deal mainly with infants who were passengers in automobiles without the consent of their parents. In an Indiana case a six year old girl who was taken for a ride in the defendant's automobile without the knowledge or consent of her parents, was allowed to recover against the driver for his *ordinary* negligence.[5] The guest statute was held inapplicable here because the child being under the age of seven was legally incapable of accepting the driver's hospitality. Similar cases in California and Oregon found the courts of those states likewise unwilling to deny infant passengers recovery, the existence

1. OHIO REV. CODE § 4515.02 provides that one owner or operator of a motor vehicle shall not be liable to non paying guests for injuries arising out of the operation of such motor vehicle unless the owner or operator's conduct be willful or wanton.

2. Lombardo v. De Shance, 167 Ohio St. 431, 149 N.E.2d 914 (1958).

3. Dorn v. Village of North Olmstead, 133 Ohio St. 375, 380, 14 N.E.2d 11, 14 (1938); Bailey v. Neale, 63 Ohio App. 62, 25 N.E.2d 310 (1939); Kilgore v. U Drive-it Co., 149 Ohio St. 505, 79 N.E.2d 908 (1948).

4. Crawford v. Foster, 110 Cal. App. 81, 293 Pac. 841 (1930).

5. Fuller v. Thrun, 109 Ind. App. 407, 31 N.E.2d 670 (1941).

of a guest statute notwithstanding.[6] While many courts have denied recovery to infants under similar statutes, such cases are distinguishable from those just cited in that the drivers' hospitality in those cases was accepted either expressly or impliedly by the parents of the infant passenger.[7] If the infant passenger is to be excluded from the scope of the guest statute, should intoxicated passengers be treated any differently? Infancy and intoxication are states of mental incompetence. Lacking adequate powers of mind, neither the infant nor the drunk have the faculties to receive with a consenting mind, the proffered hospitality of the host driver. Unlike the case of the infant passenger, the guest statute has been rarely applied to the intoxicated passenger. In one of the few guest statute cases involving an intoxicated passenger, a Texas court found him to be a guest within the Texas statute.[8] However, the evidence indicated that the passenger was not too intoxicated to accept the driver's hospitality in that he got into the car by his own power and he carried on an intelligent business conversation with the driver during the course of the trip.

Guest statutes were enacted to prevent collusive law suits against the insurance companies, in which the driver falsely admits his negligence so that the injured guest can collect on the owner's policy.[9] Under the common law a driver was required to use due care in his relations with his guest. The guest statute derogates this common law liability and absolves the driver from liability for negligence unless his conduct has been willful or wanton. As a matter of law the guest is made to assume the risk of the driver's ordinary negligence. In deciding whether the intoxicated and non consenting passenger should fall within the statute, the Ohio Supreme Court was faced with the task of choosing between a narrow and a broad construction of the statute. In choosing the latter construction, the court indicated its willingness to depart even further from the common law.

The Ohio Supreme Court in reversing the court of appeals said:

> It is our conclusion that one may become and be a guest in an automobile within the meaning of the Ohio guest statute although he may be mentally incapable of accepting an invitation to ride in that automobile.[10]

Thus the meaning of the word "guest" as construed by the Ohio Supreme

6. Rocha v. Hulen, 6 Cal. App.2d 245, 44 P.2d 478 (1936); Kudrna v. Adamski, 188 Ore. 396, 216 P.2d 262 (1950).

7. Morgan v. Anderson, 149 Kan. 814, 89 P.2d 866 (1939); *In re* Wright's Estate, 170 Kan. 600, 228 P.2d 911 (1951); Buckner v. Vetterick, 124 Cal. App.2d 417, 269 P.2d 67 (1954); Welker v. Sorenson, 209 Ore. 402, 306 P.2d 737 (1957).

8. Linn v. Nored, 133 S.W.2d 234 (Tex. Civ. App. 1939).

9. Rocha v. Hulen, 6 Cal. App.2d 245, 44 P.2d 478 (1935).

10. Lombardo v. De Shance, 167 Ohio St. 431, 436, 149 N.E.2d 914, 918 (1958).

Court does not require anything more that the giving of hospitality with the intent to benefit. To be a guest in Ohio, one does not have to accept the driver's hospitality. One can be a guest and not know it. Toward the end of the opinion, the court implied that the rule laid down in this case was not necessarily inflexible, and that perhaps it would be relaxed if the proper facts were before the court. The court said:

> We do not mean to say that one who is mentally incapable of accepting hospitality will always be a guest when taken for a ride in an automobile without payment therefor.[11]

This bit of dictum may be the key to the real reason behind the decision. If the court permitted recovery under the statute by intoxicated passengers on the theory that their temporary mental incapacity prevented them from accepting the driver's hospitality, a wide loop hole would be opened through which unscrupulous plaintiffs might recover by alleging intoxication. The court in reaching their decision may have adopted the path which they considered to be the lesser of the two evils. By finding the plaintiff to be a guest within the meaning of the statute, the court indicated that it favored a broad construction of the guest statute. Rather than lean closer to the common law in questionable or borderline cases, and adopt a narrow construction of the statute, the court indicated its willingness to carry even further the legislative policy of protecting the insurance companies.

On the doctrinal side, the reasoning chosen by the court to rationalize its conclusion was not too persuasive. The intent of the defendant driver to confer a benefit upon the plaintiff passenger was the sole factor mentioned by the court as determining the applicability of the statute. The hospitable and beneficial nature of the driver's intentions were used to immunize him from liability for his negligence. To go no further in the reasoning process would be grossly inadequate. But this is precisely what the Ohio Supreme Court chose to do. In the so-called "good samaritan" cases, defendants who were motivated only by a desire to assist and benefit the injured or helpless plaintiff, were nevertheless liable for their negligence.[12] Throughout these cases, the courts expounded the principle that one who voluntarily goes to the aid of a helpless person, must exercise reasonable care for that person's safety. The good intent of the defendants provided no insulation against liability for negligence. In the instant case, the Ohio court would have produced a more persuasive result had it not relied solely upon the "good intent" concept.

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11. *Ibid.*

12. Tullgren v. Amoskeag Mfg. Co., 82 N.H. 268, 133 Atl. 4 (1926); Lacey v. United States, 98 F. Supp. 219 (D. Mass. 1951); Malloy v. Fong, 37 Cal.2d 356, 232 P.2d 241 (1951); Salvati v. Salvati 123 N.Y.S.2d 678 (Sup. Ct. 1953).