Cleveland State Law Review

Volume 8 | Issue 2 Article 9

1959

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IT IS OUR PURPOSE HERE to explore the legal solution to one element of the common law that has been abrogated by the coming of the automobile, the right of action of one riding in a vehicle against a negligent driver of that vehicle.

Under the common law, there was a simple answer. If a plaintiff could prove that the defendant driver was negligent, and that the defendant's negligence was the proximate cause of plaintiff's injuries, the plaintiff would be successful. But, as in many cases where a rule of law, formulated to fit other times, is applied to new and different fact situations and values, this rule became much abused. The grave concern of legislatures and courts with this turn of events was voiced thus by a California court:

> As the use of automobiles became almost universal, the proverbial ingratitude of the dog that bites the hand that feeds him, found a counterpart in the many cases that arose where generous drivers, having offered rides to guests, later found themselves defendants in cases that often turned on close questions of negligence. Undoubtedly, the legislature, in adopting (the guest statute), reflected a certain natural feeling as to the injustice of such a situation.[1]

The General Problem

Several states of the United States passed *guest statutes* attempting to solve this problem. These statutes require the injured party to prove *wanton* or *wilful* misconduct on the part of the operator, owner, or person responsible for the operation of the motor vehicle while the injured party was a guest in the automobile, in order to recover.[2]

Since the guest statutes seriously limit common law rights, the courts were early presented with the problem of their constitutionality. A case in 1925 in Connecticut presented the now usual guest statute situation. There the plaintiff found it im-

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1 Crawford v. Foster, 110 Cal. App. 81, 293 P. 841, 843 (1930).

2 In Ohio, Rev. Code, sec. 4515.02 (G. C. sec. 6308-6).

possible to prove wilful and wanton negligence, although she proved ordinary negligence with no difficulty. When the plaintiff lost the case, she appealed on the ground that the statute denied to her due process of law. The State Supreme Court upheld the constitutionality of the statute. On appeal to the Supreme Court of the United States, that court, considering the constitutional question only, affirmed the lower court.[3]

Three years later, the Kentucky Supreme Court was presented with the question of the constitutionality of its own guest statute, and disagreed with the United States Supreme Court, at least as far as the guest statute applied to its own State Constitution. Here the constitutionality of the guest statute was challenged by an executor in a wrongful death case. He contended that, since he could not show *wilful* misconduct, though he could show negligence, the fact that he could not recover for his decedent's estate contravened the Constitution of the State insofar as wrongful death actions were concerned. The court, agreeing with the plaintiff, said, in part:

> The guest statute . . . undertakes to take away the right to recover for death resulting from negligence, or wrongful act amounting to anything less than an intentional act, and to that extent it clearly contravenes . . . the Constitution.[4]

The Kentucky view serves to point up the fact that the courts generally have had a difficult time reconciling the various guest statutes with traditional rules. However, under such statutes, if it can be shown that the complaining party was a *passenger,* and not a *guest,* only ordinary negligence on the part of the operator, owner, or person responsible need be proven.

The problem of who is a guest thus has been of importance in all the states which have enacted such statutes. This distinction has been described in 2 *Restatement of Torts* 1273, section 490, thus: "The designation of 'passenger' as one carried for hire or reward, as distinguished from 'guest' as one carried gratui-

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[3] Silver v. Silver, 280 U. S. 117, 123, 50 S. Ct. 57, 59, 74 L. Ed. 221, 226, 65 A. L. R. 939 (1929).

[4] Ludwig v. Johnson, 243 Ky. 533, 49 S. W. 2d 347, 349 (1932). Further commenting on the fact that the plaintiff must prove wilful and wanton misconduct the court said, "Now when (plaintiff's) right to recover is restricted by such qualifications and conditions as these, we think these qualifications and conditions constitute, within the meaning . . . of the Constitution, not only a limitation upon the amount to be recovered, but practically destroy his right to recovery."

tously, that is, without any financial return except such slight benefit as is customary as part of the ordinary courtesy of the road."

However, the above formula is easier stated than applied. The courts have developed almost as many different interpretations of the guest statutes as there are problems connected with them.

Most courts have concluded that where a rider in an automobile has conferred a substantial benefit on the driver (and this benefit need not necessarily be monetary) such rider is a "passenger" and not a "guest." A good illustration was presented by a recent Oregon case. There the defendant, a real estate salesman, was transporting the plaintiff and her parents, in the defendant salesman's automobile, to inspect some real property which the parents were considering purchasing. Plaintiff was injured by the defendant's ordinary negligence. At the trial the plaintiff showed that defendant had knowledge of the fact that she was going to pay part of the purchase price of the property and that her parents were going to rely on her judgment as to whether or not they should buy the property. The jury found for the plaintiff, but the trial judge set aside the verdict and directed a verdict for the defendant, on the basis of the guest statute. In reversing, the appellate court found that the plaintiff had conferred a "tangible, direct and material benefit" on the defendant, and thus was without the statute.[5]

This same "tangible, direct and material benefit" rule was applied by an Iowa court. It held that the guest statute did not apply in a case where the defendant transported the plaintiff and his brother A to another city to view a tractor which the defendant desired to sell to A. Plaintiff went along for the sole purpose of advising A as to the wisdom of the purchase, and A told the defendant that he (A) would not close the deal except on the advice of the plaintiff. Plaintiff sustained an injury resulting from a faulty condition of defendant's automobile. Plaintiff

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[5] Luebke v. Hawthorne, 183 Ore. 362, 192 P. 2d 990, 992 (1949). Along the same lines, the court here cited with approval Wittrock v. Newcom, 224 Iowa 925, 227 N. W. 286 (1938) which held that a woman rider in an automobile which was being demonstrated to a customer was not a guest where she was requested to ride because she was related to and employed by the prospective customer and the salesman thought her presence would further his chances of making a sale. The court said this expectation on the part of the salesman was sufficient to constitute a definite and tangible benefit to him, the salesman.

was found to be a passenger, and not a guest, and was required to prove only ordinary negligence on the part of the defendant.[6]

Using the same reasoning outlined above, many courts have held that where the rider shares the expenses for the trip with the driver, the rider is a paying passenger. The classic case on sharing of expenses is a New York Court of Appeals case decided in 1938.[7] Here a group of school teachers embarked on an automobile sight-seeing trip of the West, and the agreement was strictly a "share-the-expenses" proposition. The defendant driver negligently damaged the car in Montana, and plaintiff rider was injured. In construing the Montana Guest Statute (incidentally, New York is one of the states which does *not* have a guest statute), the court held that the sharing of the expenses took the plaintiff out of the guest statute. She obtained relief upon her proof of ordinary negligence.

Similarly, where the plaintiff and defendant took a trip in the defendant's automobile in order to inspect jointly owned property, and the plaintiff was injured by the defendant's negligent operation of the vehicle, the court held that, as the plaintiff had paid $50.00 as his share of the gas and oil expense, he was a paying passenger and entitled to a judgment upon proof of ordinary negligence on the part of the defendant.[8] It should be pointed out that this case was based on the view that the parties were joint venturers.

However, this view is far from being universally adopted, as a recent Kentucky case, also presenting a "share-the-expenses" situation, illustrates.[9] Here, plaintiffs, husband and wife, made a trip with the defendant to visit A, the daughter of the plaintiffs. Enroute, the defendant negligently damaged the car and injured the plaintiffs. The court held that in spite of the fact that the plaintiffs had paid their proportionate share of the expenses, they were guests in the auto, saying:

> . . . the sharing of the cost of gas and oil consumed on a trip, when the trip is taken for pleasure or social purposes, does not transform into a passenger one who without such exchange would be a guest.

The main problem facing the courts, however, does not concern the ordinary fact situation. The difficulty usually is caused

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[6] Mitchell v. Heaton, 231 Iowa 269, 1 N. W. 2d 284, 138 A. L. R. 832 (1941).

[7] Smith v. Clute, 277 N. Y. 407, 14 N. E. 2d 455 (1938).

[8] Walker v. Adamson, 9 Cal. 2d 287, 70 P. 2d 914 (1937).

[9] Ansback v. Greenberg, 256 S. W. 2d 1, 2 (Ky., 1952).

by one of the many varieties of unusual factual conditions which something as widely used as the automobile can present. Such a case is illustrated by a Texas case where the plaintiff and the defendant went on a joint pleasure trip. During the course of the trip the plaintiff was injured due to the negligence of the defendant. At the trial the plaintiff contended that, because he was intoxicated at the time the trip was commenced, he was incapable of entering into a "guest contract", and therefore was not a guest under the statute. The trial judge held that even if the plaintiff was intoxicated to the extent that he did not know what he was doing when he entered the automobile, he was still a guest since he did not pay for the ride. On appeal, the decision was affirmed on the ground that the host-guest relation is not necessarily created by contract.[10]

Another unusual fact situation faced a Connecticut court. There the plaintiff had free passes to a motion picture and agreed to give one to the defendant. In return, the defendant was to transport the plaintiff and others to the theater. The plaintiff was injured and filed suit, admitting that the defendant was guilty at most of ordinary negligence, but contending that the free pass which she gave the defendant made her a paying passenger. In denying relief to the plaintiff, on the ground that the situation was one of "reciprocal hospitality", the court said:

> Although the operation of the statute in denying a right of recovery should not be extended, by construction, beyond the correction of evils and the attainment of social objects sought by it, equally, the scope of the term "guest" should not be so restricted as to defeat or impair those purposes, as would be the case if one riding as a mere recipient of hospitality be excluded from the status of guest.[11]

A Michigan court held that a wartime "car-pool" was a mere "exchange of amenities between host and guest." It did not give the executor a cause of action against the driver of the vehicle for the death of one of the riders where gross negligence was not pleaded or proved.[12]

Still another unusual question was presented to a Massa-

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[10] Linn v. Nored, 133 S. W. 2d 234 (Tex. Civ. App., 1939). The court here cited with approval Balian v. Ogassin, 277 Mass. 525, 179 N. E. 232 (1931), which held that a motorist's gratuitous undertaking to transport another imposes no liability for ordinary negligence even where such other person is a child; and that the age of the child does not affect the degree of care of the operator, although it may affect the nature of the care required.

[11] Chaplowe v. Powsner, 119 Conn. 188, 179 Atl. 470, 472 (1934).

[12] Everett v. Burg, 301 Mich. 734, 4 N. W. 2d 63 (1942).

chusetts court. There the plaintiff and the defendant entered into an agreement whereby the plaintiff allowed the defendant free use of a garage in exchange for automobile pleasure trips from time to time in the defendant's car. On one of these trips, the plaintiff was injured due to a faulty condition existing in the auto. He brought suit. At the trial, the judge directed a verdict for the defendant at the close of plaintiff's evidence. Plaintiff appealed on the ground that the question of negligence should have gone to the jury. The appellate court, in reversing the lower court decision, held that the agreement between the parties was of a sufficiently contractual nature to remove the plaintiff from the status of guest, and that the lower court had erred in refusing to allow the question of negligence to go to the jury.[13]

Finally, consider the recent case of the Minnesota automobile owner who was found to be a guest in his own car.[14] Plaintiff and his wife agreed to go on an extended automobile pleasure trip with the defendant husband and wife, all parties being domiciled in Minnesota. It was agreed that plaintiff's car would be used and that the two couples would share the expenses. While driving his own car, plaintiff became tired and asked the defendant to drive. Defendant consented, and while driving the car in South Dakota, ran off the road and severely damaged the car. Plaintiff's wife was killed and plaintiff was injured. The trial judge applied the South Dakota guest statute, deciding that plaintiff and his wife were guests in their own car and, further, that the agreement to share the expenses did not make them passengers. On appeal, in affirming the lower court decision, the Supreme Court of Minnesota held that as the guest statute is in derogation of the common law, it must be strictly construed. Merely sharing expenses does not take a plaintiff out of the guest status. Because the use of the plaintiff's car had no bearing on the purpose of the trip, plaintiff and his wife were guests in their own car and could not recover, absent proof of wilful misconduct on the part of the defendant.

It should be pointed out that most of the courts, writing on these statutes, begin their opinions with the thought that the guest statutes are in derogation of the common law, and therefore must be construed strictly. Just *how strictly* is left to the discretion of the trial courts. How substantial a benefit must be

13 Chooljian v. Nahigian, 273 Mass. 409, 173 N. E. 511 (1930).

14 Phelps v. Benson, 90 N. W. 2d 533 (Minn., 1958).

in order to take a plaintiff out of the guest statute is often a matter of personal opinion.

Most of the statutes are simply written and easy to apply to cases which clearly fall under them. It is those cases which fall into the middle ground between "passenger" and "guest," that present the problems. Careful reading of the guest statute cases will reveal that many courts shape their decisions to fit the facts of the case before them, rather than on precedents in earlier cases. The guest statutes are usually quite brief. This leaves so much to the court's discretion that a court often finds that its only real limitation is its own imagination.

This, it is true, is probably consonant with the intent of the legislatures in most cases. Yet it puts a rather unnerving burden on the attorney who attempts to determine whether or not the set of facts with which he is presented does or does not come under the guest statute of the particular jurisdiction.

The Ohio Statute

Section 4515.02 of the Ohio Revised Code is a standard guest statute. The following analysis of cases decided under this statute will serve to point up not only the attitude of the Ohio courts on this statute, but will also present a fuller understanding of the difficulty courts have experienced in absorbing the guest statute into their jurisprudence.

Perhaps the most precise definition of who is a guest, in Ohio, was given by the court in one of the original guest statute cases:

> Within the meaning of (the guest statute) a guest is one who is invited, either directly or by implication, to enjoy the hospitality of the driver of a motor vehicle, and who accepts such hospitality and takes a ride either for his own pleasure or on his business without making any return to or conferring any benefit upon the driver other than the mere pleasure of his company.[15]

As is indicated in the foregoing, one is a guest where there is no business relationship between the rider and the driver. However, consider the following statement from another case:

> Where there is an oral agreement between the owner of an automobile and an automobile repairman, if the former will assist in "tearing down" the motor as preliminary to the repair job, the latter will thereafter return the former by automobile to his home, without any further understanding,

[15] Dorn v. North Olmsted, 133 Ohio St. 375, 14 N. E. 2d 11, 12 (1938).

there is no contract express or implied that such transportation is on the basis of payment to the automobile repairman therefor.[16]

The point is, would this owner have considered the job without the promise of a ride? And did not the circumstances strongly indicate a business relationship between the parties, one incidence of such relationship being the return promise of a ride on behalf of the repairman? Certainly as much mutual benefit was derived from that relationship as in a recent case involving the transportation of school children to and from school on a share-the-service plan existing between the parents.[17] Here the Ohio Supreme Court found the children to be passengers.

In cases where payment of any sort is agreed upon between the parties, which can be considered as payment for transportation, the operator, owner, or person responsible is not protected by the guest statute. He may be sued by the passenger for failure to exercise ordinary care.[18] In one case, plaintiff and defendant, during World War II, entered into an agreement in which the plaintiff agreed to "carry parties to and from work regularly in his automobile in order to qualify for tires as permitted under Amendment 16 of the Tire Rationing Regulations. Each of the riders agree to pay (plaintiff) the sum of twenty cents, for each day that they are transported by (plaintiff)." The riders were held to be passengers.[19]

Payment for transportation can be made in many ways. Some of these are: where the automobile host has a business interest in the time or service of the passenger; when the passenger is making a trip to assist the automobile host in arriving at a destination for the latter's benefit; where a substantial benefit is conferred upon the host; when the host and passenger embark

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16 Ames v. Siebert, 156 Ohio St. 45, 99 N. E. 2d 905 (1951).

17 Lisner v. Faust, 168 Ohio St. 346 (1958).

18 Miller v. Fairley, 141 Ohio St. 327, 48 N. E. 2d 217 (1943). See also Daugherty v. Hall, 70 Ohio App. 163, 45 N. E. 2d 608 (1941).

19 Miller v. Fairley, *supra* n. 18 at 336, as a matter of dicta stated, "the court is of the opinion that if the trips are made by the defendants with the plaintiff for a purely social or incidental purpose, the statute applies, but that if they have a business aspect or provide a recognized mutual economic benefit, the exemption otherwise granted to the plaintiff by the statute does not apply. See Guest Statute, 82 A. L. R. 1365, and 95 A. L. R. 1180.

on a joint enterprise in which each is equally interested; and when the compensation is paid by a third person.[20]

If there be a family relationship between the persons riding in the automobile and the owner, operator or person responsible for the operation of the automobile, a presumption is raised that the relationship between the driver and the person riding with the driver is that of a guest and not a passenger.[21] However, there might be circumstances which would indicate that a passenger status *does* exist even though a family relationship is evident.[22]

It is immaterial who pays for the transportation rendered to the passenger. In one case members of a lodge were being transported to and from lodge meetings in a neighboring city by a co-member, on the assumption and expectation that he would be paid upon presentation of a bill to the lodge. The riders were held to be passengers and not guests within the meaning of the statute.[23]

Also, a person riding in an automobile driven by an employee in violation of express orders given by the owner-employer to the driver against using the car for the transportation of others, is a guest and not a passenger, and cannot recover damages from the employer for injuries sustained.[24]

Even politics have gotten into the act. In one case a candidate for public office drove one of his followers to a political meeting. The purpose of the trip was to confer a benefit upon the driver by reason of the attendance of the adherent at the meeting. Yet the court decided that the guest statute did not apply.[25] The same was true of a sister riding with her brother, where she was riding under an agreement whereby she and her brother were to visit their father, she to furnish the gasoline and oil and the brother the automobile.[26]

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20 Duncan v. Hutchinson, 139 Ohio St. 185, 39 N. E. 2d 140 (1942). The case involved an East Liverpool couple and friends who planned a birthday party in Steubenville. The guests agreed to share the expenses of gas and oil consumed on the motor trip. The court held that the sharing of the cost of a trip for mutual pleasure or social purposes, without any business aspect, does not change a guest into a paying passenger.

21 Hasbrook v. Wingate, 152 Ohio St. 50, 87 N. E. 2d 87 (1949).

22 6 Ohio Jur. 2d. Sec. 222 (1954).

23 Sprenger v. Braker, 71 Ohio App. 349, 49 N. E. 2d 958 (1942).

24 Siemers v. Vindicator Printing Co., 66 Ohio App. 246, 32 N. E. 2d 969 (1941).

25 Delk v. Young, 33 Ohio L. A. 508, 35 N. E. 2d 969 (1941).

26 Beer v. Beer, 52 Ohio App. 276, 3 N. E. 2d 702 (1935).

As indicated earlier, the need for passage of money between the driver and the passenger is not always essential in order to remove the rider from the guest statute.[27] All that is necessary is the passenger's presence in the automobile and some service or benefit conveyed to the owner or operator, in some business sense, for the expense of his transportation.[28]

Accordingly, where a Boy Scout was injured through the defendant's negligent operation of a motor vehicle while the boy was engaged in collecting waste paper from premises along the public streets and highways and transporting it to a central point as an enterprise of the Boy Scouts, a motion for judgment for the defendant was denied. The court held that the boy was not a guest at the time of his injury, but a passenger.[29] The same decision was reached where the passenger was riding with the driver in order to point out the location of a certain house,[30] or the location of a stalled automobile.[31]

The Ohio courts, however, are apparently unsure as to the degree of "benefit" the rider must confer upon the driver in order to make the driver a passenger. In the recent carpool case[32] the Ohio Supreme Court said:

> A child is a "paying passenger" and not merely a "guest" while he is being transported from his home to his school in an automobile driven by one of a group of parents who have entered into a definite mutual agreement to perform their proportionate share of the service of providing such transportation for their children.

Here the "benefit" conferred upon the driver was that on certain days he would not have to take his child to school, but the child would be transported by other parents; an abstract balance of benefit at best. However, consider the singular case

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27 Hasbrook v. Wingate, *supra*, n. 21. The syllabus of the Hasbrook case at p. 50 reads: "Where in the carrying of a rider, a motor vehicle's direct operation tends to promote the mutual interest of both rider and driver, thus creating a joint business relationship between them, or where the rider accompanies the driver, at the instance of the latter for the purpose of having the rider render a benefit or service to the driver on a trip which is primarily for the attainment of some objective of the driver, the rider is a 'passenger.'" Approved and followed in O'Rourk v. Gunsley, 154 Ohio St. 375, 96 N. E. 2d 1 (1950).

28 Hasbrook v. Wingate, *supra* n. 27.

29 Vest v. Kramer, 158 Ohio St. 78, 107 N. E. 2d 105 (1952).

30 Dorn v. North Olmsted, *supra* n. 15.

31 Ward v. Barringer, 123 O. S. 565, 176 N. E. 217 (1931).

32 Lisner v. Faust, *supra* n. 17, at 346.

decided in the Youngstown Court of Appeals in 1956.[33] Here the defendant, a minor with only a permit to drive which stated that he had to have a licensed driver with him at all times when driving, requested the plaintiff, a personal friend of the defendant and a licensed driver, to take a ride in the defendant's automobile, with the defendant driving, for the purpose of getting a cup of coffee. While returning, the defendant was negligent, struck a post off the side of the road, and the plaintiff was injured. At the trial, plaintiff contended that he was a passenger in the vehicle since the purpose of the defendant's invitation was to allow the defendant to drive his car lawfully. The defendant argued that the relation of the parties and the nature of the trip rendered the plaintiff a guest and, since plaintiff did not plead wilful misconduct, moved for a directed verdict. This motion was denied, and when the jury found that the plaintiff was a passenger, the trial judge awarded the verdict to him.

The Court of Appeals, using the kind of reasoning one must expect to find when reading guest statute cases, reversed the decision of the lower court. Citing *Hasbrook v. Wingate* (152 Ohio St. 50, 87 N. E. 2d 187), and other cases which dealt with the type of benefit required on the part of the rider to the driver, the court determined that because of the difficulty of classification under the guest statute, there has developed a "twilight zone between just who is a guest and who is a passenger," and that rather than follow "rules" (precedent) a court must decide each case on its own facts. It decided that, as a matter of law, the plaintiff was a guest in the defendant's automobile. Whether or not the *Sabo* case flies in the face of established precedent is not only difficult to answer, but somewhat immaterial as well. The legislature, in wording the statute, seems to have *intended* the courts to decide each case on its facts, as the court in the *Sabo* case did. It is curious law that cannot be ascertained until after a trial in each case.

Criteria Established by the Decisions

Lest the reader conclude that the guest statute is entirely shrouded in doubt, and that the lawyer has no guide at all as to whether or not he has a valid guest statute case, we should point out that the Ohio courts have, at various times and places, stated certain standards under which a guest statute case can be decided.

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[33] Sabo v. Marn, 103 Ohio App. 113, 3 Ohio 2d 181 (1956).

One rule is certain: to take a rider out of the operation of the guest statute, it is necessary that he *pay* for his transportation. This payment must be made in a business and not a social sense. Furthermore, payment in terms of money may be dispensed with if the driver is deriving some economic benefit (in a business sense) from the presence of the passenger. Along the same lines, the Ohio Supreme Court has formulated a list of criteria as to whether or not a trip is business or social: [34] (1), the nature of the relations between the motorist and the party transported; (2) the nature or object of the trip; (3) the nature of the arrangement as an isolated instance or containing an element of permanency and continuity; (4) whether the arrangement is casual or based on a definite and specific contract; (5) the nature of the payment; and (6) whether the payment is adequate or inadequate for the service rendered.

The Supreme Court recently used the subjective test of mutual intention as an overall test, saying:

> There must be some mutual intention on the part of both the rider in and the driver of the motor vehicle to create the status of "passenger" before it can come into being, and this mutual intention must have its consummation before and not after an accident and injury to the rider. Of course, if the owner of a motor vehicle insists upon an arrangement by which a person riding with him is obligated to share the expense of a trip, the provision thus made will preclude the relationship of "host" and "guest" notwithstanding the trip may have a social aspect.[35]

The same Court, in *Miller v. Fairley,* discussed at some length the question of contribution of expense money by the rider, concluding that:

> Keeping in mind the purpose of the statute, it would seem that any expense money paid by a person for a ride in an automobile which is not substantially commensurate with the cost of such transportation will not take him out of the guest status fixed by the statute, *unless payment for transportation as such was actually agreed upon.* (Italics by the court.) [36]

As to the difficult question of what constitutes a business trip as opposed to a social trip, it went on to say:

> Generally, when it appears that a contract for transportation bears one or more of the indicia of a business arrangement,

[34] Miller v. Fairley, *supra* n. 18.

[35] Hasbrook v. Wingate, *supra* n. 27 at 58.

[36] Miller v. Fairley, *supra* n. 34 at 337-338.

> and especially where such arrangement is specifically for transportation, or comprehends a trip of considerable magnitude or contemplates repeated or more or less regular rides, even though the ultimate purpose may be for pleasure, the person paying for gasoline and oil consumed, or other automobile expenses, is held to be a passenger, not a guest.[37]

Finally, reminiscent of the California case with which we began our analysis,[38] the Ohio Supreme Court has given us the most succinct standard regarding the guest statute. It deals, as did the California case and as does the statute itself, principally with the underlying theory of the guest statutes:

> What was intended originally as a gratuity, cannot subsequently be made the basis of an obligation.[39]

Conclusion

Automobile guest statutes, like so many other new things that are a part of our daily life, were first approached with caution akin to apprehension, by both courts and lawyers. They were not quickly assimilated into the law. But today most of the ramifications of these statutes have been explored. Definite rules and standards have begun to take definite shape. The chief tests and criteria enunciated by the Ohio cases are generally valid anywhere.

With the growing number of law suits by injured riders against negligent drivers of automobiles in the United States, it becomes increasingly clear that the guest statutes serve a valid and useful purpose. Moreover, as case law dealing with the guest statutes increases, it seems clear that the remaining problems and questions now faced by courts and attorneys will be answered. We soon may properly stop thinking of these statutes as encroachments on our established rules of jurisprudence.

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37 Ibid.

38 Crawford v. Foster, *supra* n. 1.

39 Hasbrook v. Wingate, *supra* n. 35 at 58.