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Guest-Host Relation Termination after Beginning of Journey

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CAN AN AUTOMOBILE GUEST-HOST RELATION terminate en route after the beginning of the journey? In the few cases where this question has been raised, the fact situations usually have contained common characteristics. They often have involved:

1. An initial guest-host relation,
2. Careless or negligent driving on the part of the operator,
3. A demand to be let out of the car by the guest,
4. The ignoring of, or refusal to recognize the validity of such demand by the driver,
5. A subsequent accident resulting in injuries to the guest.

In many like cases, the issue is not pertinent. The protests of a guest against the manner of operation of the vehicle[1] have generally been considered in connection with the question of whether or not the plaintiff assumed the risk, or even was contributorily negligent in *not* protesting. But where the protests are found to have included a demand or demands to leave the car, a logical question arises as to the effects of such demands upon the existence of the guest-host relation previously established. Authority on the point is scanty, and, as will be seen, open to question.

The courts which have considered the question have generally held that the guest-host relation is *not* terminable, once established at the inception of the journey. This appears to be the majority rule.

Under all guest statutes, the plaintiff must prove some degree of negligence greater than "ordinary" in order to hold the driver liable for his injuries. Therefore the issue often arises where the facts show a desire to *leave the car* which may have been prevented by:

1. Surrounding circumstances—for example where plaintiff was a young woman faced with the option of remaining

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[1] 25 A. L. R. 2d 1449.

in the car with an obviously negligent driver, or leaving the car at 1:30 A. M. in an undesirable neighborhood,[2] or

2. A willful ignoring of such a request by the driver,[3] or
3. The driver, although not having refused, took no action to accede to the demand in the very short time between the demand and the accident.[4]

In these situations the question whether the demand and constructive (by circumstances) or actual (active or passive) refusal at that point terminated the guest-host relation is worthy of discussion.

Some of the implications are apparent. Of principal importance is the implication that if the relation was found to be other than host-guest at the time of the accident, the guest statute would not apply, and the defendant would be liable for failure to use ordinary care to protect the occupants of the car.

In some cases where a passenger's demand to leave was made and ignored, the courts have been more inclined to hold that these facts help to prove the degree of negligence necessary to allow recovery under the statute, rather than to consider whether or not the guest relation was so affected as to take the case out of the statute.[5] And in a California case an appellate court decision allowing recovery based upon termination of the guest-host relation was looked upon with disfavor by the California Supreme Court hearing the same case on appeal. The higher court affirmed the decision, but on the ground that the facts showed willful and wanton misconduct, permitting recovery under the guest statute.[6]

This decision indicated that undoubtedly the reason why the termination of the relation of guest-host upon a demand to be let out of the car often is not pleaded is that usually the circumstances imply willful or wanton acts on the part of the driver in provoking such demands. It is to the nature of these acts that the attention of counsel is directed. It would seem both probable and logical that enterprising counsel for plaintiffs usually plead the termination, attempting to place upon the defendants the full burden of liability for lack of ordinary care.

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[2] McCance v. Montroy, 75 Calif. App. 2d 186, 170 P. 2d 109 (1946).

[3] Akins v. Hemphill, 33 Wash. 2d 735, 207 P. 2d 195 (1949).

[4] Taylor v. Taug, 17 Wash. 2d 533, 136 P. 2d 176 (1943).

[5] Berman v. Berman, 110 Conn. 169, 147 A. 568 (1929).

[6] Kastel v. Stieber, 297 P. 932 (1931), 215 Calif. App. 37, 8 P. 2d 474 (1932).

There is only one reported case which has come to the attention of the writer, where a court has held that a refusal to accede to a plaintiff's demand to leave the car constituted a termination of the guest-host relationship.[7] The court held on the point as follows:

> "The allegation as to the defendant's refusal to permit her to leave the car was not set forth as a ground of negligence, but became relevant only by way of inducement, as throwing light upon the status and relationship existing between the parties at the time of the injury, which, in turn, fixed and determined the measure of care and diligence which was owing by the defendant to the decedent in driving the car. We can see no reason why the plaintiff could not take advantage of the changed relationship existing between the parties, which in turn augmented the degree of diligence owed to the decedent by the defendant, merely because such change of relationship may have been brought about by the wrongful, or even willful and wanton conduct of the defendant."

and further:

> ". . . we think the court should have instructed the jury that if it was found from the evidence that the decedent had ceased to be the voluntary and gratuitous guest of the defendant, the duty would thereafter devolve upon him to exercise ordinary care for her safety."

This decision was made in a jurisdiction which has no guest statute.

In jurisdictions operating under guest statutes[8] the applicability of the statute in any fact situation depends primarily upon the definition of the word "guest." *Restatement of Torts* defines the word as follows:

> "The word 'guest' is used to denote one whom the owner or possessor of a motor car or other vehicle invites or permits to ride with him as a gratuity, that is, without any financial

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[7] Blanchard v. Ogletree, 41 Ga. App. 4, 152 S. E. 116 (1929).

Note: Georgia having no guest statute, limits hosts' liability, by case law, to acts constituting "gross" negligence.

[8] The Ohio Guest Statute § 4515.02 R. C., liability to guests in motor vehicles, is fairly typical.

"The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or the death of a guest, resulting from the operation of said motor vehicle, while such guest is being transported without payment therefor in or upon said motor vehicle, unless such injuries or death are caused by the willful or wanton misconduct of such operator, owner, or person responsible for the operation of said motor vehicle."

> return except such slight benefits it is customary to extend as part of the ordinary courtesies of the road."

And most jurisdictions, in expanding upon the guest concept, include further that

> "a guest is one who is invited either directly or by implication to enjoy the hospitality of the driver of the motor vehicle, who accepts such hospitality and takes a ride either for his own benefit or on his business without making any return to or conferring any benefit on the driver of the motor vehicle other than the mere pleasure of his company." [9]

It is clear that a finding of a contractual relation,[10] or even a relation which confers an immediate business benefit solely on the driver,[11] establishes as a matter of law that the rider is not a "guest" within the meaning of the statutes.

It is equally clear that one riding for social purposes with the hospitality of the driver is a "guest" under the statutes.

According to the definitions given, a "guest" is one who has *accepted* the hospitality of a "host." To accept, one must agree or consent to the condition or thing offered. It obviously follows that an *initial* lack of consent to the journey operates to remove the rider from the status of "guest," and thus from the guest statute.

In the case of an infant (5 years old) riding without her consent or that of her parents, the California courts have held that the infant is not a "guest" so as to preclude recovery for injuries subsequently sustained by the child when the automobile in which she was taken collided with another automobile on the highway. The court further points out that "to be a guest within the statute . . . one must have accepted the ride in the vehicle involved, and the word 'accepted' imports both knowing plus voluntary acceptance and does not include either involuntary or forced ride." [12]

The problem is more difficult where consent is given initially, and later, in the course of the journey, is sought to be revoked. Then what is a "demand"?

According to *Words and Phrases* a *demand* may be defined

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[9] Langford v. Rogers, 278 Mich. 310, 270 N. W. 692 (1936); Voelkl v. Latin, 58 Ohio App. 245, 16 N. E. 2d 519 (1938).

[10] Thomas v. Currier Lumber Co., 283 Mich. 134, 277 N. W. 857 (1938).

[11] Bailey v. Neale, 63 Ohio App. 62, 25 N. E. 2d 310 (1939).

[12] Rocha v. Hulen, 6 Calif. App. 2d 245, 44 P. 2d 478 (1935).

as a request to do a particular thing specified under a *claim of right* on the part of the person requesting.[13]

A *request,* on the other hand, is simply defined as "to ask, to solicit, to express desire for." [14]

The semantics of whether a protest is a demand or a request need not concern us, other than that the protest must be vigorously and definitely made and that it is clear that the driver did or could be presumed to have heard the statement. The reason for this is that such a statement, in these circumstances would be a demand, not a request, since it was made under a *claim of right.* The *claim of right* here is the legal obligation imposed on all to exercise reasonable care for safety. A refusal to accede to a request made under a claim of right based upon the maker's safety, may spell out a presumptive intent to injure on the part of the one to whom the demand is directed. This is because all are presumed to intend the natural and foreseeable consequences of their acts. Having been put on notice that the rider foresaw injury to himself as a natural consequence of the driver's acts, the driver should be estopped from denying his attempt to injure the plaintiff in the event of a subsequent injury. This unlawful act, so construed, should provide a basis in tort for recovery, since, as will be discussed later, the unlawful act in fact terminated the guest-host relation between the parties.

The latest authority on his point seems to hold that once a guest-host relation is established, subsequent demands by the plaintiff to be let out of the car do NOT terminate the relation. Stated more concisely: once a guest—always a guest. As indicated above, the logic of this view is at least questionable.

In *Taylor v. Taug,*[15] applicable testimony is reported as follows:

> "She asked him to stop the car and let her out, that she was nervous, because she had just gotten over one accident . . . because he was driving so fast and reckless."

Two miles, or approximately two minutes later, the driver lost control of the car, causing it to plunge into a ditch and the plaintiff sustained injuries.

Query: recognizing that at the inception of the journey the relation of the driver and the plaintiff was that of guest-host,

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[13] Brackenridge v. State, 27 Tex. App. 513, 11 S. W. 630, 4 L. R. A. 360 (1889).

[14] Long v. State, 23 Neb. 33, 36 N. W. 310 (1888).

[15] Supra, n. 4.

what was the effect on the guest-host relation of the plaintiff's protest and request to be let out of the car?

The Washington court held (6-3) that when the plaintiff accepted a ride with the automobile host she became a guest for the entire journey, and the request that the host stop the automobile and let the guest out did *not* terminate the relation so as to render the host liable for injuries, without proof of an *intention* to injure the guest.

In *Akins v. Hemphill* (1949),[16] the syllabus of the case said:

> "When 16 year old girl accepted defendant's invitation to ride with him in an automobile to specified place, she became a 'guest' for the entire journey and her repeated demands that host stop automobile and permit her to alight did not terminate the relation so as to render host liable for injuries to guest without proof that accident was intentional."

A contention that these cases may not be conclusive on the point of law involved can be based on the fact that they are supported primarily on the grounds of public policy, arising out of an interpretation of the admittedly harsh Washington guest statute.[17] The statute is unique in American jurisdictions.[18] It limits recovery to those situations in which the host is proved to have INTENDED to injure his guest.

The holding of the court is summarized in the following excerpt from a concurring opinion by Hill, *J.* in the *Akins* case.

> "The legislature (on enacting the statute) in effect said that it is better that there be an occasional injustice than a wholesale perversion of justice. To announce any other rule than that adhered to by the majority would again make a jury question out of any host-guest case in which the plaintiff would testify, truly or falsely, that he or she had attempted to terminate the host-guest relationship prior to the accident."

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[16] Supra, n. 3.

[17] The Washington Guest Statute, Rem. Rev. Stat. § 6320-121, reads as follows:

"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 the part of said owner or operator: Provided, that this section shall not relieve any owner or operator of a motor vehicle for liability while the same is being demonstrated to a prospective purchaser."

[18] A similar Kentucky statute was declared unconstitutional by the Kentucky courts in Ludwig v. Johnson, 243 Ky. 533, 49 S. W. 2d 347 (1932), on the ground that it violated the Kentucky Constitutional provision respecting rights of parties to recover for wrongful death negligently caused by another.

Apart from considerations of public policy, the majority opinion in the *Taylor* case rests on the following points:

1. The court construed the Washington guest statute to mean that one who accepts another's invitation to ride in his car assumes the risk of all injuries except those intentionally caused by the driver.
2. The court felt that the only purpose of the consideration of the question of "protest" was whether or not the evidence showed that the guest was guilty of contributory negligence in riding with a reckless driver.
3. The court found a total failure of proof that the driver heard the protest or that he refused any request made by the guest.
4. The court further found that appellant should have appreciated the danger of riding in a car driven by one whom she had just seen drinking intoxicating liquor.
5. The court, in disagreeing with the reasoning of *Blanchard v. Ogletree*,[19] took judicial notice of the fact that that case had not been considered by the Georgia supreme court.

In the *Akins* case, the majority opinion followed the rule laid down in the *Taylor* case in the following words:

> "The factual situation in the case before us would justify a claim on the part of the appellant that his daughter did not assume the risks of the journey and was not guilty of contributory negligence by voluntarily riding with a driver who had been drinking intoxicating liquor, but it does not take away the effect of the rule to which we are committed that when she became a guest of the respondent driver, she became such for the entire journey and did not terminate the host-guest relationship by her demands."

The court goes on to say that while the rule seems harsh, it is inescapable under their view of the Washington guest statute and any appeal from its rigor must be addressed to the legislature rather than the courts.

Admittedly a prime reason for the adoption of guest statutes was to prevent collusive suits by hosts and guests tending to defraud insurance companies, thereby affecting the rates at which such insurance could be offered.

The conclusions reached in the *Taylor* case, followed by the *Akins* case on the ground of "public policy," and the intent of

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[19] Supra, n. 7.

the Washington guest statute, and other grounds shown, seem not to come to grips with the appellants' claims that the circumstances took the cases out of the jurisdiction of the statutes. The question ought to be not whether recovery under the statute may be allowed, but whether the statute applies at all.

It has generally been held that an automobile guest statute is in derogation of the common law insofar as it deprives injured guests of the right to hold drivers of vehicles liable for failure to exercise ordinary care, and is to be liberally construed in favor of the guest.[20]

Any statute in derogation of the common law, by widely accepted principles, should be strictly construed.

Extension of the statute into fields where it does not purport to go is the result of these Washington cases.

However, apart from considerations of public policy peculiar to the Washington jurisdiction, an approach on the merits reveals three generally applicable considerations.

1. Does a Guest Generally Have a Right to Terminate His Status as a Guest?

The guest-host relation is established on the tenuous thread of a mutual social benefit. No authority can be found to state that the host may not terminate the relation at will, for the plain reason that the relation arose the same way. To hold that a guest may be denied the power to terminate, while the host retains such power, is to give the relation a construction incompatible with its meaning.

Grady, *J.* in his dissent in the *Taylor* case, points out that:

> "it is illogical to say that a guest could not terminate the relationship of host and guest during a journey, this would nullify the plain wording and intent of the host-guest statute. The statute fixes the liability of the host while one is his guest, but does not go beyond that. If we are to adopt the rule announced in the majority opinion, then the guest must sit idly by and submit to the hazard of injury or death until the driver voluntarily releases him. Grave consequences will follow the adoption of any such rule of law."

Judge Grady's prophecy was fully borne out by the *Akins* case.

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[20] Kennard v. Palmer, 143 O. S. 1, 53 N. E. 2d 908 (1944); Blair v. Greene, 247 Ala. 104, 22 S. 2d 834 (1945); Sullivan v. Harris, 224 Iowa 345, 276 N. W. 88 (1937).

2. Is the Revocation of Consent a Valid Termination of the Relation?

Justice Steinert, dissenting in the *Akins* case, points out that:

> "the statute . . . has reference to a person transported by the owner or operator of the motor vehicle *as an invited guest* (italics mine). By reason of the facts of this case, as stated in the majority opinion, the appellant was entitled to be let out of the automobile upon her demand and then and there to have her former relationship to the driver of the car terminated. Under such circumstances, she was no longer an 'invited guest,' but, rather, was one who stood in the position of a person being forcibly abducted." (J. J. Mallery and Robinson concurred.)

This seems to be the better law, and implies a general application, under similar facts, in any jurisdiction, which would tend to take the case out of an applicable guest statute.

3. Does the Restraint Imposed by a Refusal to Comply With a Request to Leave the Car, After the Guest's Consent Is Revoked, Change the Legal Relation of the Parties?

Such restraint, if proved, would obviously change the relation since it is impossible to be an "involuntary" guest. The very concept of "guest" is the antithesis of the concept of "involuntary." Exactly what the relation becomes is hardly important as long as it cannot be that of host-guest so as to come within the Statute.[21]

Moreover, it is abhorrent to permit a driver to claim immunity from liability in such circumstances on the ground that he occupied a relation that was exempt from liability, when that very alleged relation was, if not created, at least *continued by his own unlawful act.*[22]

The conclusion reached in the *Taylor* case and supported by the *Akins* case was again criticized in a dissenting opinion in a later Washington case.[23]

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[21] The circumstances seem to imply an element of the tort of false imprisonment. In an interesting Massachusetts case, Cieplinski v. Severn, 269 Mass. 261, 168 N. E. 722 (1929), plaintiff accepted a ride home with a driver whom she knew slightly as a business acquaintance of her husband. When the driver had passed her street, refusing to let her out in spite of her continual demands, and began making indecent advances, plaintiff successfully sued for damages sustained in jumping from the moving vehicle based upon establishment of false imprisonment.

[22] See Upchurch v. Hubbard, 29 Wash. 2d 559, 188 P. 2d 82 (1947).

[23] Hayes v. Brower, 39 Wash. 2d 372, 235 P. 2d 482, 25 A. L. R. 2d 1431 (1951). Finley, J. in a dissenting opinion urged the overruling of the Akins case on grounds mentioned above.

We must conclude that the weight of logic supports a finding that the guest-host relation can be terminated during the course of a journey. It can be terminated by the guest, by the expression of positive and repeated demands to be allowed to alight from the car. The host by his refusal creates an unlawful relation akin to, if not actually, false imprisonment, which conclusively removes the rider from the status of an "invited guest."

Nevertheless, it is clear that this is not the prevailing rule.