Guest Statutes: Have Recent Cases Brought Them to the End of the Road

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GUEST STATUTES: HAVE RECENT CASES BROUGHT THEM TO THE END OF THE ROAD?

I. The Problem

Legal scholars, judges, and practitioners have spent an inordinate amount of time discussing and attempting to avoid the quagmires one can fall into while litigating guest statute cases. Recent cases, however, have made an effort to clarify this "tangle of confusion." The purpose of this article is not to present a catalog of information on guest statutes; that has been done with sufficient thoroughness in other works. Rather, this article is an attempt to briefly point out typical problems of guest statutes, to critically evaluate the solution sought by recent decisions, and to review the future of guest statutes.

California's guest statute, similar in most respects to other states', provides:

No person riding in or occupying a vehicle owned by him and driven by another person with his permission and no person who as a guest accepts a ride in any vehicle upon a highway without giving compensation for such a ride, nor any other person, has any right of action for civil damages against the driver of the vehicle or against any other person legally liable for the conduct of the driver on account of personal injury to or the death of the owner or guest during the ride, unless the plaintiff in any such action establishes that the injury or death proximately resulted from the intoxication or willful misconduct of the driver.

Definitional problems in such a statute are abundant. First, "guest" must be defined. A guest is ordinarily one who accepts a gratuitous ride. Still, in some states the least amount of pecuniary benefit conferred on the host by the guest may change the guest's status to that of a "passenger for hire." If one is indeed a "gratuitous" guest, there are still further problems. For example, can an owner be placed in the unusual position of being a guest in his own car? Can an infant or a family member of the host be defined as a guest? What if the accident occurs in a private drive?

3 Cal. Vehicle Code § 17158 (West 1959); For a listing of guest statutes see Note, Judicial Nullification of Guest Statutes, 41 S. Cal. L. Rev. 884, 899-901 (1968).
car has come to a momentary halt? The answers to these questions may play a crucial role in a guest statute case.

The dilemma of determining the minimum degree of fault for liability under a guest statute must also be treated. What does "gross negligence," "willful misconduct," or "intoxication" mean? *American Jurisprudence (Second)* somewhat understates the problem when it says that none of these terms are susceptible of exact definition. Additionally, can contributory negligence be a defense to willful misconduct, or must the defense be based on contributory willful misconduct? Assumption of the risk by the guest, the possible duty of a guest to watch for and warn of danger, or the possible duty of a guest to protest the driver's conduct can all present additional pitfalls which can be determinative of a case.

The complex problems seem endless. Courts, in construing the statutes, have often attempted to avoid harsh results. Such construction, however, has resulted in myriad exceptions and peculiar quirks in an already troublesome statute. One writer, referring to the Florida guest statute, describes such an anomaly:

[I]f a person gets into an automobile without the driver's permission and an accident occurs, the wrongdoer may recover damages from the negligent driver, even if the driver has previously ordered the trespasser not to board the vehicle. It is only when the trespasser's presence is unknown that liability is limited to instances of wanton and willful misconduct. *In other words, a known invited guest has less protection than a known trespasser!* Definitions further operate to create exceptions and "every exception carved out of a statute weakens its effectiveness and destroys its vitality."

Guest statutes place a heavy financial burden on those who are least protected and most often innocent of any blame. The negligent host, on the other hand, is protected by the statute. The principal cases, discussed infra, realize this distortion of justice and establish a more realistic basis of liability for the host.

II. The California Decision

In a recent decision the California Supreme Court declared its guest statute unconstitutional. In *Brown v. Merlo* the court nullified the California guest statute by holding that it violated the equal protection clauses of the California and United States Constitutions. Before analyzing the California decision, definitions further operate to create exceptions and "every exception carved out of a statute weakens its effectiveness and destroys its vitality." Definitions further operate to create exceptions and "every exception carved out of a statute weakens its effectiveness and destroys its vitality."
it would be helpful to briefly note three significant cases which have upheld the constitutionality of guest statutes.

A. Past Decisions

An analysis of the constitutionality of guest statutes begins with *Silver v. Silver*, an early decision by the Supreme Court of the United States. The case has been cited by many courts as upholding the constitutionality of guest statutes in general; however, the challenge to the Connecticut guest statute in *Silver* was limited. The argument was that the classification of the guests in automobiles as distinguished from those in other vehicles was arbitrary. The United States Supreme Court, affirming the Connecticut Supreme Court, stated:

> It is said that the vice in the statute is not that it distinguishes between passengers who pay and those who do not, but between gratuitous passengers in automobiles and those in other classes of vehicles. But it is not so evident that no grounds exist for the distinction that we can say *a priori* that the classification is one forbidden as without basis and arbitrary.

The court additionally observed that automobile litigation was increasing and that limiting multiplicity of suits was a legitimate legislative function.

Another case frequently cited as upholding the constitutionality of guest statutes is *Naudzius v. Lahr*. In *Naudzius* it was contended that the Michigan legislature, by abolishing “the right of an action for ordinary negligence, deprive[d] plaintiff of a right of property without due process of law.” It was further argued that the act established “unreasonable, arbitrary, and unlawful classes of persons” by distinguishing between guests in motorcars and guests in other vehicles and between gratuitous and paying passengers in the same situation. *Naudzius* articulated the underlying purposes of the Michigan statute. These purposes have been almost universally accepted. The first purpose was to prevent collusion between the host and guest against an insurance company; the second was to prevent recovery by an ungrateful guest. The court upheld the discrimination based on the two purposes finding the classification had its basis in reason. It analogized the discriminating treatment to similar distinctions in other areas such as between the bailee and the bailor, the common carrier and the ordinary driver, and the innkeeper and the social host.

Another case dealing with the constitutionality of guest statutes is *Shea v. Olson*. It was contended the statute there violated guarantees of equal protection, due process, and trial by jury. In holding the statute valid, the Washington
Supreme Court relied on the purposes enunciated in *Naudzius*. The court explained:

It has been asserted that collusion frequently takes place between the host and guest to establish a case of gross negligence against the host, in order to fasten liability upon a company by whom the host is insured; that, because of a friendly regard for the guest, and knowing that he himself will not have to pay the bill anyway, the host is willing to admit, and often testify to, a state of facts other than it actually is, and thus deprive the insurance company of the benefit of a good defense.\(^{27}\)

The court also emphasized the second purpose of the guest statute, *i.e.*, preventing inhospitality. If a guest were allowed to recover, drivers would be deterred from extending favors for fear of being compelled to defend a suit.\(^{28}\) The Washington court concluded:

The only limitation upon the legislature in the exercise of [the police] power is that the act must reasonably tend to correct some evil or promote some interest of the state and not violate any positive mandate of the constitution. The act, in our opinion, fully meets the requirements of the constitution.\(^{29}\)

The die was thus cast. Guest statutes were found necessary to protect hospitality and prevent collusion. As such they were a valid exercise of police power. Throughout their existence, however, guest statutes have done a great deal more than promote the purposes for which they were enacted, if they do indeed promote those purposes. They have also eliminated many claims by innocent victims with sometimes disastrous injuries.

### B. Equal Protection Test

The California Supreme Court, in a well-reasoned opinion, held the two justifications traditionally given for guest statutes fail to provide a rational basis for the differential treatment actually accorded by the statute's classification.\(^{30}\) The court's opinion, written by Judge Tobriner, tested the constitutionality of the statute by examining the traditional justifications in light of the recent tests of equal protection.

The court applied the "rationality" standard for equal protection as delineated by recent United States Supreme Court cases and recent California decisions.\(^{31}\) *Reed v. Reed* enunciated this standard as follows:

The Equal Protection Clause . . . den[ies] to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of

\(^{27}\) *Id.* at 155, 53 P.2d at 620.  
\(^{28}\) *Id.*  
\(^{29}\) *Id.* at 161, 53 P.2d at 622.  
\(^{31}\) The court dismissed, in a footnote, the plaintiff's argument that the "strict scrutiny" standard should be applied. 8 Cal. 3d at 861 n.2, 106 Cal. Rptr. at 392 n.2, 506 P.2d at 216 n.2.
that statute. A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." [Quoting from Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920)].

C. Protection of Hospitality

The court found two main reasons why protection of hospitality did not provide a rational basis for discrimination. First, there is no justification for treating the guests in automobiles differently than all other recipients of hospitality. The case of Rowland v. Christian, for example, held that hosts must exercise reasonable care not to injure a social guest. As the court noted in Brown, it was decided in the 1930's that:

when a landowner undertook any "active operation" he bore a duty to exercise due care towards trespassers, licensees and invitees alike. The operation of an automobile, of course, constituted the paradigm case of an "active operation" which would bring the ordinary due care standard into play. Thus, for more than three decades California's guest statute has singled out automobile guests for harsher treatment and less protection than guests receive generally.

The court had additional support for its holding. Citing decisions doing away with charitable immunities, Judge Tobriner reasoned that however laudable "the motives of a hospitable host or however generous his charity, it is irrational to reward that generosity by subjecting beneficiaries to a greater risk of uncompensated injury than is faced by other individuals." Under this principle, the guest statute's classification scheme was found to be clearly unreasonable. In summary, the opinion concluded:

[I]t is irrational to assume that if a recipient of generosity is permitted recovery for negligent injuries, the cause of "ingratitude" will be served or the cause of "hospitality" plundered. Thus, we conclude that by depriving automobile guests of a right of action for negligence which is afforded to all other passengers or pedestrians, the California guest statute draws an irrational classification condemned by both our federal and state constitutions.

D. Prevention of Collusion

Having successfully destroyed the hospitality rationale, the court continued:

[The constitutionality of the guest statute must stand or fall on whether the provision's classification scheme bears a substantial and rational relation

32 Reed v. Reed, 404 U.S. 71, 75-76 (1971).
33 8 Cal. 3d at 864, 106 Cal. Rptr. at 394, 506 P.2d at 218.
34 69 Cal. 2d 108, 70 Cal. Rptr. 97, 443 P.2d 561 (1968).
35 8 Cal. 3d at 865 n.6, 106 Cal. Rptr. at 395 n.6, 506 P.2d at 219 n.6.
36 Id. at 871, 106 Cal. Rptr. at 399, 506 P.2d at 223.
37 Id. at 872, 106 Cal. Rptr. at 400, 506 P.2d at 224.
to the second proposed objective of the statute: the preclusion of collusive lawsuits against insurance companies.\textsuperscript{38}

The statute, to prevent collusion, required a showing that the host was guilty of willful misconduct or intoxication. However, the court found the classification of "guest" to be overly broad,\textsuperscript{39} reasoning that there is no more reason to suspect collusion between host and guest, than between host and paying rider. In the same manner, if the guest and host could collude on the issue of negligence without such a statute, what should prevent them from colluding on the issue of compensation (in order to fit within the "passenger for hire" exception) with such a statute?\textsuperscript{40}

The court drew on an analogous holding denying the invocation of the doctrine of family immunity.\textsuperscript{41} Members of a family are not precluded from suit merely because of a possibility of collusion. In like fashion, the court in \textit{Brown} reasoned: "it is unreasonable to eliminate causes of action of an entire class of persons simply because some undefined portion of the designated class may file fraudulent lawsuits."\textsuperscript{42} In any event, collusive suits seem more likely with family members as opposed to host and guest in an automobile. Since members of a family can now sue other members of the same family, there is no compelling reason why a guest cannot recover from his automobile host.

The court pointed out an additional problem with the statute by supplying numerous examples of recovery by happenstance. The court described the problem as arising from statutory loopholes which "add yet another element of irrationality to the provision's classification scheme, for they, too, are totally unrelated to either the 'hospitality' or 'anti-collusion' theme."\textsuperscript{43} The court explained as follows:

The numerous statutory exceptions in the guest statute—making a guest's recovery turn on the mobility or immobility of the vehicle, the physical location of the guest in or outside the car or the physical location of the vehicle on a private or public highway—similarly bear "no discernible relationship to the realities of life."\textsuperscript{44}

Thus, \textit{Brown} demonstrated that the classification of guests had no relevance to the purpose of preventing inhospitality or the purpose of ending collusive suits. California, however, is not likely to be the only state to so decide, for other states may well rely on \textit{Brown} and its forceful arguments for striking down similar statutes.

\textsuperscript{38} \textit{Id.} at 872-73, 106 Cal. Rptr. at 400, 506 P.2d at 224.
\textsuperscript{39} "Overinclusive categories are unconstitutional because they fly squarely in the face of our traditional antipathy to assertions of mass guilt and guilt by association." Tussman and tenBroek, \textit{The Equal Protection of the Laws}, 37 CAL. L. REV. 341, 352 (1949).
\textsuperscript{40} 8 Cal. 3d at 875, 106 Cal. Rptr. at 402-03, 506 P.2d at 226-27.
\textsuperscript{41} Emery v. Emery, 45 Cal. 2d 421, 289 P.2d 218 (1955); Klein v. Klein, 58 Cal. 2d 692, 26 Cal. Rptr. 102, 376 P.2d 70 (1962).
\textsuperscript{42} 8 Cal. 3d at 875, 106 Cal. Rptr. at 402, 506 P.2d at 226.
\textsuperscript{43} \textit{Id.} at 878, 106 Cal. Rptr. at 405, 506 P.2d at 229.
\textsuperscript{44} \textit{Id.} at 882, 106 Cal. Rptr. at 407, 506 P.2d at 231.
III. Subsequent Cases

As of this writing, at least two trial court rulings have cited Brown in declaring state guest statutes unconstitutional; and both cases indicate a trend toward strong acceptance of the Brown rationale and reasoning.

The case of Putney v. Piper\(^{45}\) involved a suit against a host by a minor child. In a motion to dismiss for failure to state a claim upon which relief could be granted, the defendant contended the Iowa guest statute,\(^{46}\) which required a showing of intoxication by alcohol or other drugs, or reckless driving, prohibited plaintiff's recovery. In answer to the defendant's motion to dismiss, the plaintiff contended the Iowa statute was unconstitutional as per Brown. In denying defendant's motion, Judge Oxberger stated:

> There is reason to believe that guest statute legislation, of which Iowa's statute is a prototype, is unconstitutional. The California Supreme Court has this year struck down that state's guest statute for being violative of the equal protection guarantees of the California and United States Constitutions.\(^{47}\)

The court followed closely the organization and reasoning of the California decision, relying on it throughout the ruling. It applied the rationale of the California decision to the Iowa statute and concluded:

> [T]he classifications which the Iowa guest statute establishes in determining which categories of passengers are permitted and which are denied recovery for negligently inflicted injuries from the owner or operation of a motor vehicle are lacking in a reasonable or substantial relationship to the purposes of such legislation and for that reason render the statute unconstitutional as a violation of the equal protection guarantees of both the Iowa and the United States Constitutions.\(^{48}\)

The Putney decision, although from a trial court, has demonstrable importance. It appears that the Brown decision may provide the impetus for other states to act on their statutes.

Another recent case adopting the rationale of Brown is Fox v. Knapp.\(^{49}\) This case was a trial court ruling on defendant's motion for summary judgment. Defendant argued the Indiana guest statute prohibited the suit. The decision on the ruling merely stated that the Indiana guest statute was in "violation of the equal protection guarantees of the Constitution of the State of Indiana, and of the Constitution of the United States."\(^{50}\) The plaintiff's brief relied heavily upon the Brown decision, and the case undoubtedly played a major role in the court's determination. The argument was stated as follows:

> The issue of the constitutionality of the California Guest Statute, which is substantially similar to the Indiana Statute, was recently before the California Supreme Court in the case of Brown v. Merlo. [Citation omitted.] In

\(^{45}\) Law No. 2798 ' (Dist. Ct., Polk County, Iowa, August, 1973).


\(^{47}\) Putney v. Piper, Law No. 2798 (Dist. Ct., Polk County, Iowa, August, 1973) at 6.

\(^{48}\) Id. at 13.

\(^{49}\) Cause No. 33-581 ' (Cir. Ct., Pulaski County, Ind., August 9, 1973).

\(^{50}\) Id.
a unanimous decision which is as admirable as it was overdue, the Court declared the California Guest Statute unconstitutional as a violation of the equal protection guarantees of the California and United States Constitutions. Because of the persuasiveness and the inherent soundness of that decision, it is probable that it will sweep the country.

The brief contends further that the Supreme Court of Indiana is probably willing to rid Indiana law of one of the few remaining pockets of protected negligence which is provided by the Indiana guest statute since the state has recently abrogated governmental, interspousal, and charitable immunities.

Although Fox and Putney are trial court rulings, it is apparent courts are willing to re-examine traditional arguments sustaining the validity of guest statutes. There is no doubt that more trial courts and courts of last resort will consider the Brown rationale. The time is ripe for a plaintiff's attorney in an automobile litigation action to seize upon the opportunity for re-analysis of the guest statutes. Although other arguments may suggest themselves, the equal protection argument should be stressed. Courts have shown their willingness to accept it, and it embodies sound reasoning.

IV. Conclusion

By articulate and concise reasoning, Brown v. Merlo declared California's guest statute unconstitutional on the grounds that it violated the equal protection clause of both the California and United States Constitutions. The case removed the onerous burden of proving willful misconduct from the plaintiff and gave him a more just possibility of recovery.

Using identical reasoning, several lower courts have followed suit in striking down state guest statutes. The fact that these cases were from trial courts is significant: the inclination of lower courts to strike down such legislation on the trial level is indicative of the unpopularity of guest statutes and indicates a confidence that such rulings will be upheld on appeal. This willingness and confidence on the part of trial courts should definitely be taken advantage of by plaintiffs' counsel.

But more than plaintiffs and prospective plaintiffs will benefit from these decisions. The judiciary itself stands as one beneficiary. Although the number of negligence actions may increase slightly, courts will no longer have to deal with knotty legal problems which are inherent in guest statute cases; the time and inconvenience saved on this matter alone are significant.

Moreover, for all of us, the Brown decision and its progeny raise a spark of hope for compensation in the event of a negligently inflicted injury on a so-called guest. Some solace should be found in the fact that the host, whose "friendly" hand could once negligently crack his guest's skull with little fear of liability, will now be compelled by progressive courts to reach into his pocketbook to compensate such injuries.

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51 Brief for Plaintiff at 2, Fox v. Knapp, Cause No. 33-581 (Cir. Ct., Pulaski County, Ind., August 9, 1973).
52 Id.
53 W. Prosser, supra note 1, at 187.