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APPLICABILITY OF THE FLORIDA GUEST STATUTE TO CAR POOL ARRANGEMENTS

One by-product of Florida's trend toward increased industrialization will probably be a more frequent use of "car pool" or "share-a-ride" arrangements. A corresponding increase in personal injury suits instituted by members of car pools against the drivers is probable. This note will consider the applicability of Florida's guest statute to such arrangements and the degree of negligence required to sustain personal injury actions by car pool members.

THE GUEST STATUTE

As a general rule the operator of an automobile must exercise ordinary, reasonable care for the safety of his passengers.[1] Failure to do so renders the driver liable for any injuries sustained by the passenger, provided the passenger is not contributorily negligent.[2]

Florida modified this general rule by the adoption, in 1937, of the automobile guest statute.[3] The statute provides in part:

> "No person transported by the owner or operator of a motor vehicle as his guest or passenger, without payment for such transportation, shall have a cause of action for damages against such owner or operator for injury . . . in case of accident, unless such accident shall have been caused by the gross negligence or willful and wanton misconduct of the owner or operator of such motor vehicle . . . ."

The owner or operator is thus relieved of liability to his guest passengers for ordinary negligence.

Although the Florida Supreme Court has held that the guest statute is to be strictly construed,[4] the modern tendency is toward a more liberal interpretation in favor of the guest. This was exemplified by a recent case in which the Court stated that "a guest under the statute . . . may recover for gross negligence *which is that kind or degree of negligence which lies in the area between ordinary negligence and wilful and wanton misconduct* . . . ."[5] Since willful and wanton misconduct had formerly been considered synonymous with gross negligence,[6] it appears that the Florida Court has relaxed its

1. 60 C.J.S., *Motor Vehicles* §397 (1949).
2. 1 SCHWARTZ, TRIAL OF AUTOMOBILE ACCIDENT CASES §502 (1941).
3. FLA. STAT. §320.59 (1959).
4. Berne v. Peterson, 113 So. 2d 718, 720 (Fla. 1959).
5. Carraway v. Revell, 116 So. 2d 16, 22 (Fla. 1959). (Emphasis supplied.)
6. *E.g.*, Brown v. Roach, 67 So. 2d 201 (Fla. 1953); Dexter v. Green, 55 So. 2d 548 (Fla. 1951); Orme v. Burr, 157 Fla. 378, 25 So. 2d 870 (1946).

position as to the degree of negligence necessary for recovery under the statute.

Payment by the Passenger

Section 320.59 of the Florida statutes defines a guest as one who is transported without payment. Therefore, when the rider compensates the operator of the automobile, he does not come within the purview of the statute.[7] By the weight of authority in the United States, such compensation need not be in the form of money.[8] The Kansas Supreme Court has indicated that payment sufficient to preclude classification as a guest may consist of some substantial benefit conferred on the automobile owner or operator.[9] It is apparently sufficient if the passenger's presence directly compensates the driver in a "material or business sense as distinguished from mere social benefit or nominal or incidental contribution to expenses of the trip."[10] It should also be noted that the arrangement for compensation need not constitute a legal contractual obligation whereby the driver could recover for the agreed or reasonable value of the transportation.[11] Payment "is not to be considered in its restricted legal sense as the discharge in money of a sum due or the performance of a pecuniary obligation."[12]

The Mutual Benefit Theory

The Florida Supreme Court has adopted the "mutual benefit" theory. In *Peery v. Mershon* the Court stated that "if his [the passenger's] carriage tends to the promotion of mutual interests of both himself and the driver and operates for their common benefit, . . . he is not a guest within the meaning of such enactments."[13] The Court did not speak in terms of payment of money but referred to promotion of mutual interests and common benefit. By using this general terminology the Court provided latitude for determination of each case according to its individual facts and the relationships of the parties. The Florida Supreme Court's position that the guest statute does not apply when the transportation is solely for the benefit of

7. Cormier v. Williams, 148 Fla. 201, 4 So. 2d 525 (1941).

8. 5 AM. JUR., *Automobiles* §239 (1936).

9. Sparks v. Getz, 170 Kan. 287, 225 P.2d 106 (1950).

10. Allison v. Ely, 170 N.E.2d 371, 374 (Ind. 1960); see Burrow v. Porterfield, 171 Ohio St. 28, 168 N.E.2d 137 (1960), for a listing of the relationships in which the rider is a guest and those in which he is a passenger.

11. Johnson v. Kolovos, 355 P.2d 1115 (Ore. 1960).

12. *Id.* at 1117.

13. 149 Fla. 351, 359, 5 So. 2d 694, 697 (1942).

the driver, or for the mutual benefit of the occupant and the driver, has been reiterated in four recent cases.[14]

In *Peery v. Mershon* the defendant's servant was injured while riding in an automobile driven by the defendant's wife. Although this case concerned a master-servant relationship, the Florida Supreme Court in *Handsel v. Handsel* stated that "the doctrine of the Mershon case is being extended to other than a master and servant relationship."[15]

The benefit conferred on the driver as inducement for the transportation must be real and tangible,[16] but it need not accrue to the driver at the actual time of transportation;[17] and it may be merely an anticipated or prospective profit.[18] If it is determined that the motivating purpose of the transportation is companionship, pleasure, social amenities, hospitality, or the like, the Court will apply the guest statute.[19] The Florida Supreme Court has taken the position that the mere sharing of expenses is not sufficient to avoid the operation of the guest statute.[20] In *Yokom v. Rodriguez*[21] the passenger was classified as a guest even though she had paid all of the expenses of the trip, and she was denied recovery in absence of a showing of gross negligence. The theory expressed in *McDougald v. Couey* was that a contribution towards expenses "was but the gesture of a person who did not wish to impose upon his companion's generosity . . . ."[22] The passenger, it was held, was under no obligation to pay, since payment was merely an afterthought.

These cases are clearly distinguishable from car pool or share-a-ride arrangements, for a car pool member "contributes" by furnishing reciprocal transportation on an impersonal business level, not as a personal gesture of appreciation.

Car Pools

There have been no cases decided under the Florida guest statute with respect to car pool arrangements, but the question has been dealt with in many other jurisdictions. The weight of authority

14. Berne v. Peterson, 113 So. 2d 718 (Fla. 1959); Montana v. Gorp, 108 So. 2d 64 (Fla. 1959); Sproule v. Nelson, 81 So. 2d 478 (Fla. 1955); Tillman v. McLeod, 124 So. 2d 135 (2d D.C.A. Fla. 1960).

15. 72 So. 2d 813 (Fla. 1954).

16. Sullivan v. Stock, 98 So. 2d 507 (2d D.C.A. Fla. 1957).

17. Woodland v. Smith, 354 P.2d 391 (Wash. 1960).

18. Martinez v. Southern Pac. Co., 45 Cal. 2d 244, 288 P.2d 868 (1955); Follansbee v. Benzenberg, 122 Cal. App. 2d 466, 265 P.2d 183 (1954).

19. Berne v. Peterson, 113 So. 2d 718 (Fla. 1959).

20. McDougald v. Couey, 150 Fla. 748, 9 So. 2d 187 (1942).

21. 41 So. 2d 446 (Fla. 1949).

22. 150 Fla. 748, 752, 9 So. 2d 187, 189 (1942).

appears to be that when individuals alternate in transporting each other to work without charging one another, the transportation is not given gratuitously and the passenger is not considered to be a guest.[23] The basis for this conclusion is that each ride is paid for by reciprocal transportation. It has been held that such relationships are not social, that their sole purpose is the provision of convenient transportation for the car pool members,[24] and that they are clearly impersonal relationships "based upon business expedience and mutual benefit."[25]

A mutual agreement entered into by parents of school children whereby the parents take turns driving the children to school should logically be classified as a type of car pool arrangement. In a recent Ohio case[26] it was held that a child riding with a driver other than his parent under a reciprocal ride arrangement was a "paying passenger" rather than a guest. The court stated that a definite business relationship existed in which the parents saved both time and expense. It should be noted that the Florida guest statute expressly excludes children being transported to and from school.

Application and Effect of Joint Enterprise

Most jurisdictions appear to hold that guest statutes do not apply when driver and passenger are engaged in a joint enterprise or adventure.[27] The Florida Supreme Court indicated its approval of this view in *Yokom v. Rodriguez.* It is questionable, however, whether the Court will classify a car pool arrangement as a joint enterprise. The essential elements of a joint enterprise were outlined in *Yokom* and in *Roberts v. Braynon.*[28] In the former case the Court stated that (1) there must be an agreement, express or implied, to enter into an undertaking; (2) there must be a community of interest in the objects and purposes to be accomplished; and (3) the parties must have equal authority in pursuance of the enterprise. A car pool arrangement seems to comply with the first two elements, but the

23. *E.g.,* Riggs v. Roberts, 74 Idaho 473, 264 P.2d 698 (1953); Collins v. Rydman, 344 Mich. 588, 74 N.W.2d 900 (1956); Coerver v. Haab, 23 Wash. 2d 481, 161 P.2d 194 (1945).

24. Kinney v. Kraml Dairy, Inc., 20 Ill. App. 2d 531, 156 N.E.2d 623 (1959).

25. Bridges v. Lintz, 140 Colo. 582, 584, 346 P.2d 571, 572 (1959). *Contra,* Everett v. Burg, 301 Mich. 734, 4 N.W.2d 63 (1942), in which it was held that a typical car pool arrangement constituted the exchange of amenities between fellow employees so as to establish a host and guest relationship.

26. Lisner v. Faust, 168 Ohio St. 346, 155 N.E.2d 59 (1958).

27. *E.g.,* Whitechat v. Guyette, 19 Cal. 2d 428, 122 P.2d 47 (1942); Brody v. Harris, 308 Mich. 234, 13 N.W.2d 273 (1944); Duncan v. Hutchinson, 139 Ohio St. 185, 39 N.E.2d 140 (1942).

28. 90 So. 2d 623 (Fla. 1956).