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Negligence -- Guest Statute -- Right of Recovery

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in a prior advisory opinion ruled that a pardon blotted out the offense in
the eyes of the law. The court has not literally interpreted this "blotting out" theory since it later held that a pardon does not restore one to the
practice of law; nor will it preclude revocation of a license to practice
medicine. They consider proceedings for a criminal act and for disbarment
as separate and distinct, and a pardon for the former is not a pardon for
the latter. These decisions, however, concerned license privileges and did
not construe the habitual offender law.

In the principal case the court bases its decision upon an exclusionary
rule of statutory construction. It was concluded that it was the legislative
intent to exclude pardoned offenses by not expressly including them in the
habitual offender law. A cardinal rule of statutory construction provides
that a statute is to be construed according to the intent of the legislature.
All other rules of statutory construction are subordinate and are mere aids in
determining legislative intent. It is submitted it may have been the intent
of the legislature to include pardoned offenses in the application of this
law. However, these statutes should have no bearing when a pardon is
given because of innocence, since the element of criminal habit is not
present. The habitual offender laws are designed to deter crime and thereby
to protect society. These statutes are not directed to any particular crime
but only to the recurrent offender.

The criminal character or habits of the individual, the chief postu-
late of the habitual criminal statutes, is often as clearly disclosed
by a pardoned conviction as by one never condoned.

Iva W. Kay, Jr.

NEGLIGENCE—GUEST STATUTE—
RIGHT OF RECOVERY

The plaintiff sued for the wrongful death of her minor child who was
killed while riding as a guest in the defendant's automobile. Held, the guest
statute applied, thus precluding the plaintiff from recovering where the

18. In re Advisory Opinion to the Governor of Florida, 14 Fla. 318 (1872).
20. Page v. Watson, 140 Fla. 536, 192 So. 205 (1938); State v. Hazzard, 139
Wash. 487, 247 Pac. 957 (1926); accord, Prichard v. Battle, 178 Va. 455, 17 S.E.2d
393 (1941).
22. Kelley v. State, 204 Ind. 612, 185 N.E. 453 (1933); State v. Martin, 59
Ohio St. 212, 52 N.E. 188 (1898); contra, People v. Biggs, 9 Cal.2d 508, 71 P.2d
214 (1937).
23. State v. Taylor, 80 So.2d 618 (Ala. 1954); Abood v. City of Jacksonville,
80 So.2d 443 (Fla. 1955); Crawford v. School Dist. 6, 342 Mich. 564, 70 N.W.2d
789 (1955).
196 U.S. 1 (1904); State v. Doran, 124 Conn. 160, 198 Atl. 573 (1938).
death was the result of simple negligence. Brailsford v. Campbell, 89 So.2d 241 (Fla. 1956).

In the absence of a guest statute, the general rule in almost all jurisdictions is that the person operating or responsible for the operation of an automobile must exercise reasonable and ordinary care for the safety of a guest therein. However, a majority of the states have so-called “automobile guest statutes.” A few other jurisdictions have adopted the guest rule by judicial decision.

Generally, these statutes preclude the guest from recovering from his host for injuries sustained due to the latter’s simple negligence. The statutes require a finding of “gross negligence,” “wilful and wanton misconduct,” and/or “intoxication” on the part of the driver in order for the guest to recover.

In those jurisdictions which have adopted guest statutes a problem arises when the guest dies. Must the plaintiff prove gross negligence as would have been required of the guest? Or does the death statute which requires only simple negligence pre-empt the field? In all but two states which subscribe to the “automobile guest” doctrine, the beneficiaries under the wrongful death statutes may not recover for the death of a guest in the absence of gross negligence.

2. 60 C.J.S., Motor Vehicles § 399 (1a) (1949).
7. See statutes cited note 2 supra for California, Colorado, Idaho, Iowa, Nebraska, North Dakota, Oregon, and Utah. Other terms used are: “intentional” (Colorado, Delaware, Idaho, New Mexico, Oregon, South Carolina, Texas, and Washington), “reckless disregard” (Idaho, New Mexico, Oregon, South Carolina, and Texas), “willful and wanton disregard” (Arkansas, Colorado, Delaware, and Virginia), “heedlessness” (New Mexico, South Carolina, and Texas), “reckless operation” (Iowa and Montana), “wanton negligence” (Kansas), and “willful negligence” (Vermont).
The results are not all reached in the same manner. The rationale depends on the provisions of the statute involved. There are three basic types of guest statutes. All require the higher degree of culpability previously mentioned. The effect of the first type is to restrict the guest's right of recovery. The second limits the liability of the owner or operator, and the third type precludes either the guest or his survivors from maintaining an action in the absence of gross negligence. Only the first class of statute appears to allow the beneficiaries to maintain their action on simple negligence. Fifteen states have guest statutes of this nature. In nine of these states the wrongful death statute permits recovery only in cases where the deceased could have prevailed had he lived. Four of the six remaining states have wrongful death statutes which do not predicate

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, death or loss, 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, and unless such gross negligence or willful and wanton misconduct was the proximate cause of the injury, death or loss, for which the action is brought . . . .

The owner, operator or person responsible for the operation of a motor vehicle shall not be liable for loss or damages arising from injuries to or death of a guest while being transported without payment therefor, 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.

Any person who as a guest accepts a ride in any vehicle moving upon any of the public highways of this state, and who while so riding as such guest receive or sustains an injury, shall have no right of recovery against the owner or driver of person responsible for the operation of such vehicle. In the event that such person while so riding as such guest is killed or dies as the result of an injury sustained while so riding as such guest, then neither the estate nor the legal representatives nor heirs of such guest shall have any right of recovery against the driver or owner of said vehicle by reason of the death of such guest . . . . The provisions of this chapter shall not be construed as relieving the owner, driver, or person responsible for the operation of a vehicle from liability for injury to or death of a guest proximately resulting from the intoxication, willful misconduct, or gross negligence of such owner, driver, or person responsible for the operation of such vehicle.

12. See note 8 supra

recovery on the deceased’s cause of action.\textsuperscript{14} Of these four, those in Idaho and Washington have been interpreted in the courts as not allowing recovery if the deceased never had a cause of action.\textsuperscript{15} The same result has been reached in California, apparently without noticing the conflict.\textsuperscript{16} The issue has eluded the Delaware court. Oregon, like Florida, has two wrongful death statutes. That is, each state has a statute which gives a parent a cause of action for the death of a minor child with no mention made of the child’s cause of action had he lived,\textsuperscript{17} and each also has a statute which gives an administrator a cause of action for wrongful death only in cases where the deceased would have had a right of recovery had death not ensued.\textsuperscript{18}

In the instant case the majority of the court disregarded the express words of the statute allowing recovery by the parent for the death of a minor child and held that the legislature had really meant to say that the parent could recover only if the child could have recovered had death not ensued. All the states which have adopted a guest statute have arrived at the same result. But in reading the statutes it is quite apparent that in most cases the legislatures have failed to realize that the wording they have used is ambiguous.

\textbf{Frank M. Dunbaugh III}

\textsuperscript{15} Hegegon v. Powell, 54 Idaho 667, 34 P.2d 957 (1934); Upchurch v. Hubbard, 29 Wash. 2d 559, 188 P.2d 82 (1947).