Case Notes

Automobiles—Indirect Benefit Is Not Sufficiently Tangible and Definite to Remove Plaintiff from Operation of the Iowa Guest Statute.—*Jackson v. Brown* (Iowa 1969).

Plaintiff sought recovery for injuries she sustained while an occupant of an automobile owned and operated by defendant. Plaintiff accompanied the defendant and one Weston at their request to direct them to the home of her ex-husband, who had some tools for sale which Weston was interested in buying. The trial court found the plaintiff was not a guest within the meaning of the Iowa guest statute[1] and allowed her to recover for the ordinary negligence of the defendant. Defendant appealed to the Supreme Court of Iowa. *Held*, reversed and remanded, two justices dissenting. The evidence viewed in the light most favorable to plaintiff[2] was insufficient to generate a jury question as to whether plaintiff was present in the automobile for the tangible and definite benefit of the defendant. Thus, the plaintiff was adjudged a guest as a matter of law within the meaning of the Iowa guest statute. *Jackson v. Brown*, — Iowa —, 164 N.W.2d 824 (1969).

The automobile guest statute was adopted for the purpose of eliminating liability for ordinary negligence in the operation of an automobile resulting in injury to a guest.[3] Its purpose is to protect the "Good Samaritan."[4] The Iowa Supreme Court articulated this purpose by stating:

> The situation that this . . . [statute] was apparently designed to prevent is well known. 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 upon close questions of negligence. Undoubtedly, the legislature, in adopting this act, reflected a certain natural feeling as to the injustice of such a situation.[5]

The court indicated that lawmakers intended, by passage of this statute, to

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1 Iowa Code § 321.494 (1966) provides:

The owner or operator of a motor vehicle shall not be liable for any damages to any passenger or person riding in said motor vehicle as a guest or by invitation and not for hire unless damage is caused as a result of the driver of said motor vehicle being under the influence of intoxicating liquor or because of the reckless operation by him of such motor vehicle.

2 Iowa R. Civ. P. 344(f)(2); Ling v. Hosts, Inc., 164 N.W.2d 123 (Iowa 1969).

3 Iowa Code § 321.494 (1966); Fritz v. Wohler, 247 Iowa 1039, 1041, 78 N.W.2d 27, 28 (1956).

4 Powers v. Hatcher, 257 Iowa 833, 836, 135 N.W.2d 114, 116 (1965); Nielsen v. Kohlstedt, 254 Iowa 470, 473, 117 N.W.2d 900, 903 (1962).

5 Bookhart v. Greenlease-Lied Motor Co., 215 Iowa 8, 11, 244 N.W. 721, 722 (1932), quoting from Crawford v. Foster, 110 Cal. App. 81, 87, 293 P. 841, 843 (1930). *Bookhart* was the case of first impression involving interpretation of "who is a guest" under the Iowa statute.

prevent persons having no moral right of recovery from doing so as against motorists who provided a ride as a gratuity and who expected no advantage to accrue to themselves as a result of the carriage.

Difficulties in interpreting who is a guest within the meaning of the Iowa statute, as well as the guest statutes of other states, arose soon after passage. One of the early cases from another jurisdiction phrased the test for a guest as simply, "was there consideration for the transportation?"[6] The Iowa Supreme Court more fully defined the test in the case of *Knutson v. Lurie*[7] by requiring, *inter alia*, that the passenger become such for the benefit of the owner or operator. That rule, the subject of the *Jackson* case, has been examined in a large number of Iowa cases,[8] and the "benefit" required has been interpreted as meaning that the trip was made for the *definite* and *tangible* benefit of the owner or operator.[9] Such a requirement clearly shows that a benefit to an occupant or guest of the operator is not a tangible and definite benefit as contemplated by the statute. Deciding what benefits are definite and tangible to the operator under the various facts presented to the court has resulted in a somewhat ill-defined rule.

In the *Jackson* case the plaintiff claimed that she was occupying the status of a passenger,[10] not of a guest within the meaning of the guest statute, and, therefore, should have been permitted recovery for the ordinary negligence of the operator. The court held that she did not confer upon the defendant a benefit sufficiently tangible and definite to give her status other than that of a guest. The primary purpose of the trip was found to be for Weston's benefit, and defendant was clearly not advantaged by the carriage of Weston. He was merely giving him a ride, apparently a favor to a friend or as a gratuitous gesture. The issue, however, was whether the carriage of plaintiff, and not that of Weston, was of benefit to defendant.

Such benefits as are incidental to hospitality, social relations, companionship or the like are not recognized as tangible and definite benefits sufficient to

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[6] Crawford v. Foster, 110 Cal. App. 81, 84, 293 P. 841, 843 (1930) (does not necessarily mean that the consideration must be monetary). The language is given here only for purposes of showing the evolution of the test from the simple requirement of "consideration" to the more complex four part test utilized in Iowa today. *See* note 7 *infra*.

[7] 217 Iowa 193, 251 N.W. 147 (1933). The three categories enunciated in *Knutson* were: (1) That the relationship of master and servant exists between the passenger and owner or operator of the car, (2) that the passenger became such for the benefit of the owner or operator of the car or (3) that the passenger was conveyed in the car for the mutual benefit of the operator on the one hand, and the passenger on the other. Knutson v. Lurie, 217 Iowa 193, 195, 251 N.W. 147, 149 (1933). A fourth category has apparently been recognized in Powers v. Hatcher, 257 Iowa 833, 135 N.W.2d 114 (1965) (where the relationship between operator and passenger is that of co-employees in furtherance of their employment in transportation as directed by their employer).

[8] *See, e.g., In re* Estate of Ronfeldt, 152 N.W.2d 837 (Iowa 1967); Zwanziger v. Chicago & N.W. Ry., 259 Iowa 14, 141 N.W.2d 568 (1966); Bodaken v. Logan, 254 Iowa 230, 117 N.W.2d 470 (1962).

[9] *See* Morrow v. Redd, 257 Iowa 151, 131 N.W.2d 761 (1964); Hessler v. Ford, 255 Iowa 1055, 125 N.W.2d 132 (1963); Murray v. Lang, 252 Iowa 260, 106 N.W.2d 643 (1960); Ritter v. Dexter, 250 Iowa 830, 95 N.W.2d 280 (1959); McBride v. Dexter, 250 Iowa 7, 92 N.W.2d 443 (1958); Stenberg v. Buckley, 245 Iowa 622, 61 N.W.2d 452 (1954).

[10] In the Iowa Supreme Court's discussions of the guest statute the term "passenger" is generally used to connote status other than that of a "guest."

remove an automobile occupant from the operation of the statute.[11] Therefore, plaintiff is precluded from claiming that the pleasure of her company was sufficient benefit to defendant to make the guest statute inapplicable. The court recognized the possibility that an early location of their destination might be seen as a benefit to the defendant but dispensed with this contention with the statement that "the fact that it is contemplated that some indirect benefit will accrue to the operator of the automobile . . . such as an early location of the Jackson home . . . is not a sufficiently tangible and definite benefit to the owner or operator."[12] The court stated that in order to satisfy the tangible and definite requirement, a benefit must not be "indirect." By giving the "early location" motive an "indirect" label, the court excluded plaintiff from recovery.

The use of the term "indirect" as a test to exclude a benefit in question from the tangible and definite category was first suggested by a prominent writer in the field of automobile law.[13] A case which quotes that writer and the test of "indirectness" was, in turn, cited by the Iowa Supreme Court in *Jackson* as authority for finding that an indirect benefit cannot be a tangible and definite benefit.[14] Apparently, the rationale for which the court cited that case was *dicta* and other grounds constituted the *ratio decendi.*

The case of *Brown v. Killinger,*[15] also cited in *Jackson* for the proposition that indirect benefits are not sufficient to produce a tangible and definite benefit, presents a fact situation analogous to the principal case.[16] In *Brown,* however, it was held that a jury question was presented as to whether sufficient tangible and definite benefit accrued to the operator to render the guest statute inapplicable.

Several Iowa cases prior to *Jackson* have shown a trend toward liberal interpretation of what constitutes a tangible and definite benefit. In *Ritter v. Dexter,*[17] the Iowa Supreme Court held that where plaintiff took a ride at the operator's request to help him look for some fender skirts that had been stolen from the car, the evidence was sufficient to render the issue of plaintiff's

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11 *In re* Estate of Ronfeldt, 152 N.W.2d 837, 842 (Iowa 1967); Powers v. Hatcher, 257 Iowa 833, 837, 135 N.W.2d 114, 116 (1965); Nielsen v. Kohlstedt, 254 Iowa 470, 474, 117 N.W.2d 900, 903 (1962).

12 Jackson v. Brown, 164 N.W.2d 824, 828 (Iowa 1969).

13 D. BLASHFIELD, AUTOMOBILE LAW & PRACTICE § 2292 (1948). As it appears in that work the wording is: "The fact that it is contemplated that some indirect benefit will accrue to the operator . . . is not sufficient to make the carriage one for *mutual benefit* within the rule as stated." (Emphasis added.) It may well be meaningful to point out that this wording would indeed seem to indicate that a plaintiff cannot claim an indirect or incidental benefit as one sufficient for inclusion within the *mutual benefit rule.* However, in *Jackson* plaintiff contended that the carriage was for the benefit of the operator, not within the mutual benefit rule. *See* note 7 *supra.*

14 Peery v. Mershon, 149 Fla. 351, 5 So. 2d 694 (1942).

15 146 So. 2d 124 (Fla. 1962).

16 In *Brown* the maid of defendant's daughter-in-law was being transported to the daughter's home by defendant. The defendant was providing the ride gratuitously, presumably as a favor to her daughter-in-law. The only evidence of a possible benefit to defendant was that she was carrying some clothes that she was going to ask her daughter-in-law if the maid could press.

17 250 Iowa 830, 95 N.W.2d 280 (1959).

status as a guest a jury determination. A later case held that where plaintiff was riding at the request of the driver in order to help choose uniforms for the driver, a jury question as to plaintiff's status was presented.[18] In another case, in which defendant had taken several girl friends home for the weekend, it was held that the jury could find a sufficiently tangible and definite benefit if they determined that a substantial motivation for the presence of plaintiffs in the car was the driver's need for passengers growing out of the extreme driving conditions under which the trip was being made.[19]

However, the court did not stop at these liberal interpretations of what is required to render the guest statute inapplicable, for in a recent case the following reasoning is set forth: "The case does not turn on the question of 'benefit' from the accomplishment of such a purpose. What would constitute a 'benefit' is not decisive. The desired attainment of an objective or purpose is the issue. The answer is not found by weighing the benefits by us."[20] The court seems to have indicated that no benefit at all is necessary, only that the carriage be for an objective or purpose. This language is seemingly a contradiction of the rationale of earlier cases and provides a good example of the court's difficulty in interpreting just what is necessary in order to take a passenger out of the guest statute.[21] In *Jackson*, the plaintiff was present in order to aid in the accomplishment of an objective or purpose, and under the foregoing rationale, it would not appear that a benefit to defendant was necessary in order to permit plaintiff to recover.[22] A recent Iowa case provides valuable insight as to the court's disposition in regard to the guest statute itself. "Whether the result shows an enlightened interpretation of our guest statute law or what to the writer is a continuing erosion of its purpose, depends on the premise from which the predicament of an injured party is viewed."[23] This statement is clearly incongruous to the requirement of a tangible and definite benefit flowing from occupant to owner or operator.

As stated above, the Iowa Supreme Court held that the benefit which accrued to the defendant in *Jackson* could not be found to be sufficient under the definite and tangible rule because the benefit was indirect. The Supreme Court of Colorado was faced with a case under that state's guest statute which involved benefit to a party other than the operator but reached a result

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18 Bodaken v. Logan, 254 Iowa 230, 117 N.W.2d 470 (1962).

19 Zwanziger v. Chicago & N.W. Ry., 259 Iowa 14, 141 N.W.2d 568 (1966). *See also* Stenberg v. Buckley, 245 Iowa 622, 61 N.W.2d 452 (1954).

20 Sieren v. Stoutner, 162 N.W.2d 396, 400 (Iowa 1968).

21 "The mere fact that both parties have a common interest and purpose in the trip is not sufficient to render the benefit derived compensation . . . . The benefit derived must be material and tangible, and must flow from, and depend upon, the transportation provided . . . ." Nielsen v. Kohlstedt, 254 Iowa 470, 475, 117 N.W.2d 900, 903 (1962), quoting from 60 C.J.S. *Motor Vehicles* § 399(5) (1936).

22 This is assuming, *arguendo*, that no benefit in fact existed. However, it does not seem logical to conclude, *as a matter of law*, that defendant derived no benefit. Plaintiff was the only person present who knew where her husband could be located, therefore it is unquestionable that defendant would have saved time in locating him by plaintiff's presence in the vehicle. Under the liberal interpretations of benefits in other cases, it seems that the time saved could qualify as a definite and tangible benefit.

23 Sieren v. Stoutner, 162 N.W.2d 396, 397 (Iowa 1968).

converse to that in the principal case under the rationale that the relationship of "guest" and "host" does not exist between the operator of an automobile and an occupant, within the meaning of the guest statute, if the guest is being carried for the benefit or in the business of the operator *or for the benefit or in the business of the operator's principal.*[24] Under Iowa law, as well as nearly all other jurisdictions, an agent acting gratuitously owes the same duty as any other agent.[25] Therefore, this agency theory could logically be applied to the principal case, resulting in liability to plaintiff. This theory is another confusing element related to consistent application of the rule requiring a tangible and definite benefit to the owner or operator of the vehicle.

At least one writer has suggested that the tendency to liberalize exemptions under the guest statute should be continued and more fully developed and defined. He further attempts to provide a novel statement of what should be necessary to prove occupancy outside the guest statute:

> It might be concluded that the passenger should be able to avoid the guest statute by establishing that his presence advanced an independent *nonsocial purpose* for which the journey was made. This would include any nonsocial joint undertaking by the passenger and the owner or driver . . . . While the Iowa court has never adopted or expressly recognized this rule, it is generally consistent with the court's decisions and interpretations of the statutory policy.[26]

Whether this "nonsocial purpose" test would be more consistent than the present one is, however, a matter of conjecture. A test phrased in those terms would seem to prevent the court from denying recovery merely because it interpreted a benefit as indirect.

As the court has stated in response to a plaintiff's impassioned plea against the purpose and existence of the guest statute itself, "regardless of the legislative objects, good or bad, the so-called Guest Statute does appear in

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24 Dobbs v. Sugioka, 117 Colo. 218, 220, 185 P.2d 784, 786 (1947), quoting from Hart v. Hogan, 173 Wash. 598, 601, 24 P.2d 99, 102 (1933). An enlightening statement of the purpose of the guest statute as interpreted by the Colorado Supreme Court is found in *Dobbs*. "Clearly they were enacted to prevent recovery by those who had no moral right to recompense, those carried for their own convenience, for their own business or pleasure, those invited by the operator as a mere generous gesture, 'hitch-hikers' and 'bums' who sought to make profit out of soft-hearted and unfortunate motorists." 117 Colo. at 219, 185 P.2d at 785. Under this statement of purpose it can easily be seen why Colorado would tend to employ a liberal interpretation of what is a benefit sufficient to take the case out of the guest statute.

25 Merrill v. Sax, 141 Iowa 386, 394, 118 N.W. 484, 487 (1908). The analogy being, of course, that Weston's request and defendant's compliance had in effect created a principal-agent relationship between them.

26 Note, *Problems of Recovery Under the Iowa Guest Statute*, 47 IOWA L. REV. 1049, 1054 (1962). It is not clear that this test would necessarily be an aid to clarity and predictability of recovery under the statute because the burden of proof to show the nonsocial purpose would probably be on the person seeking to recover, much as under the present interpretation, where the burden is upon the litigant who claims that the guest statute is not applicable to prove his status was other than a guest. *See* Livingston v. Schreckengost, 255 Iowa 1102, 1104, 125 N.W.2d 126, 127 (1963). Also, evidentiary problems which now trouble the court and jury, such as lack of witnesses, would not be made any easier to deal with.

nearly all State Codes today. This is something that can only be corrected by the legislature. The legislature at least is in a position to do something about it. We are not."[27] A bill to abolish the guest statute was in fact introduced and was the topic of significant discussion in the Sixty-first Iowa General Assembly,[28] but at present the statute remains in the code and the Iowa courts are bound thereby. The trend toward liberal interpretation of what is a benefit to the operator sufficient to find the passenger outside the guest statute is in line with a well-recognized and oft-cited statement regarding the guest statute. "In determining who are 'guests' within the meaning of automobile guest statutes, the enactments should not be extended beyond the correction of the evils which induced their enactment."[29]

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Criminal Law—IN ACTIONS FOR FORGERY OR UTTERING A FORGED INSTRUMENT AN INDIGENT DEFENDANT HAS THE RIGHT TO STATE FUNDS FOR THE PURPOSE OF OBTAINING AN INDEPENDENT EXPERT HANDWRITING ANALYSIS.—*State v. Hancock* (Iowa 1969).

Defendant, an indigent, was charged with forgery. A Questioned Document Examiner from the Iowa Bureau of Criminal Investigation compared a sample of defendant's handwriting with the handwriting on the instrument in question and concluded that the author of both writings was the same person. Without questioning the reliability of the state's expert, defendant, through her court-appointed attorney, applied to the trial court for authorization of funds to obtain an independent handwriting analysis for comparison purposes. The application was denied. Defendant was ultimately found guilty of uttering a forged instrument. On appeal to the Supreme Court of Iowa, *held*, reversed and remanded. In actions for forgery or uttering a forged instrument, an indigent defendant has the right to state funds for the purpose of obtaining independent expert handwriting analysis.[1] *State v. Hancock*, — Iowa —, 164 N.W.2d 330 (1969).

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27 Hessler v. Ford, 255 Iowa 1055, 1059, 125 N.W.2d 132, 134 (1963).
28 H.F. 3, 61st Iowa G.A. (1965).
29 D. BLASHFIELD, AUTOMOBILE LAW & PRACTICE § 2292 (1948).

1 Although the opinion dealt with other issues, the court felt that "[t]he trial court committed reversible error in denying defendant's application." State v. Hancock, 164 N.W.2d 330, 333 (Iowa 1969).