Washington Law Review

Volume 21 | Issue 2

4-1-1946

Torts—"Guest" Statute—Share-the-Ride; Criminal Law—Burglary—What Constitutes Breaking

S. W. P.

B. V. L.

RECENT CASES

TORTS—'GUEST" STATUTE—SHARE-THE-RIDE *P, D,* and three others entered an oral agreement to share their cars, each alternating daily in driving his car from Yakima, where they lived, to Hanford, where they worked carrying the other four as passengers It was further agreed that if for any reason one party could not take his car, another party would substitute and the missed ride would be made up There was no obligation to ride if inconvenient *P* brought an action for personal injuries sustained while *D* was driving his car, and *D* invoked REM REV STAT SUPP (1937) § 6360-121, the Washington "guest" statute *Held: P* was allowed to recover The driver was found guilty of negligence, and since he was not transporting *P* "without payment for such transportation" as contemplated by the statute, the statute was no bar to recovery *Coerver v Haab* 123 Wn Dec 447, 161 P (2d) 194 (1945)

The share-the-ride question has not previously come before our court Each member contributed a share in the ride, and the difficulty is determining what constitutes 'payment" as contemplated by the statute The payment necessary to prevent a recovery must be: (1) an actual or potential benefit in a material or business sense resulting or to result to the owner, and (2) transportation motivated by the expectation of such benefit *Syverson v Berg,* 194 Wash 86, 77 P (2d) 382 (1938), *Fuller v Tucker,* 4 Wn. (2d) 426, 103 P (2d) 1086 (1940) It is not necessary that there be a contract in advance, or that the payment be in money, for a paid-passenger relation to arise *Scholz v Leuer,* 7 Wn (2d) 76, 109 P (2d) 294 (1941) A return of favors such as paying for meals, gas, or providing cigarettes does not necessarily destroy the relationship of host and guest *Potter v Jaurez,* 189 Wash 476, 481, 66 P (2d) 290 (1937) It would seem that a contract in advance would make it easier to find a ride motivated by the expectation of material or business benefit though the benefit be small Whether or not the benefit was an exchange of courtesies or a material or business benefit is the difficult problem in these small share-contribution cases, of which the share-the-ride situation is one In the instant case, the court held that the share-the-ride plan was a benefit to the driver, and had all of the elements of a contract in advance For complete coverage of the "guest" statute problem see Comment by Professor John W Richards of the Washington Law School in (1940) 15 WASH L REV 87

The courts in other jurisdictions, where this share-the-ride question has arisen, seem to distinguish between a situation where several passengers ride continuously with one driver and pay a nominal fee to cover part or all of the expenses and a situation where several drivers rotate taking their cars It is usually held in the former situation that the payment of this nominal fee makes riders passengers for hire *Johnson v Mack,* 263 Mich 10, 248 N W 534 (1933), *Miller v Fairley,* 141 Ohio St 327 48 N.E (2d) 217 (1943) Where there was a rotation of cars as in the instant case it was held that the passenger was a guest *Everett v Burg,* 301 Mich 734, 4 N W (2d) 63 (1942) (a mere exchange of amenities); *Fisher v Johnson,* 238 Ill App 25 (1925) (car rotation did not create relation of joint enterprise); *contra, Huebotter v Follett,* —— Cal (2d)——, 167 P (2d) 193 (1946) (reducing cost of transportation to each was "compensation')

S W P

CRIMINAL LAW—BURGLARY—WHAT CONSTITUTES BREAKING *D* was convicted of second-degree burglary upon an information alleging that he did, " with intent to commit some crime therein, break and enter a room, to-wit: Room 621 in the Davenport Hotel building in the City of Spokane said room then and there being a place where property was kept for use and deposit " *D* contends there was a failure of proof as to the element of breaking within the meaning of the burglary statute, REM REV STAT § 2579 The evidence indicated that the door was ajar only three or four inches and that it was necessary for him to open it further to effect his entry *Held:* The gist of burglarious breaking is the application of force to remove some obstacle to entry, and the amount of force employed is not material The application of force to push further open an already partly open door is sufficient breaking to constitute burglary if the other essential elements of the offense are present *State v Rosencans*, 124 Wash Dec 743, 167 P (2d) 170 (1946)

In so far as this case defines burglarious breaking it is a case of first impression in the Washington court

At common law an actual breaking was required This was also the earlier view in the American courts *Com v Steward*, 7 Dane, Abr (Mass) 136 (1789) "Blackstone says that 'if a person leaves his doors and windows open it is his own folly and negligence' Book 4, 226 This is the same as saying that the law will not undertake to protect by its penalties a man who is not diligent to protect himself But this is not the rule in other branches of the criminal law A man may recklessly and unnecessarily pass through a group of men excited to the point of violence, but if he is assaulted the penalty will follow A man may issue a check so carelessly drawn as to afford an attractive opportunity for alteration, but the man who makes the alterations will be guilty of forgery " *State v LaPoint*, 87 Vt 115, 88 Atl 523 (1913)

There is a tendency on the part of a number of courts to depart from the strict construction of the common law, which required an actual breaking They have adopted the more reasonable and logical rule holding that but the slightest force is necessary to constitute a breaking *Goins v State*, 90 Ohio St 176, L R A 1915 D, 241, 107 N E 335 (1914); *State v Sorenson*, 157 Iowa 534, 138 N W 411 (1912) In the *Goins* case, pushing open a door partly open was held to constitute "forcible breaking" within the terms of the Ohio statute The Washington statute requires only "breaking"

Hence the Washington court, in the first time that the question has been presented to it, has indicated that it has departed from the common law rule and the earlier American rule

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