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Torts

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Torts

Torts; equestrian standard of care

Vehicle Code §21805 (amended).
SB 422 (Lagomarsino); STATS 1973, Ch 495

Vehicle Code Section 21805 provides that the driver of a vehicle must yield the right of way to any horseback rider crossing a roadway at a designated equestrian crossing. Section 21759 requires the driver of a vehicle to slow down or stop as may be necessary when approaching a horse and rider. Section 21805 has been amended to provide that a horseback rider is not relieved of his duty to use due care for his own protection even though he has the right of way over approaching vehicles at a designated equestrian crossing. Section 21805 has also been amended to prohibit the equestrian from suddenly leaving a curb or other place of safety and proceeding into the path of a vehicle which is so close as to constitute an immediate hazard.

See Generally:

1) CAL. VEHICLE CODE §21050 (horseback riders subject to all rights and duties applicable to drivers).
2) 60A C.J.S., *Motor Vehicles* §§350, 362, 363, 416, 417 (1969).

Torts; guest statutes repealed

Harbors and Navigation Code §661.1 (repealed); Public Utilities Code §21406 (repealed); §21404 (amended); Vehicle Code §17158 (amended).
AB 1094 (Z'berg); STATS 1973, Ch 803

Chapter 803 has been enacted to eliminate the provisions of California law which deny a guest in an automobile, boat, or airplane the right to recover from the operator for negligently inflicted injuries. Prior to amendment, Section 17158 of the Vehicle Code provided that a person who accepted a ride in any vehicle upon a highway without having paid compensation for such ride could not recover civil damages against the driver or other person legally liable, unless the injury or death resulted from the intoxication or willful misconduct of the driver. Harbors and Navigation Code Section 661.1, which had a similar pro-

vision applying to guests in boats, and Public Utilities Code Section 21406, applying to guests in airplanes, have also been repealed.

COMMENT

The enactment of Chapter 803 is in response to *Brown v. Merlo* [8 Cal. 3d 85, 506 P.2d 212, 106 Cal. Rptr. 388 (1973)], in which the California Supreme Court held that Section 17158 of the Vehicle Code, as applied to a negligently injured guest, violated the guarantees of the California and United States Constitutions. The court stated that the statute distinguished between the rights of paying and non-paying riders, and between different categories of guests (guests injured while in a vehicle as opposed to outside the vehicle, during a ride as opposed to before or after the ride, and upon a public highway as opposed to private property), and stated that such classifications could only be valid if they bore a rational relationship to a legitimate state interest. After an exhaustive analysis the court concluded that neither the protection of the hospitality of generous drivers nor the elimination of collusive lawsuits provided a rational basis for the classifications. In rejecting the potentially collusive lawsuit argument, the court analogized to three cases dealing with intrafamilial immunities similar to the immunity granted a host-driver [8 Cal. 3d at 874, 506 P.2d at 225, 106 Cal. Rptr. at 401]. In *Emery v. Emery* [45 Cal. 2d 421, 289 P.2d 218 (1955)] two sisters brought suit for injuries resulting from their brother's negligent operation of an automobile. The defendant, represented by his insurer, sought total immunity based upon the long-standing doctrine of intrafamily tort immunity, claiming the immunity was justified because of potential fraudulent lawsuits between family members. The court in *Emery* stated that it should be cognizant of fraud and collusion in each particular case, but the fact that there was greater opportunity for fraud in one class of cases than in another did not warrant the prohibition of a cause of action to all cases of that class [45 Cal. 2d at 431, 289 P.2d at 224]. In *Klein v. Klein* [58 Cal. 2d 692, 695-96, 376 P.2d 70, 72-73, 26 Cal. Rptr. 102, 104-05 (1962)], the same reasoning was used to reject the claim that the possibility of collusive lawsuits between a husband and wife served as sufficient justification for barring interspousal negligence actions. *Gibson v. Gibson* [3 Cal. 3d 914, 919-20, 479 P.2d 648, 651-52, 92 Cal. Rptr. 288, 291-92 (1971)] rejected the parallel contention that the broad parental immunity doctrine, which barred all negligence actions by children against their

parents, could be sustained on a collusion prevention rationale. The court in *Brown* concluded that these three cases established that it was unreasonable to eliminate actions of an entire class of persons simply because some undefined portion of the class may file fraudulent lawsuits. The court also stated that the guest-passenger classification scheme was less defensible and less rational than any of the familial classifications invalidated as it: (1) allowed suits by some who had no less reason to collude than those barred from bringing a suit (*e.g.*, close friends in car pools); and (2) eliminates causes of action of many individuals as to whom there is no reasonable likelihood of collusion (*e.g.*, hitchhikers) [8 Cal. 3d at 875, 506 P.2d at 226, 106 Cal. Rptr. at 402].

The court found the decision in *Rowland v. Christian* [69 Cal. 2d 108, 443 P.2d 561, 70 Cal. Rptr. 97 (1968)] applicable in rejecting the argument that guest statutes were justified because they sought to protect generous hosts from a suit from ungrateful guests. In *Rowland* the common-law distinctions between trespassers, licensees, and invitees on the property of another were discarded for normal negligence principles. In analogizing this to the guest-passenger distinction, the court held that just as it is unreasonable to lower the standard of care owed to a visitor on private property because such visitor is only a "social guest" rather than a "paying invitee," it is unreasonable to single out automobile guests and expose them to greater dangers from negligence than paying passengers [8 Cal. 3d at 870, 506 P.2d at 222, 106 Cal. Rptr. at 398]. The notion of the ungrateful guest is also disclaimed by the almost universal presence of liability insurance. The court found no notion of ingratitude in suing a host's insurer [8 Cal. 3d at 870, 506 P.2d at 222, 106 Cal. Rptr. at 398].

The court in *Brown* also distinguished *Silver v. Silver* [280 U.S. 117 (1929)], in which the United States Supreme Court had upheld the constitutionality of a Connecticut automobile guest statute. In *Silver* the plaintiff had attacked the statute solely on the ground that the distinction drawn between automobile guests and guests in other conveyances was impermissible. The Supreme Court did not consider the reasonableness of the two additional statutory distinctions—between guests and paying passengers and between different categories of guests—which were attacked in *Brown* [8 Cal. 3d at 863-64 n.4, 506 P.2d at 217-18 n.4, 106 Cal. Rptr. at 393-94 n.4]. The California Supreme Court also distinguished the two cases factually, as *Silver* was not set against a background of almost universal liability

insurance and decisions such as *Rowland* [8 Cal. 3d at 863-64 n.4, 506 P.2d at 217-18 n.4, 106 Cal. Rptr. at 393-94 n.4]. The court did not specifically rule on the statutes pertaining to guests in airplanes or boats as they were not at issue, but logically the court would also find them unconstitutional if confronted with them.

See Generally:

1) Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).
2) 2 WITKIN, SUMMARY OF CALIFORNIA LAW, *Guest in Motor Vehicle* §353 *et seq.* (1960).
3) Lasher, *Hard Laws Make Bad Cases—Lots of Them (The California Guest Statute)*, 9 SANTA CLARA LAW. 1 (1969).