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Compensation and the California Guest Statute: Updating the Tangible Benefit and Motivation Tests

By Daniel J. Kelly*

SINCE 1929 an automobile host in California has been partially protected from liability to his injured guest by the California Guest Statute.¹ In summary, this statute has the effect of reducing the common law duty of care which the host owes to his guest. Unless the rider in the vehicle has paid compensation for the ride, there may only be recovery for death or injury which results from the driver's intoxication or willful misconduct.² The primary policy underlying the statute is to prevent recovery for ordinary negligence by one who has accepted the hospitality of the driver. A secondary policy is to prevent collusive suits (*i.e.*, the driver admits negligence to assure compensation for his victim).³

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1. CAL. VEH. CODE § 17158: "No person riding in or occupying a vehicle owned by him and driven by another person with his permission and no person who as a guest accepts a ride in any vehicle upon a highway without giving compensation for such ride, nor any other person, has any right of action for civil damages against the driver of the vehicle or against any other person legally liable for the conduct of the driver on account of personal injury to or the death of the owner or guest during the ride, unless the plaintiff in any such action establishes that the injury or death proximately resulted from the intoxication or willful misconduct of the driver."

2. As originally enacted, the statute also permitted recovery in cases of gross negligence. Cal. Stat. 1929, ch. 787, § 1, at 1580. In the 1931 amendment to the statute the gross negligence language was eliminated. Cal. Stat. 1931, ch. 812, § 1, at 1693. 2 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Torts* § 353, at 1555 (1960).

3. See, *e.g.*, *Morrison v. Townley*, 269 Cal. App. 2d 863, 75 Cal. Rptr. 274 (1969); *Sand v. Mahnan*, 248 Cal. App. 2d 679, 56 Cal. Rptr. 691 (1967); *Stephan v. Proctor*, 235 Cal. App. 2d 228, 45 Cal. Rptr. 124 (1965). It has also been suggested that the true motivation of the statute is to benefit liability insurance companies. Comment, *Statutes Releasing Owner or Driver from Liability for Negligence Toward Guest*, 18 CALIF. L. REV. 184, 194 (1930). The insurance industry has long feared that host-guest litigation could only lead to its financial exsanguination in the absence of a guest statute. It is difficult to discover an empirical—or rational—basis for that fear,

While both courts and legal commentators have directly and indirectly questioned the constitutionality of the Guest Act,⁴ it is nevertheless still the law in California. However, the various elements of this comparatively succinct statute have undergone a number of judicial interpretations and constructions. In the 1967 decision of *O'Donnell v. Mullaney*,^{4a} for example, the California Supreme Court held that the statute protects the driver from liability only when the accident has occurred on a public highway. The host owes his guest a duty of reasonable care when they are traveling on a *private* road. In *Williams v. Carr*,⁵ decided the following year, the court held that a guest's contributory negligence was not a bar to recovery. Rather, the defendant, guilty of willful misconduct, must prove that the plaintiff was guilty of "contributory willful misconduct"—*i.e.*, conduct indicating that the guest had acted with a willful disregard for his own safety.

Since compensation paid by the passenger renders inoperative the restrictions of the Guest Act, host-guest litigation often involves a determination of whether the rider is a passenger for compensation. The word "compensation" has produced a plethora of appellate decisions seeking to define its meaning. Recently the California Supreme Court has sought to clarify the distinction between a passenger and a gratuitous guest. The purpose of this article is to examine the judicial interpretations of the compensation provision of the California Guest Act.

The Tangible Benefit Rule

Compensation, which makes the rider a passenger rather than a guest, may consist of either a present or prospective tangible benefit to the driver or his principal. Whether present or prospective, the benefit must be a tangible benefit and not an incidental or customary

since 20 states do not have guest statutes. AM. JUR. 2D *Desk Book, Doc. No. 123* (1962).

4. See, *e.g.*, *Olsen v. Clifton*, 273 Cal. App. 2d 359, 370, 78 Cal. Rptr. 296, 302 (1969); Lascher, *Hard Laws Make Bad Cases—Lots of Them (The California Guest Statute)*, 9 SANTA CLARA LAW. 1 (1968), wherein the author argues that the "guest" classification is irrational, serves no useful purpose, and thus is violative of the equal protection clause of the United States Constitution. In addition, various legislative attempts (all unsuccessful) have been made to abolish California's guest statute. The latest, Senate Bill 14, 1970 Reg. Sess., was introduced at the last legislative session by State Senator John Nejedly.

4a. 66 Cal. 2d 994, 429 P.2d 160, 59 Cal. Rptr. 840 (1967).

5. 68 Cal. 2d 579, 440 P.2d 505, 68 Cal. Rptr. 305 (1968).

courtesy of the road. Thus, the mere companionship of the rider does not constitute a tangible benefit.⁶ Moreover, compensation does not result from the rider's extension of a courtesy, such as paying a bridge toll during a trip.⁷

A. Present Benefits

Obviously, a money payment suffices as compensation,⁸ even if made by someone on behalf of the passenger.⁹ Benefits accruing to the driver in a form other than cash have also been held to be compensation. For example, where the evidence shows that the rider paid for his ride with reciprocated rides then the rider is, as a matter of law, a passenger.¹⁰ Similarly, compensation has been found where the passenger has accompanied the driver to assist in the following matters: driving,¹¹ loading and unloading,¹² route selection,¹³ selling,¹⁴ getting a job¹⁵ and even gift selection.¹⁶ In all of the above cases the passenger has given compensation by assisting the driver in arriving at his destination or fulfilling the object of his journey. The tangible benefit rule is not satisfied if the assistance rendered is volunteered by the rider as a courtesy during the ride; the driver must have requested or contemplated the proffered benefit.

B. Prospective Benefits

Typically, compensation in the form of a prospective benefit has been rendered when a prospective customer rides with the driver who

6. *Martinez v. Southern Pac. Co.*, 45 Cal. 2d 244, 288 P.2d 868 (1955) (dictum); *Whitechat v. Guyette*, 19 Cal. 2d 428, 122 P.2d 47 (1942) (dictum); *Christ v. O'Neil*, 28 Cal. App. 2d 651, 83 P.2d 96 (1938).

7. *Whitechat v. Guyette*, 19 Cal. 2d 428, 122 P.2d 47 (1942); *McCann v. Hoffman*, 9 Cal. 2d 279, 70 P.2d 909 (1937).

8. *E.g.*, *Whitechat v. Guyette*, 19 Cal. 2d 428, 432, 122 P.2d 47, 50 (1942).

9. *Smith v. Fall River Joint Union High School Dist.*, 118 Cal. App. 673, 5 P.2d 930 (1931).

10. *Huebottter v. Follett*, 27 Cal. 2d 765, 167 P.2d 193 (1946); *Peccolo v. Los Angeles*, 8 Cal. 2d 532, 66 P.2d 651 (1937). *But see Phillips v. Harper*, 60 Cal. App. 2d 298, 140 P.2d 686 (1943).

11. *Druzanich v. Criley*, 19 Cal. 2d 439, 122 P.2d 53 (1942).

12. *Fedler v. Hygelund*, 106 Cal. App. 2d 480, 235 P.2d 247 (1951); *Christiana v. Rattaro*, 81 Cal. App. 2d 597, 184 P.2d 682 (1947).

13. *Lerma v. Flores*, 16 Cal. App. 2d 128, 60 P.2d 546 (1936).

14. *Haney v. Takakura*, 2 Cal. App. 2d 1, 37 P.2d 170 (1934).

15. *Fachadio v. Krovitz*, 62 Cal. App. 2d 362, 144 P.2d 646 (1944).

16. *Kruzic v. Sanders*, 23 Cal. 2d 237, 143 P.2d 704 (1943). *But see Lundell v. Hackbarth*, 226 Cal. App. 2d 609, 38 Cal. Rptr. 137 (1964) wherein it was held that rendering advice on olive selection was so trivial an act that the jury was justified in finding that it was not compensation for the ride.

is attempting to obtain his passenger's business. Thus, the prospective automobile buyer who is given a demonstration ride with the salesman is not a guest receiving a ride without compensation.¹⁷ The same rationale applies when the host provides transportation to the potential customer to facilitate the inspection of real estate¹⁸ or the discussion of some other business transaction.¹⁹ It is not necessary for the host to realize an immediate profit as a result of the transaction in question. The mere hope of a future profit is a sufficient prospective tangible benefit.²⁰

The intent of the parties with regard to the ride is crucial in establishing whether there is a tangible benefit flowing from rider to driver. Thus, the intent with which the ride is offered and accepted (either as expressed or disclosed by acts) must be considered and evaluated.²¹ A determination of intent obviously involves the evaluation of subjective elements, for a benefit that is incidental to one man may be important to another. It is thus impossible to generalize about the decisional law in this area. A jury's determination on this question should rarely be disturbed since it is truly a factual question that can only be decided in light of all of the evidence presented.

C. Share-the-Expense Rides

An often litigated situation is that of the motor trip or excursion where the driver and rider agree to share the expenses.²² The law on this question has changed in the past 20 years. Under the former California law as exemplified by *McCann v. Hoffman*,²³ the determination of guest or passenger status was dependent upon the purpose of the trip. If the trip were for a business or nonsocial purpose, the agree-

17. *Riley v. Bekeley Motors, Inc.*, 1 Cal. App. 2d 217, 36 P.2d 398 (1934); *Crawford v. Foster*, 110 Cal. App. 81, 293 P. 841 (1930). See also *Follansbee v. Benzenberg*, 122 Cal. App. 2d 466, 265 P.2d 183 (1954).

18. *Parrett v. Carothers*, 11 Cal. App. 2d 222, 53 P.2d 1023 (1936); *Sullivan v. Richardson*, 119 Cal. App. 367, 6 P.2d 567 (1931).

19. *Piercy v. Zeiss*, 8 Cal. App. 2d 595, 47 P.2d 818 (1935) (insurance agent drove plaintiff to her home after she declined to purchase a policy).

20. *Id.*

21. *Kruzic v. Sanders*, 23 Cal. 2d 237, 143 P.2d 704 (1943).

22. See generally Comment, *Applicability of the California Guest Statute to Share-the-Expense Motor Trips*, 43 CALIF. L. REV. 853 (1955); Annot., 10 A.L.R.3d 1097 (1966).

23. 9 Cal. 2d 279, 70 P.2d 909 (1937). *McCann* involved two couples who shared expenses (based on an understanding from previous excursions) on a pleasure trip. On appeal, it was held that the sharing of the cost of gasoline and oil on a pleasure trip was merely the exchange of social amenities.

ment to share expenses was held to be compensation; if the trip were merely a social outing, the share-the-expense agreement was an incidental or common courtesy of the road.²⁴

In *Whitmore v. French*²⁵ this arbitrary rule or distinction was seemingly put to rest. *Whitmore* involved close friends who had been vacationing in the western United States. During their trip each agreed to contribute equally to a common fund for gasoline, oil, meals, lodging and sight-seeing. The court held that the purpose of the trip was irrelevant in determining the applicability of the Guest Statute:

[I]t has been held that the sharing of expenses does not destroy the host and guest relationship if nothing more is involved than the exchange of social amenities and reciprocal hospitality. [Citations omitted.] Where, however, the driver receives a tangible benefit, monetary or otherwise, which is a motivating influence for furnishing the transportation, the rider is a passenger and the driver is liable for ordinary negligence. [Citations omitted.] This is, of course, true whether the trip is for the joint pleasure of participants or is of a non-social nature. [Citations omitted.]²⁶

Six years later, in *Ray v. Hanisch*,²⁷ the court of appeal held that no consideration existed in a share-the-expense prearrangement, although the trip would have not been made if there had been no agreement.²⁸ Somewhat perplexing, the *Ray* court cited the *Whitmore* case to support its holding. As one commentator has aptly put it, "[I]t seems that where the Guest Act is concerned . . . the supreme court often seems to gain grudging acceptance—at best—from the intermediate appellate court."²⁹

To further confuse matters, *Standard California Jury Instructions*, in defining the guest-passenger distinction, did not follow the mandate of the *Whitmore* decision; rather, the purpose of the trip was deemed controlling.³⁰

24. *Id.*

25. 37 Cal. 2d 744, 235 P.2d 3 (1951).

26. *Id.* at 746, 235 P.2d at 5 (1951).

27. 147 Cal. App. 2d 742, 306 P.2d 30 (1957).

28. *Id.* at 750, 306 P.2d at 35.

29. Lascher, *Hard Laws Make Bad Cases—Lots of Them (The California Guest Statute)*, 9 SANTA CLARA LAW. 1, 26 (1968).

30. 2 BAJI No. 209 (4th ed. 1956) provided, *inter alia*: "However, the mere sharing of expenses of a motor trip, such as for gasoline and oil, does not, in and of itself, cause the rider who pays part of such expense to be a passenger, rather than a guest. If such a contribution is the motivating influence for furnishing the transportation, if the arrangement has a character similar to that of a business agreement, then the payment is compensation for the ride; and one who thus rides and pays or agrees to pay is a passenger; but if the purpose of the trip is merely the joint pleasure of the participants, if that objective is what led to the trip as a social occasion, then the shar-

During the 1969 term the California Supreme Court clarified this area of host-guest law. In *Nevarez v. Carrasco*³¹ the plaintiff had promised to "make it right" with the defendant if the latter drove him from Watsonville to San Mateo, California. He further agreed to supply gas for the trip and testified at the trial that he did buy gas before the accident occurred. The trial court instructed the jury using the "purpose of the trip" distinction between guest and passenger. On appeal, the supreme court held that it is irrelevant whether the trip is for the joint pleasure of the participants or is of a nonsocial nature. Reiterating its *Whitmore* decision, the court stated:

A rider does not accept the hospitality of the driver when the rider "pays his own way" and the driver furnishes the transportation because of the circumstance. It is the element of compensation and not the purpose of the trip which is the relevant criterion in ascertaining whether the rider is merely accepting the hospitality of the driver.³²

Thus, the court held that the trial court's instruction on the "purpose of the trip" distinction was prejudicial error.

The supreme court's reaffirmation of, and the lower court's adherence to,³³ the rule enunciated in the *Whitmore* decision should provide both finality and rationality to share-the-expense litigation. The recent court of appeal decision in *Joslyn v. Callison*^{33a} suggests that both trial and intermediate appellate courts will now follow the supreme court's lead. In *Joslyn* the court reversed a directed verdict for the defendant, holding that "[t]he mandate of *Nevarez* . . . seems clear: Once it is established that compensation flows from the rider to the driver—a sharing of expenses—the rider's status presents a jury question."^{33b} This review of the past irreconcilable (and disturbing) decisions on this question compels the conclusion that finality and rationality were both long overdue.³⁴

ing of expenses is merely incidental, and one who thus rides with the driver, although sharing in the expense, is a guest."

31. 1 Cal. 3d 518, 462 P.2d 577, 82 Cal. Rptr. 721 (1969).

32. *Id.* at 522, 462 P.2d at 480, 82 Cal. Rptr. at 723.

33. In *Nevarez* the supreme court clearly implied that the lower courts had not adhered to the *Whitmore* rule. Citing that case, the court stated: "Thus, as long ago as 1951, we resolved the question presently before us." *Nevarez v. Carrasco*, 1 Cal. 3d 518, 522, 462 P.2d 577, 580, 82 Cal. Rptr. 721, 723 (1969).

33a. 12 Cal. App. 3d 788, 90 Cal. Rptr. 884 (1970).

33b. *Id.* at 794, 90 Cal. Rptr. at 887.

34. Following its *Nevarez* decision, the California Supreme Court again commented on the erroneous "purpose of the trip" test in *Bozanich v. Kenney*, 3 Cal. 3d 567, 477 P.2d 142, 91 Cal. Rptr. 286 (1970): "The trial court also erred in instructing the jury essentially in the form of BAJI (4th ed.) 209, which was disapproved in part in *Nevarez v. Carrasco*. . . . We there pointed out that part of the instruction erroneously implies that the purpose of 'joint pleasure' would render the plaintiff a guest

The Motivation Test

The law has long required that there be a connection between the compensation and the ride: the compensation must have played some role in inducing the driver to furnish the transportation. In *McCann v. Hoffman*³⁵ the California Supreme Court held that the tangible benefit was compensation only if it was *the* motivating influence. Fourteen years later the same court held in *Whitmore v. French*³⁶ that the tangible benefit is compensation if it is *a* motivating influence. This inconsistency of decisions was particularly brought to light when, only 11 months after the *Whitmore* decision, the court in dictum again used the wording of the *McCann* decision but cited *Whitmore* as authority!³⁷ In 1957 the court in *Gillespie v. Rawlings*³⁸ judicially recognized the variance of its decisions and attempted a clarification with the following language:

[C]ases which use the phrase "a motivating influence" and those which use the phrase "the motivating influence" do not, because of this difference in phraseology, state different principles. The thought conveyed by both groups of cases is that the tangible benefit, not mere pleasure, kindness, or friendship alone, must be the principle inducement for the ride to constitute compensation.³⁹

Thereafter, standardized jury instructions in California spoke of compensation as "[a] [the] chief inducement,"⁴⁰ "[a] [the] motivating influence"⁴¹ or "[a] [the] principle inducement"⁴² for the ride. In *Nevarez v. Carrasco*⁴³ the California Supreme Court reconsidered and clarified the matter with the following footnote language:

Some cases decided since *Whitmore* may have contributed to an erosion of its interpretation of the guest statute. In both *Gillespie v. Rawlings* (1957), 49 Cal. 2d 359, 364-365 [317 P.2d 601], and *Baker v. Novak* (1965), 144 Cal. App. 2d 514, 519-520 [301 P.2d 257], it is suggested that there is no significant difference be-

regardless of the importance of any consideration paid to the defendant." *Id.* at 572, 477 P.2d at 145, 91 Cal. Rptr. at 289.

35. 9 Cal. 2d 279, 70 P.2d 909 (1937).

36. 37 Cal. 2d 744, 235 P.2d 3 (1951).

37. *Clifford v. Ruocco*, 39 Cal. 2d 327, 328 & n.1, 246 P.2d 651, 652 & n.1 (1952).

In light of the inconsistency between them, it is interesting to note that Chief Justice Gibson authored both the *Whitmore* and *Clifford* decisions.

38. 49 Cal. 2d 359, 317 P.2d 601 (1957).

39. *Id.* at 364, 317 P.2d at 604.

40. 2 BAJI No. 209 (4th ed. 1956). Double brackets in original indicate alternative wording.

41. *Id.*

42. BAJI No. 5.65 (5th ed. 1969). Double brackets in original indicate alternative wording.

43. 1 Cal. 3d 518, 462 P.2d 577, 82 Cal. Rptr. 721 (1969).

tween an instruction requiring that compensation be *a* motivating influence for furnishing the transportation and one which requires that compensation be *the* motivating influence. *Whitmore* refers to "a motivating influence" and thus implicitly recognized that a number of reasons may underlie a driver's decision to provide transportation and the receipt of compensation need not be the sole reason. Because requiring that compensation be *the* motivating influence may suggest the contrary interpretation, we prefer the *Whitmore* language.⁴⁴

Less than 1 year later the supreme court reinforced its *Nevarez* decision in *Bozanich v. Kenney*.⁴⁵ It is probable that the supreme court felt that if it were to clarify this area it would have to do it in the body of a decision rather than in a footnote. Whatever the reason, the *Bozanich* decision squarely held that it was error to instruct that the tangible benefit must be the chief or principal inducement.⁴⁶ Rather, it need only be *a* motivating influence.

While the conflict in "share-the-expense" cases resulted from the refusal of the lower courts to follow the supreme court's lead, the problems in the "motivation test" cases resulted from the supreme court's failure to state a positive workable rule. In *Nevarez* and *Bozanich* the court remedied its past failures.

Conclusion

The tangible benefit and motivation tests now enunciated by the recent decisions of the supreme court will have the effect of narrowing the application of the California Guest Statute. This result is consistent with the long recognized view that the Guest Statute, as an exception in derogation of the common law, must be strictly construed.⁴⁷ Critics will no doubt accuse the supreme court of attempts to interpret away the statute or of exhibiting an over-solicitous penchant for finding compensation.⁴⁸ Yet the fact remains that the decisions are merely re-

44. *Id.* at 522 & n.3, 462 P.2d at 580 & n.3, 82 Cal. Rptr. at 723 & n.3.

45. 3 Cal. 3d 567, 477 P.2d 142, 91 Cal. Rptr. 286 (1970).

46. In *Bozanich* the trial court instructed on "chief inducement" from 2 BAJI No. 209 (4th ed. 1956). When the case reached the supreme court, a new edition of BAJI had been published, using the phrase "the principal inducement." The court struck down the language in the old edition and went on to note that the language in the new edition intensified the error. 3 Cal. 3d at 572, 477 P.2d at 145, 91 Cal. Rptr. at 289.

47. *Bozanich v. Kenney*, 3 Cal. 3d 567, 477 P.2d 142, 91 Cal. Rptr. 286 (1970); *Prager v. Isreal*, 15 Cal. 2d 89, 98 P.2d 729 (1940); *Barr v. Carroll*, 128 Cal. App. 2d 23, 274 P.2d 717 (1954).

48. These were criticisms made of the court following its *Whitmore* decision. Comment, *Applicability of the California Guest Statute to Share-the-Expense Motor Trips*, 43 CALIF. L. REV. 853, 858 (1955).

iterations and clarifications of previously enunciated views.

It is now quite apparent that the California Supreme Court realized that the compensation provision of the Guest Statute had engendered a number of irreconcilable decisions. To remedy the situation the court has firmly and unequivocally sought to clarify the entire area with its recent decisions. It is hoped that its lead will not go unnoticed by the state's trial and intermediate appellate courts.

APPENDIX

Proposed Jury Instructions

The recent California Supreme Court decisions on compensation and the Guest Act have altered and/or struck down previous standard jury instructions in this area. To assist in filling this present void, the following jury instructions are proposed:

Subject: Compensation as Test of Passenger Status

The test whether a rider is a passenger or a guest is whether compensation has been given or is expected to be given for the ride. Compensation means a special tangible benefit to the driver which was a motivating influence for furnishing the ride.

Nevarez v. Carrasco, 1 Cal. 3d 518, 522, 462 P.2d 577, 580, 82 Cal. Rptr. 721, 723 (1969);

Gillespie v. Rawlings, 49 Cal. 2d 359, 364, 317 P.2d 601, 604 (1957);

Whitmore v. French, 37 Cal. 2d 744, 746, 235 P.2d 3, 5 (1951);

Quicksall v. Levy, 217 Cal. App. 2d 599, 601-02, 31 Cal. Rptr. 702, 703-04 (1963).

Subject: Benefit as a Motivating Influence

A driver may have a number of reasons for providing transportation, and it is not necessary that an actual or expected benefit be the sole reason for the ride in order to show that the rider is a passenger for compensation. Such a benefit is sufficient to constitute compensation if it was a motivating influence for the ride.

Bozanich v. Kenney, 3 Cal. 3d 567, 572, 477 P.2d 142, 145, 91 Cal. Rptr. 286, 289 (1970);

Nevarez v. Carrasco, 1 Cal. 3d 518, 522 n.3, 462 P.2d 577, 580 n.3, 82 Cal. Rptr. 721, 723 n.3 (1969).

Subject: Anticipated Benefit as Compensation

To constitute compensation it is not necessary that the driver shall have received any payment from the rider before the accident. Compensation may consist of a prospective or anticipated benefit to be received by the driver from the rider at the end of the trip if that benefit was one of the reasons which influenced the driver to furnish the transportation.

Martinez v. Southern Pacific Co., 45 Cal. 2d 244, 251, 288 P.2d 868, 872 (1955);
Follansbee v. Benzenberg, 122 Cal. App. 2d 466, 471, 265 P.2d 183, 186 (1954).

Subject: Sharing Expenses as Compensation

The rider is a passenger for compensation if there was an implied or express agreement, understanding or arrangement between the driver and the rider that the rider would pay part of the expenses of the trip, or if both parties expected such payment, provided that the expected payment was a motivating influence for furnishing the transportation.

Nevarez v. Carrasco, 1 Cal. 3d 518, 521-22, 462 P.2d 577, 580, 82 Cal. Rptr. 721, 723 (1969);
Whitmore v. French, 37 Cal. 2d 744, 748, 235 P.2d 3, 5 (1951);
Joslyn v. Callison, 12 Cal. App. 3d 788, 793-94, 90 Cal. Rptr. 884, 887 (1970).

Subject: Purpose of Trip Not Decisive

The purpose of a trip does not determine whether or not the rider is a passenger for compensation. The test is whether the driver was to receive a special tangible benefit which was a motivating influence in his decision to furnish transportation to the rider. This test applies regardless of the purpose of the trip, whether it was social, educational, for pleasure or otherwise.

Bozanich v. Kenney, 3 Cal. 3d 567, 572, 477 P.2d 142, 145, 91 Cal. Rptr. 286, 289 (1970);
Nevarez v. Carrasco, 1 Cal. 3d 518, 522, 462 P.2d 577, 580, 82 Cal. Rptr. 721, 723 (1969);
Whitmore v. French, 37 Cal. 2d 744, 746, 235 P.2d 3, 5 (1951);
Joslyn v. Callison, 12 Cal. App. 3d 788, 793-94, 90 Cal. Rptr. 884, 887 (1970).

