alternative but to admit any applicant who has fulfilled the prescribed requirements. Not one of these courts construed *shall* as being a directory provision, which would allow the judiciary to provide additional requirements for admission to the bar. It should be noted that where legislatures have drafted similar statutes but have substituted the word *may* in place of the word *shall,* courts have held these laws simply directory—and constitutional. In such instances the courts retained power to add further qualifications to those demanded by law. The rule of these decisions is well stated in In re *Greer*:[23]

> It is true that the legislatures of the various states may, and often do, prescribe *minimum* qualifications which must be possessed by those who desire . . . to practice [law], and the courts will require all applicants to comply with the legislative conditions . . . but notwithstanding that an applicant may possess the qualifications required by the legislature, this does not entitle him to admission to practice unless the court is satisfied that such qualifications are sufficient.[24]

In other words, the legislature, by virtue of its police power, may prescribe reasonable conditions to an applicant's admission to the bar. But in no case has the legislature been allowed to set the maximum requirements beyond which the judicial department may go. This proposition represents the great weight of authority[25] and the *Kaufmann* decision is consistent therewith.

WALTER M. CLARK

TORTS—GUEST STATUTE APPLICATION BROADENED—PROTECTION WHILE GUEST ENTERING CAR DURING TRIP.—Ella Castle had been accompanying McKeown in his auto on a day-long summer outing from Lansing to a nearby lake resort. Returning that evening and still some distance from the Michigan capital, McKeown stopped his car on an upgrade to examine a soft rear

23. 52 Ariz. 385, 81 P.2d 96 (1938).
24. *Id.* at 390, 81 P.2d at 98.
25. Keeley v. Evans, Dis't Atty. *et al.*, 271 Fed. 520 (D.C. Ore. 1921); *In re* Lavine, 2 Cal.2d 324, 41 P.2d 161 (1935); *In re* Chapelle, 71 Cal. App. 129, 234 Pac. 906 (1925); Freeling v. Tucker, 45 Idaho 475, 289 Pac. 85 (1930); Anderson v. Coolin, 27 Idaho 334, 149 Pac. 286 (1915); Hanson v. Grattan, 84 Kan. 843, 115 Pac. 646 (1911); *Ex parte* Steckler *et al.*, 179 La. 410, 154 So. 41 (1934); *In re* Opinion of Justices, 279 Mass. 607, 180 N.E. 725 (1932); State *ex rel.* Johnson, Atty. Gen. v. Childe, 139 Neb. 91, 295 N.W. 381 (1941); *In re* Crum, 103 Ore. 296, 209 Pac. 948 (1922); Vernon City Bar Association v. McKibbin, 153 Wis. 350, 141 N.W. 283 (1913).

tire. While he was thus engaged, Mrs. Castle—who was purportedly ill—also left the car and went some distance into an adjacent field. She returned a few minutes later and on opening the right hand door of the machine, with one foot on the running board and the obvious intention of getting in, the car proceeded to roll backwards throwing her legs under the wheels. She subsequently sued McKeown for damages resulting from his alleged negligence. The Supreme Court of Michigan deemed the applicable law under the facts to be contained in

MICH. STAT. ANN. § 9.1446 (1948):

> . . . no person, transported by the owner or operator of a motor vehicle as his guest 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 wilful or wanton misconduct of such owner or operator . . . .

On the basis of this guest statute the court affirmed the judgment of the trial court for defendant, holding that the gratuitous transportation of the plaintiff continued throughout the period of the brief interruption of the trip, and that at the time of the injury the plaintiff was still the guest of the defendant and therefore could not recover without a showing of gross negligence. Plaintiff did not attempt to argue that there had been "gross" negligence but simple claimed that she had not been a "guest" while standing on the running board and thus only needed proof of ordinary negligence.[1]

At common law an automobile driver is bound to exercise reasonable care for the protection of a gratuitous passenger.[2] Today, however, probably as a protection for insurance companies against collusive suits between host and guest, approximately one-half of the states have enacted guest statutes which preclude recovery by an automobile guest against a negligent host unless a more serious departure from the standards of ordinary care can be shown.[3] In a few other states a similar doctrine has arisen without the aid of a statute as an amplification of the common law.[4]

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1. Castle v. McKeown, 327 Mich. 518, 42 N.W.2d 733 (1950).
2. PROSSER, TORTS 634 (1941).
3. *Ibid.*
4. *Ibid.* The author suggests that this extension of the common law may have arisen as an analogy to the cases on gratuitous bailment of chattels.

In interpreting these various laws regarding the automobile guest it is often extremely difficult to determine at what point one becomes a guest and just when this relationship ceases. The Michigan Court in holding that the plaintiff remained an automobile guest even while she was temporarily absent from the defendant's car seems in disagreement with the views of the majority of prior cases decided under similar guest statutes where the courts have preferred a more literal interpretation of the statutory language. This more restricted view is typified by the decisions of Iowa and California where the physical position of the plaintiff in relation to the defendant's automobile seems to be the sole criterion for establishing or denying the existence of the guest status.

The Iowa and early California guest statutes[5] denied damages to any person "riding in" another's automobile as his guest except where gross negligence or intoxication was shown. Thus in *Puckett v. Pailthorpe*[6] the plaintiff was not a guest when she was injured while trying to open the door of the defendant's car, nor was the plaintiff in *Moreas v. Ferry*[7] who got out to crank the defendant's car during a momentary pause in their trip. The same reasoning was applied by the Supreme Court of Wisconsin in their interpretation of a similarly worded Illinois statute when the plaintiff was injured after he had alighted from the defendant's car to help change a tire.[8]

After the *Moreas* case the California statute was changed so that the words "while so riding" were removed, but the new statute[9] contained the phrase "during such ride," and the former interpretation was retained. So where the plaintiff was injured while moving from the back seat to the front seat of the defendant's parked automobile and had "one foot on the ground and the other on the running board";[10] where the plaintiff left the defendant's car to mail a letter intending to return immediately;[11] where the plaintiff was about to enter the defendant's

5. IOWA CODE § 5026b1 (1927); CALIF. ST. § 141 ¾ (1923).
6. 207 Iowa 613, 223 N.W. 254 (1929).
7. 135 Cal. App. 202, 26 P.2d 886 (1933).
8. Rohr v. Employers Liability Assur. Corporation, Ltd., of London, 243 Wis. 113, 9 N.W.2d 627 (1943).
9. CALIFORNIA VEHICLE CODE § 403 (1935).
10. Prager v. Isreal, 15 Cal.2d 89, 98 P.2d 729 (1940).
11. Harrison *et al.* v. Gamatero *et al.*, 52 Cal. App. 2d 178, 125 P.2d 904 (1942).

car having her hand on the door handle with one foot in the air and one foot on the ground,[12] the California courts maintained that in each case the host-guest relationship did not exist at the moment of the injury and that the plaintiff could recover with a showing of only ordinary negligence on the part of the defendant.

The Ohio court following the lead of California held that the plaintiff was not a guest when she left the front seat of the defendant's car and stood about two feet away to give the defendant more room to find her keys as they were preparing to drive home from a social gathering.[13] Here the statute[14] described a "guest" as one who is "in or upon" the motor vehicle of another.

Even the earlier Michigan cases seem to have preferred the strict interpretation of that state's guest statute, and it was held that the plaintiff who had taken one or two steps away from the defendant's car after she had been driven to her home by the defendant was no longer a guest;[15] nor was the plaintiff who had been traveling with the defendant and had left the defendant's car for two or three hours and then was injured while attempting to crank the car before re-entering.[16]

The alternative view as to the instant of time at which one becomes, and then ceases to be an automobile guest is typified by the decision of Massachusetts where, although there is no guest statute, a similar doctrine has arisen as an extension of the common law. The Massachusetts rule, which tends to stress the intent of the driver and his passenger rather than their actual physical location, is expressed in *Ruel v. Langelier*:

> . . . it must be clear that the defendant's duty does not depend upon the physical position of the plaintiff at the moment of the accident, or whether she was then in the defendant's automobile or outside of it, or upon whether in everyday language she would be described as a guest. The degree of the defendant's duty depends upon whether the act of the defendant claimed to be negligent was an act performed in the course of carrying out the gratuitous undertaking which the defendant had assumed.[17]

This doctrine has been applied in subsequent Massachusetts cases where the court considered the plaintiff to be a guest after

12. Smith *et ux.* v. Pope, 53 Cal. App.2d 43, 127 P.2d 292 (1942).
13. Eshelman v. Wilson, 83 Ohio App. 395, 80 N.E.2d 803 (1948).
14. OHIO GEN. CODE, § 6308-6 (Throckmorton, 1933).
15. Brown v. Arnold, 303 Mich. 616, 6 N.W.2d 914 (1942).
16. Hunter v. Baldwin, *et al.*, 268 Mich. 106, 255 N.W. 431 (1934).
17. 299 Mass. 240, 12 N.E.2d 735 (1938).

having stepped from the defendant's car onto the driveway at the termination of their trip;[18] after having alighted from the defendant's car to direct the latter's parking;[19] where the plaintiff was entering the defendant's car, with her "right foot in the air and her left foot on the curb";[20] where the plaintiff was standing beside the defendant's car with one foot on the running board during an interruption of their trip;[21] and where the plaintiff was standing on the sidewalk awaiting the defendant who was driving his car to the nearby curb.[22]

This doctrine also seems to have been accepted by the Supreme Court of Kansas where it was held that the plaintiff who had been injured attempting to close the door of the defendant's car after having alighted therefrom at her home was still a guest and in the terms of the statute was still being "transported" by the defendant.[23] Further, when defendant driver slammed the door on plaintiff's hand while the latter was entering the car, the Connecticut court found a guest-host relationship present and, of course, concomitant statutory inability to sue.[24] The opinion in the former and much more recent case stated:

> Both parties agree that a defendant's, a host's, duty depends upon whether the claimed act of the host's negligence was an act performed in the course of carrying out the gratuitous undertaking which the host had assumed.[25]

The principal case, as well as the Kansas and Connecticut decisions, seem to be following the lead of the Massachusetts courts in placing an interpretation on the statute which, while it is not so literal, seems far more realistic than the interpretation of the California and Iowa courts. If the real purpose of the guest statutes is to preclude the possibility of collusive suits between the host and guest, then the actual physical position of the parties would seem of less importance than their obvious mental acceptance of the host-guest status. Accordingly, recovery was properly denied in *Castle v. McKeown* for there would seem to

18. Adams v. Baker, 317 Mass. 748, 59 N.E.2d 701 (1945).
19. Bragdon v. Dinsmore, 312 Mass. 628, 45 N.E.2d 833 (1942).
20. Head v. Morton, 302 Mass. 273, 19 N.E.2d 22 (1939).
21. Ethier v. Audette, 307 Mass. 111, 29 N.E.2d 707 (1940).
22. Donahue v. Kelley, 306 Mass. 511, 29 N.E. 2d 10 (1940).
23. Marsh v. Hogeboom, 167 Kan. 349, 205 P.2d 1190 (1949).
24. Nemoitin v. Berger, 111 Conn. 88, 149 Atl. 233 (1930).
25. Marsh v. Hogeboom, 167 Kan. 349, 351, 205 P.2d 1190, 1192 (1949).

be no doubt as to the complete absence of mental reservations on the part of the plaintiff in her continuing role as defendant's guest from the initial phases of the trip until the time of the accident.

EDWIN CHARLÉ