Analysis of Liability Issues in Gratuitous Passenger Cases

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Abstract: Against the current societal push for green and mutual-aid transportation, frequent disputes over gratuitous rides reveal judicial challenges stemming from their ambiguous legal nature. This study addresses this issue by examining the nature and liability rules of such rides through conceptual analysis, case studies, and comparative methods. Using the parties' subjective fault as a classification basis, the paper systematically evaluates liability allocation schemes under various scenarios, advocating for the application of equitable or fault-based liability principles. It demonstrates that pure gratuitous rides, lacking declaratory intent and legal enforceability, constitute acts of courtesy rather than juristic or factual acts, and thus generally fall outside direct legal regulation. The study concludes that liability determination should be grounded in the nature of gratuitous rides as acts of courtesy, balancing rights protection through differentiated fault analysis to provide clear guidance for judicial practice.

Keywords: Gratuitous Ride; Act of Courtesy; Compensatory Liability; Driver; Passenger

1. Introduction

In 2013, a high-profile compensation case occurred in Guangdong: a motorcycle owner, on his way to work, offered a colleague a ride out of goodwill. Unfortunately, a traffic accident ensued during the journey, resulting in severe head injuries to the passenger. The colleague filed a lawsuit claiming compensation of 2.31 million RMB. The court eventually ordered the driver to pay 1.53 million RMB in damages. The driver felt wronged—why did a simple act of kindness lead to such a massive lawsuit? The passenger was also left in a difficult position, having suffered serious injuries from what was intended as a casual ride. Who should bear the liability?

Against the backdrop of severe environmental pollution and urban traffic congestion, carpooling has gradually emerged as a socially encouraged mode of transportation. In some countries, hitchhiking or ride-sharing has even become a common daily practice. However, in recent years, the increasing number of disputes arising from such goodwill rides has drawn widespread attention from both legal scholars and practitioners. These cases compel us to examine how liability should be determined when accidents occur during gratuitous rides.

2. The Concept and Nature of Gratuitous Rides

2.1 The Concept of Gratuitous Rides

To date, there is no specific statutory definition of "gratuitous rides" in Chinese law. The term originally stems from the concept of "acts of courtesy" proposed by Taiwanese civil law scholar Professor Wang Zejian. A gratuitous ride refers to the act where a passenger, with the consent of the driver or vehicle owner, rides in a non-commercial motor vehicle without payment [1]—essentially what is commonly known as "hitching a ride."

2.2 Analysis of the Nature of Gratuitous Rides

Is a gratuitous ride an instance of a gratuitous contract, negotiorum gestio (management of affairs without mandate), or something else? Should accidents during such rides be addressed under contract law or tort law? The answers to these questions require an in-depth analysis of the legal nature of gratuitous rides.

2.2.1 Gratuitous rides vs. juristic acts

(1) Differences in Constituent Elements

A juristic act refers to an act by which citizens, legal persons, or other organizations establish, modify, or terminate civil rights and obligations. One characteristic of gratuitous rides is that mutual consent is reached, yet not all agreements constitute contracts. As noted by Dong Ansheng in *Civil Juristic Acts*: "The intention to establish legal relations (declaratory

intent) is an essential element of a contract; not all agreements qualify." The core of a juristic act is the expression of intent, and the core of that expression is the declaratory intent [2]. As argued above, gratuitous rides lack such declaratory intent—their purpose is merely to foster mutual goodwill, which fundamentally distinguishes them from juristic acts.

(2) Differences in Subject Requirements

Since a juristic act requires expression of intent, the legal capacity of the actor is essential. Only persons with full civil capacity can perform valid juristic acts [3]. In contrast, the arrangement of a gratuitous ride does not require the parties to have civil capacity. Even a person with limited or no civil capacity could, hypothetically, become a party in a gratuitous ride scenario, assuming they were able to operate a vehicle.

(3) Differences in Legal Enforceability

Juristic acts fall within the legal domain, and non-performance may be enforced by law. In contrast, gratuitous rides lack such enforceability: the law cannot compel a driver to provide a ride, nor can it force a passenger to accept one.

In summary, a purely gratuitous ride does not satisfy the constituent elements of a juristic act. Since contractual relationships are a subset of juristic acts, the conclusion that gratuitous rides are not juristic acts also precludes their classification as contracts.

2.2.2 Gratuitous rides vs. factual acts

Some scholars argue that gratuitous rides constitute factual acts [4]. However, this view is also debatable. A factual act refers to conduct that, regardless of the actor's intention to create, modify, or terminate legal relations, produces legal consequences once it satisfies statutory requirements. The similarity between gratuitous rides and factual acts—and the reason some scholars group them together—lies in the fact that both trigger legal effects irrespective of the parties' subjective intent.

The critical difference, however, is that factual acts entail statutory rights and obligations imposed by law regardless of intent, whereas gratuitous rides do not—no corresponding legal rights or obligations are established by law. Thus, gratuitous rides do not qualify as factual acts. Consequently, the proposition that they constitute *negotiorum gestio* (management of affairs without mandate) is also untenable.

2.2.3 Gratuitous rides as acts of courtesy

Having reached this point, the nature of gratuitous rides remains to be clarified. In fact, a purely gratuitous ride is a type of act of courtesy (*Gefälligkeit* in German law), a form of goodwill benefaction. Firstly, while gratuitous rides are non-compensatory, not all non-compensatory acts are acts of courtesy; the law also recognizes gratuitous contracts such as loans, gifts, mandates, and deposits [5].

The essential criterion of an act of courtesy is that one party is not legally bound [6]—that is, the promise is unenforceable. Its characteristics include: the benefactor conferring a benefit upon the beneficiary, the beneficiary having no right to performance against the benefactor, and the benefit received not constituting unjust enrichment.

In the context of gratuitous rides, this means that the driver extends an invitation or permission to ride without payment, yet the passenger has no claim to performance. The free ride received by the passenger does not amount to unjust enrichment. Although some acts of courtesy in daily life may not be clearly distinguishable and can be easily confused with contracts in form, even if the parties misunderstand the nature of their relationship, such misunderstanding does not affect the ultimate legal characterization.

As a form of social behavior and interpersonal interaction, purely gratuitous rides fall outside the scope of legal regulation. Excessive interference by the law would undermine the norms of social life.

3. Classification of Gratuitous Rides

Professor Wang Liming argues that no form of direct or indirect payment should be present in a gratuitous ride—that is, regardless of the passenger's subjective purpose, if any cost-sharing, low-price vehicle use, or even gift-giving occurs, the relationship between the driver and the passenger can no longer be classified as a gratuitous ride [7]. In contrast, Professor Wang Changfa contends that the formation of a gratuitous ride relationship is neither the result of a mutual agreement nor a legally mandated obligation, but arises purely out of goodwill, whereby the driver permits the passenger to ride in a vehicle under their control. Since the relationship is based on social courtesy, even if some form of payment appears to exist, so long as it does not constitute adequate consideration for the ride, it should

still be recognized as a gratuitous ride—albeit a compensated one [8].

This paper supports Professor Wang Changfa's view. Based on the closeness of the relationship between the driver and the passenger, gratuitous rides can be broadly categorized, in descending order of intimacy, as follows: close relationships (such as relatives and friends), casual relationships (such as ordinary colleagues or classmates), and distant or stranger relationships. As the relationship becomes more distant, the social basis for the ride weakens, and the element of goodwill diminishes, often compensated by monetary payment. Generally, rides among close relatives and friends are uncompensated; those among acquaintances may be either compensated or uncompensated; while rides involving strangers are usually compensated. Providing free rides to those with whom one has a close relationship is clearly recognized as a gratuitous ride and is legally straightforward. However, the legality of compensated rides among strangers warrants further examination.

Compensated gratuitous rides also fall within the scope of gratuitous rides, with ride-sharing services such as "carpooling" or "shunfengche" being a typical example. In the ruling (2017) Yu 01 Min Zhong No. 8797, the court of first instance defined carpooling as an arrangement in which a private car owner publishes travel information in advance, and individuals with similar routes choose to share the ride, either sharing part of the travel costs or engaging in free mutual assistance—a form of shared travel.

There has been considerable debate over whether carpooling is legal and whether it constitutes illegal "black taxi" (unlicensed transport) activity. The author believes that this should be comprehensively evaluated based on the nature of carpooling and whether it violates public order and good morals.

First, regarding the nature of carpooling: as discussed above, although passengers pay a certain fee, drivers do not charge vehicle rental or service fees, indicating a clear lack of equivalence in exchange. Moreover, carpooling drivers do not pick up passengers randomly but rather select those with the same or similar destinations. Therefore, carpooling lacks the characteristics of commercial operation and is not a profit-driven transport service.

Second, regarding compliance with public order and good morals: both parties are aware of and consent to the arrangement, making the driver's act one of social courtesy. Furthermore, carpooling helps reduce emissions, protect the environment, alleviate traffic congestion, and foster a spirit of mutual assistance and community cooperation, contributing to the construction of a harmonious society. It does not violate public order or good morals.

In conclusion, although not explicitly defined in law, carpooling is legal and distinct from "black taxi" operations. "Black taxis" refer to unlicensed vehicles that specifically engage in passenger transport for profit. In contrast, carpooling passengers are relatively specific—usually those heading to the same or similar destinations—while "black taxi" passengers are arbitrary. Carpools are not profit-oriented, whereas "black taxis" operate for profit. Carpooling is an incidental act of sharing a ride, while "black taxi" activity constitutes illegal passenger transport as an occupation. The two are fundamentally different and should not be conflated. Carpooling is legal and deserves encouragement, while "black taxis" are illegal and must be prohibited [9].

4. Theoretical Approaches to Gratuitous Rides in Foreign Jurisdictions

4.1 Germany

In 1909, Germany enacted the *Automobile Act,* which introduced strict liability for motor vehicle accidents for the first time, while also setting caps on compensation. However, it excluded the vehicle keeper or driver and their passengers from its scope. In 1952, the law underwent substantial revision and was renamed the *Road Traffic Act* (*Straßenverkehrsgesetz*) [10]. This revision maintained strict liability and extended it to paid passenger transport but continued to exclude liability toward non-paying passengers. It was not until the passage of the *Second Act to Amend Damages Provisions* in 2002 that the *Road Traffic Act* was amended to include non-paying passengers within the scope of its strict liability protection [11].

4.2 Japan

Japan's *Automobile Damage Compensation Security Act* of 1955 established no-fault liability. Article 3 of the Act imposes civil liability for harm caused to the "life or body of another." The key question was whether

"another" included passengers in gratuitous rides. In a landmark 1969 decision, the Supreme Court of Japan explicitly held that "another" refers to "any person other than the driver and those who use the automobile for their own operations," thereby including gratuitous passengers. However, it is worth noting that in practice, the recognition of "another" has not been uniformly applied across all cases in Japanese courts [12].

4.3 United States

Early U.S. tort law held that a driver owed a duty to a non-paying passenger only in cases of gross negligence. This principle was first clearly articulated by the Massachusetts Supreme Judicial Court in a 1917 decision. In the early 20th century, many states adopted *Automobile Guest Statutes*, which provided that if the driver was not operating the vehicle for profit but merely as a goodwill gesture, the driver would not be liable for ordinary negligence [13]. These statutes aimed to balance the interests of drivers and passengers. However, due to the lack of a uniform standard for defining "gross negligence," the laws undermined legal predictability and were criticized for unfairness toward passengers, violating the Equal Protection Clause of the Constitution.

The landmark case of *Brown v. Merlo* (1973) fundamentally challenged these statutes, ruling that California's guest statute violated the Equal Protection Clause of the Fourteenth Amendment [14]. This decision led most states to abandon the gross negligence standard in favor of ordinary negligence principles. Today, aside from Alabama, which retains a modified and controversial version of the rule, the majority of U.S. states have revised or abolished automobile guest statutes [15].

5. Liability Determination in Gratuitous Rides

5.1 Liability in Purely Gratuitous Rides

In the context of uncompensated gratuitous rides, four scenarios may arise: neither party is at fault, both parties are at fault, only the driver is at fault, or only the passenger is at fault. The first two scenarios are less directly tied to the essential nature of gratuitous rides, while the latter two are more closely related.

5.1.1 Neither party at fault

If an accident results from unforeseen events such as a flat tire, traffic congestion, or slippery road conditions causing a rollover, and neither party is at fault, Article 24 of the *Tort Liability Law* applies, introducing the doctrine of equitable distribution of loss. This principle allows for the apportionment of loss based on the actual circumstances—such as the manner of the act, the context, the extent of loss, and the economic situation of the parties—rather than mandating equal division. The equity principle serves as a supplementary doctrine in tort law, reflecting societal morality and helping to resolve social conflicts.

If the harm is caused solely by a third party, liability rests with that third party pursuant to Article 28 of the *Tort Liability Law*. Where multiple third parties are involved, they may be held jointly and severally liable as joint tortfeasors.

5.1.2 Both driver and passenger at fault

If both the driver and the passenger are at fault—for example, the passenger knowingly rides with a driver who is unlicensed or driving under the influence—both parties may be considered to have assumed the risk. This scenario invokes the doctrine of comparative negligence under Article 131 of the *General Principles of Civil Law*, whereby the victim's own fault may reduce the tortfeasor's liability. The passenger, by choosing to ride under dangerous conditions, breaches a duty to safeguard their own well-being; the driver is likewise at fault for driving under impairment. Liability should be apportioned according to the comparative causative role of each party's fault [16].

According to Article 2 of the *Interpretation of the Supreme People's Court on Issues Concerning the Application of Law in Trials of Personal Injury Compensation Cases* (Judicial Interpretation [2003] No. 20), if the tortfeasor acts with intentional or grossly negligent conduct, the victim's ordinary negligence does not reduce the tortfeasor's liability. Since intentional misconduct by the driver has been excluded from the scope of gratuitous rides (as discussed earlier), this section focuses on negligence. Thus, if the driver is ordinarily negligent, both parties share liability proportionally; if the driver is grossly negligent, the driver bears full liability even if the passenger is ordinarily negligent. Regarding the distinction between ordinary and gross

negligence, courts in practice typically determine the severity of fault based on the circumstances. For instance, driving without a license or without proper qualifications, driving while excessively fatigued, or drunk driving are generally considered gross negligence. [17] However, significant discretion remains in making such determinations. Therefore, the author contends that relying on the Traffic Accident Responsibility Statement issued by traffic management authorities offers greater operational feasibility in practice [18].

5.1.3 Driver at fault, passenger without fault

Academic views diverge regarding the driver's negligence: (1) Some scholars argue that the driver should be liable for both ordinary and gross negligence, contending that the driver's goodwill should not reduce the duty of care owed to the passenger, and that life and safety demand absolute respect. (2) Others distinguish between ordinary and gross negligence, holding the driver liable only for the latter. They reason that requiring a driver offering a free ride to bear the same liability as a commercial carrier would be contrary to reason and fairness, and that the passenger assumes certain risks by accepting a free ride [19].

While these views differ, both agree that an accident caused by the driver's fault shifts the relationship from the realm of social courtesy to tort liability, making the driver liable in damages.

This paper, however, offers a different perspective. As argued above, a purely gratuitous ride is an act of courtesy in which the parties have no intention to create legal relations, and thus no duty of care exists between them. Therefore, even if the driver is at fault, this does not automatically give rise to tort liability due to the absence of a pre-existing legal duty. In such cases, the passenger should, in theory, bear their own loss, though the driver may offer appropriate compensation.

Notably, Professor Wang Liming's proposed *Civil Code Draft* (Article 1980) suggests that "if a traffic accident occurs while gratuitously carrying another, the provider of the means of transport shall give appropriate compensation." [20]. Judicial practice also largely supports the principle that the vehicle owner should provide appropriate compensation—not full damages—to an injured non-paying passenger [21].

5.1.4 Passenger at fault, driver without fault

If the passenger is at fault—for example, by improperly instructing the driver or grabbing the steering wheel—while the driver is without fault, the situation mirrors that in Section 5.1.3 (one party at fault). Since no legal duty exists between the parties, the passenger should bear compensatory responsibility.

5.2 Liability in Compensated Gratuitous Rides

In principle, within the framework of purely gratuitous rides, no legal duties exist between the driver and the passenger. However, as the relationship becomes more distant, uncompensated rides may evolve into compensated ones. In this transition, the element of social courtesy diminishes, replaced by monetary or material exchange, and the driver's duty to ensure safety gradually increases.

There are three main academic views on the liability standard: (1) Fault-based liability, where liability arises only from intentional or grossly negligent conduct, considering the social nature of the ride. (2) Strict liability, emphasizing the inviolability of life and holding that even social courtesy cannot negate the duty to protect the passenger [22]. This view splits into two sub-points: whether liability should be reduced or not. (3) Presumption of fault, whereby the driver must prove absence of fault, and if the passenger proves harm resulting from the driver's fault, the driver is presumed liable [23].

Considering China's actual conditions and principles of fairness, this paper supports the first view—fault-based liability, where the driver is generally not liable unless guilty of intentional or grossly negligent conduct. First, this aligns with the system of the *Tort Liability Law*, which under Article 6 defaults to fault-based liability when no specific provision applies. Second, strict liability or presumption of fault would impose excessive burdens on drivers, discouraging altruistic behavior. Finally, passengers accepting rides should be aware of the risks and assume them accordingly. Imposing heavy liability on drivers for ordinary negligence would be unfair, as drivers already bear vehicle-related risks, while passengers enjoy convenience at minimal cost [24]. Therefore, drivers should only be expected to exercise reasonable care, and risks should be shared when both parties are without fault or gross negligence.

Once liability is determined, the paramount practical concern remains compensation. To balance the interests in gratuitous rides, the author advocates establishing a dual protection system comprising "insurance" and a "fund." The insurance mechanism serves to initially disperse the compensation risks borne by the driver, while a Fund established at the national level may provide supplementary relief for severe damages exceeding insurance coverage limits. This dual system not only alleviates the driver's liability concerns but also ensures adequate compensation for the passenger, thereby institutionalizing the values of "friendliness" and "justice."[25].

6. Conclusion

In judicial practice, liability determinations in accidents involving gratuitous rides have been inconsistent, primarily due to unclear understanding of their essential nature. Gratuitous rides belong neither to juristic acts nor to factual acts but constitute acts of social courtesy. As such, private law should intervene minimally. When accidents occur, the fault of each party must be distinguished and analyzed separately. This paper has emphasized the courteous nature of gratuitous rides and discussed liability when neither, both, or only one party is at fault, hoping to offer a new perspective for judicial practice. Furthermore, it calls upon insurance institutions and government authorities to promptly introduce corresponding specific liability insurance and special funds to construct the proposed dual safeguard system.

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