

# **People Are Normal Until They Check Into a Hotel**

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## People Are Normal Until They Check Into a Hotel Room

### **I. Introduction**

*People Are Normal Until They Check Into a Hotel Room* will address a wide variety of personal injury and damages claims that have arisen in the hospitality area, related to innkeeper tort law trends, and defense claims and strategies. Hotels have a general duty to "protect [guests] against unreasonable risk of physical harm."<sup>1</sup> The law requires that hotels "exercise reasonable care under the circumstances" when protecting its guests, such as having employees diligently inspect the hotel room for defects, and correcting the defects discovered.<sup>2</sup> This reasonable care standard, however, does not require hotels to protect against dangers where the employees "neither know[] nor should know of the unreasonable risk."<sup>3</sup> The following discusses how this general standard plays into different types of liability for hotels.

### **II. Strange But True**

The field of hospitality is ripe with outrageous scenarios that result in lawsuits. For example, parents sued when they believed their children played poorly in a baseball tournament, because the players were streaming "free" porn in the hotel "all night" before the games. Another interesting lawsuit resulted when a hotel guest drove off with more than \$20,000 in wedding gifts after the hotel offered to load the gifts into the limousine early for the couple. These are just a few examples of the kind of strange but true cases you will hear about today.

### **III. In The Beginning**

#### Res Ipsa Loquitur

A well-known area of potential liability for hotels is the doctrine of *res ipsa loquitur*. This doctrine essentially holds defendants liable if a plaintiff is injured in an accident, the accident likely is not something that would occur if people were being careful, and the defendant had control of the cause of the accident. A defendant can be liable even if there is no evidence showing that a defendant was careless. A famous example of this doctrine is the case of Larson

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<sup>1</sup> (Peterson v. Superior Court (1995) 10 Cal.4<sup>th</sup> 1185, 1206.)

<sup>2</sup> (Id.)

<sup>3</sup> (Id.)

v. St. Francis Hotel where a chair fell from the sky and landed on Ms. Larson.<sup>4</sup> She had been walking out from under the St. Francis Hotel sign, but there was no evidence that the St. Francis Hotel did anything improper.<sup>5</sup> Ms. Larson sued under a theory of *res ipsa loquitur*, but failed because she could not show that the St. Francis Hotel had exclusive control over the chair.<sup>6</sup>

#### **IV. General Liability**

##### Slip and Fall

One of the more common accidents resulting in potential liability is a slip and fall. In order for a hotel to be liable for a guest's injuries, the guest must show that there was a dangerous condition, the employees knew or should have known of the condition, and the employees could have, but failed to make the condition safe.<sup>7</sup> However the plaintiff must also show that he was not at fault in the accident.<sup>8</sup> An example of a slip and fall case is a lawsuit involving a California hotel where a millionaire guest sued the hotel after his buttocks slipped off an outdoor wedding chair based on a claim of "excessive dew."

##### Building Code Violations

Another area of general liability is building code violations. The California building code applies to construction, alteration, repairs, etc. of a building.<sup>9</sup> However, if a building is already in existence, it may not need to comply with new building code requirements. Older hotels therefore may have doors, stairs, or other features that do not meet the safety criteria of current codes. Despite not needing to comply with the building code, the conditions may still lead to liability.<sup>10</sup> However, compliance with the code does not necessarily absolve a hotel from

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<sup>4</sup> (Larson v. St. Francis Hotel (1948) 83 Cal.App.2d 210.)

<sup>5</sup> (Id.)

<sup>6</sup> (Id.)

<sup>7</sup> (Howard v. Omni Hotels Management Corp. (2013) 203 Cal.App.4<sup>th</sup> 403.)

<sup>8</sup> (See Archie Richard v. Ridge Hotel, Talcott Properties, Inc. and Roger Huddlestone; 2004 Jury Verdicts LEXIS 45447.)

<sup>9</sup> (California Code of Regulations, Title 24, Part 2 Section 1.1.3.)

<sup>10</sup> (Pollock v. West Beach Inn; 2001 Nat. Jury Verdict Review LEXIS 1911.)

liability. For example, a child fell out of a second story window at a hotel in California.<sup>11</sup> The hotel did not have a screen on the window, but the window was in complete compliance with the applicable building codes.<sup>12</sup> Despite this compliance, the Court allowed the lawsuit to move forward against the hotel.<sup>13</sup> Accordingly, compliance with the building codes can help a defendant's case, but it will not likely be dispositive.

Renovations may also lead to liability, such as in the case where a California resort was sued by a wealthy guest who claimed that repainting caused her lead exposure, and thus, a brain injury, or the case where a hotel renovated its marble floors to make them more slip-resistant, only to be accused of making the floors less slip-resistant by a celebrity who fell in public view.

### Americans with Disabilities Act

Another area of general liability for hotels is the Americans with Disabilities Act. It is common for some disabled individuals to travel from hotel to hotel specifically looking for ADA violations, and then to sue the hotel for compliance. In order to be successful in one of these ADA suits, the plaintiff must show that he encountered a barrier that interfered with his full and equal enjoyment of the facility that relates to his disability, and that he intends to return to the noncompliant property, or that the barriers deter him from returning to the property.<sup>14</sup> However, the plaintiff does not need to have actually encountered every barrier he is claiming is noncompliant.<sup>15</sup> Furthermore, the defendant hotel cannot use a serial plaintiff's history of filing lawsuits as evidence refuting that the plaintiff intends to return to that particular hotel.<sup>16</sup> Hotels do, however, have a number of defenses at their disposal to fight the ADA cases, such as claiming that compliance would be a disproportionate cost to the benefit that would result, that

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<sup>11</sup> (Lawrence v. La Jolla Beach & Tennis Club, Inc., 2014 Cal.App. LEXIS 998 (Cal.App.4<sup>th</sup> Dist. Oct. 31, 2014).)

<sup>12</sup> (Id.)

<sup>13</sup> (Id.)

<sup>14</sup> (Paulick v. Starwood Hotels and Resorts Worldwide, Inc., 2012 U.S. Dist. LEXIS 101332.)

<sup>15</sup> (Id.)

<sup>16</sup> (D'Lil v. Best W. Encina Lodge & Suites (9<sup>th</sup> Cir. 2008) 538 F.3d 1031.)

compliance is not readily achievable, or that a reasonable portion of the facilities are accessible, among others.<sup>17</sup>

## **V. Special Hotel Services**

### Concierge Recommendations

An unexpected area for potential liability is through concierge services. A hotel may be liable if a guest is injured using services merely *recommended* by the hotel or concierge. For example, a major resort was sued because of the informal recommendation of transportation that it made to guests, leading to a \$10 million wrongful death claim. A lawsuit also resulted when a concierge's "poor" dinner recommendation allegedly cost a businessman a huge contract deal.

### Food

Hotels may also be liable for the food it provides to guests. For example, a landmark hotel served famous sushi so delicious that some guests asked for some "to go," only later to claim that the tuna was "bad."

### Alcohol

Hotels should also be aware of potential liability resulting from serving alcohol. Lawsuits could result from over-serving, such as in the case where a plaintiff alleged that the 24-7 unlocked hotel minibar caused him to over-imbibe and therefore caused him to fall and hurt his back badly in the lobby. Hotels in some states should also be aware of Dram Shop statutes, which impose liability for the sale or furnishing of alcoholic beverages to persons who then injure third parties.<sup>18</sup>

### Rowdy Guests

Hotels may also have a duty to remove rowdy guests from the premises, in order to avoid potential lawsuits. For example, hotels have faced potential liability for a gun battle breaking out in a hotel lobby, or overdoses occurring when rave parties rented rooms.

## **VI. Security**

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<sup>17</sup> (Rapp v. Lawrence Welk Resort, 2013 U.S. Dist. LEXIS 11966 (S.D. Cal. Jan. 28, 2013.)

<sup>18</sup> (4-19 Premises Liability – Law and Practice § 19.02.)

Liability issues also arise when dealing with security – whether guards act inappropriately, or security is inadequate and hotel guests become crime victims. An example of potential security guard liability is when a famous big-city hotel was sued for "excessive force" when security rejected a guest who planned – and carried out – a political protest at a famous annual political event.<sup>19</sup>

## **VII. Spoliation**

A final issue that hotel owners should be aware of is spoliation. Spoliation is the intentional destruction of evidence, and it can result in adverse consequences for the party tampering with evidence. One such sanction is the court instructing the jury that a party tampered with evidence, and therefore the jury should assume it was evidence of a breach of duty.<sup>20</sup> This is particularly important in hotels where rooms are cleaned daily, possibly destroying evidence of misdeeds, or security tapes are recorded over to make room for more recent video feed.<sup>21</sup> Hotels should practice preserving as much evidence as possible as soon as litigation becomes a possibility (as soon as the hotel knows of an incident) to avoid the possibility of sanctions such as adverse inferences.<sup>22</sup> Keeping a good record or file on a potential claimant is key.

## **VIII. Defenses and Advice**

Though there are many ways that a hotel can face liability, they also have many defenses to diminish damages or have the case dismissed altogether. Common defenses include: obvious danger, comparative negligence, assumption of risk, trivial defect, lack of notice, failure to mitigate, unavoidable accident, unclean hands, lack of control over the area of the incident, or plaintiff's injury not being reasonably foreseeable. In addition to these defenses, hotels are advised to hire good lawyers, avoid the media, aggressively investigate incidents before they become claims, and make sure that its attorneys control the pace of the case and attack outrageous claims.

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<sup>19</sup> (Catherine Cusic v. Surveillance, Protection & Investigations Group, Inc., Westin Hotel Management, LP, SHR St. Francis, LLC, Westin St. Francis Hotel, St. Francis Hotel Corporation, Starwood Hotels and Resorts Worldwide, Inc., Emilio Olguin and Matthew Matter; 2011 Jury Verdicts LEXIS 209012.)

<sup>20</sup> (Mullaney v. Hilton Hotels Corp., 2009 U.S. Dist. LEXIS 55629 (D. Haw. June 30, 2009).)

<sup>21</sup> (Id.)

<sup>22</sup> (Gleason v. Marriot Hotel Servs., Inc., 2013 U.S. Dist. LEXIS 123967 (S.D.N.Y. Aug. 26, 2013).)