



Risk Management

by Michael Gentile, J.D.

Hotel liability for guests' personal property can be enormous

Another great article from *The Rooms Chronicle*, the #1 journal for hotel rooms management! ***Important notice: This article may not be reproduced without permission of the publisher or the author.*** College of Hospitality and Tourism Management, Niagara University, P.O. Box 2036, Niagara University, NY 14109-2036. Phone: 866-Read TRC. E-mail: editor@roomschronicle.com

Notice: The ideas, opinions, recommendations, and interpretations presented herein are those of the author(s). The College of Hospitality and Tourism Management, Niagara University/The Rooms Chronicle assume no responsibility for the validity of claims in items reported.

An age-old problem for the hospitality industry is the protection of personal property of hotel guests. Traditionally, guest property consisted of clothing, luggage, money, jewelry and vacation items. Today, hotel guests are likely to have with them items such as laptop computers, cell phones, various electronic devices and perhaps inventory for the traveling salesperson. These items can be worth thousands of dollars, possibly exposing the hotel to extensive liability for their loss. It becomes incumbent upon property managers to be aware of their responsibilities when it comes to the preservation of personal property for their guests. Like most legal issues, the specific requirements vary from state to state and should be reviewed with a local attorney. The following information should serve as an overview of an individual hotel's liability regarding guest property.

Bailment

The legal theory of *bailment* is one that is well known within the hospitality industry. By definition, a bailment is the delivery of an item of tangible personal property for some purpose with the express or implied understanding that the person receiving the property shall return it in the same or similar condition in which it was received when the purpose has been completed. Essentially, it is entrusting personal property to the hotel for temporary safekeeping. In a hotel setting this would include items guests placed in safes or safety deposit boxes, luggage storage, valet parking and valet laundry services. The operation of law is somewhat different if the bailment created is express or implied. Each of these bailment scenarios will be analyzed below.

Theories of liability

When discussing the liability of a hotel for the loss of guest property the concept of *infra hospitium* or "within the hotel" applies. This means that management's responsibility for the lost or missing property of a guest only attaches when the property was within the walls of the hotel or was in the care or charge of the innkeeper. Once this has been determined, there are two theories of liability that may be applied. *Common law liability* states that the hotel is in essence an insurer and is responsible for the loss, unless it can show the guest was negligent, or an act of god or an act of a common or public enemy caused the loss. *Statutory liability*, sometimes referred to as a limiting liability statute, has been created in most jurisdictions to limit common law liability for hotels. All 50 states in the U.S. have passed legislation designed to limit an innkeeper's liability for guests' personal property. The maximum limits vary among each state and territory and range from \$0 (MO, MT, NM, WY) to \$5,000 (NJ). However, to receive the protection of the limiting liability statute, management must do the following:

- Provide safes that withstand fire and theft, either in rooms or in a central location
- Post notices that safes are available for guest use
- Post notices of that state's maximum monetary limit of liability
- Require guests to declare the value of goods at the time of surrender if the state's statutory limit is to be exceeded

If any of these statutory requirements are not met, the hotel might not be afforded the protections of the statutory limit of liability. As a result, hotel liability could possibly exceed established limits through the application of common law standards.

The next step then, is an analysis of the type of bailment created to determine responsibility for the lost property. As stated in the definition, a bailment may be expressed or implied. In cases where the hotel provides a safe or some other service to keep or store guests' property, an expressed bailment is created. When property is given by the guest (bailor) to the hotel management (bailee), and both parties receive some benefit (i.e., a gratuity to the bellman and safekeeping for the guest), this may be referred to as *mutual-benefit bailment*. As such, the hotel is required to exercise ordinary care over the property. This may even

extend to periods of time when the hotel holds property for non-guests or former guests, such as when luggage is stored prior to check-in or after check-out.

Lost and found items

But what happens when a guest leaves an item in the room or on the premises after check-out, especially in lost and found situations? This is a case where *constructive bailment* has been created. Though the hotel comes into lawful possession of the property other than by a mutual agreement, it is still treated as the bailee of the property. Hence, bailment has automatically been created through a default process the moment an employee finds lost or mislaid guest property. The hotel now has the responsibility to return the property to its rightful owner in order to conclude the bailment. To comply, hotel management should take the following steps:

- Review the lost and found laws for their state
- Require employees and staff to immediately turn in lost property to the hotel's lost and found department
- Keep a log of such found property
- Make reasonable, documented efforts to find the owner, especially for items of significant value
- Safeguard and hold the personal property for the length of time prescribed by the state's statute of limitations for lost or mislaid property
- Ascertain the identity of the purported owner by requiring proof of ownership or identification of lost items before returning found property
- If the original owner cannot be found, dispose of the property in accordance with written procedures and the laws of the jurisdiction

Lost property can be a tricky issue. Is the property truly lost or was it left behind to be discarded? Is there a financial or sentimental value to the property? What efforts must be made to find the owner? Keep in mind that the standard of care in constructive bailments is the use of ordinary care. Management should err on the side of caution and assume that the property is in fact lost, then follow the steps outlined above. By following these procedures, management can protect the hotel from liability for any lost personal property.

In the next issue of TRC

- Mike Gentile will discuss in greater detail the legal requirements that hotels must comply with to avail themselves of limiting statutory liability for guests' personal property. ✧

(Michael Gentile, J.D. is an attorney and assistant professor of recreation and sports management at Niagara University. As an attorney he specialized in personal injury and administrative law and is the former law director for the city of Sandusky, Ohio. E-mail: mgentile@niagara.edu)