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The Liability of an Innkeeper for the Personal Chattels of His Guests

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THE LIABILITY OF AN INNKEEPER FOR THE PERSONAL CHATTELS OF HIS GUESTS.

At common law an innkeeper was liable for the goods of his guest lost in an inn, unless the loss was caused by an Act of God, a public enemy or by the fault of the guest. He was regarded as an insurer of his guest's goods. This is the prevailing view today, it being the law in a majority of the states. Arkansas,[1] California,[2] Delaware,[3] Maine,[4] Massachusetts,[5] Nebraska,[6] New Hampshire,[7] New York,[8] Ohio,[9] West Virginia,[10] Wisconsin,[11] Alabama,[12] North Carolina[13] and Pennsylvania[14] have followed this common law doctrine. The courts of these various states have construed an "Act of God" differently. In *Hulett v. Swift*[15] it was held that an innkeeper was liable for goods lost due to an accidental fire, while in *Moore v. Long Beach Development Co.*,[16] the court decided that an innkeeper was immune from liability for an accidental fire. In *Schiffer v. Carson*[17] it was held that an innkeeper who negligently failed to provide against an "Act of God" was liable. The New York view is the broader and the one generally followed in this country.

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1. Petit v. Thomas, 103 Ark. 593.
2. Matier v. Brown, 1 Calif. 221.
3. Russell v. Fagan, 7 Houst. 389.
4. Norcross v. Norcross, 53 Me. 163.
5. Mason v. Thompson, 9 Pick. 280.
6. Dunbier v. Day, 12 Nebr. 596.
7. Sibley v. Aldrich, 33 N. H. 553.
8. Hulett v. Swift, 33 N. Y. 571.
9. Gast v. Gooding, 1 Ohio Dec. 315.
10. Cunningham v. Buckey, 42 W. Va. 671.
11. Jalie v. Cardinal, 35 Wis. 118.
12. Glenn v. Jackson, 93 Ala. 342.
13. Halstein v. Phillips, 146 N. C. 366.
14. Schultz v. Wall, 134 Pa. St. 262.
15. 33 N. Y. 571.
16. 87 Cal. 483.
17. 5 S. Dak. 233.

Another doctrine which has been adopted to some extent is that an innkeeper is liable only if he is negligent. The courts of Illinois,[18] Indiana,[19] Kentucky,[20] Louisiana,[21] Maryland,[22] Michigan,[23] Texas[24] and South Carolina[25] have held to this opinion.

There is still a third, the prevailing English view,[26] which has been adhered to by Minnesota[27] and Vermont,[28] which is that the innkeeper is liable if injury was the result of an inevitable accident or an irresistible force. Thus the courts have held that a robbery or burglary may discharge him if he was not at fault. This rule is really a lenient gloss on the first mentioned doctrine, and is best in accord with the history of the law. Whatever view is taken the burden of proof is on the innkeeper to establish facts which will exonerate him.

The next question that naturally arises is concerning the kind of chattels of his guest for which the innkeeper is liable. As a general rule he is liable for all goods that he has received. He can refuse to accept any specific article, but if he does accept, he at once becomes liable. This rule has many exceptions and is regulated by statutes in most jurisdictions. At common law he was liable for all the money in the possession of his guests. However, this rule has been abrogated to a great extent. Thus in *Johnson v. Richardson,*[29] the court held that an innkeeper's liability will not embrace sums of money which no prudent man would carry with him where exchange can readily be obtained. Again in

18. Johnson v. Richardson, 17 Ill. 302.
19. Baker v. Dessauer, 49 Ind. 28.
20. Vance v. Throckmorton, 5 Bush 41.
21. Woodworth v. Morse, 18 La. Ann. 156.
22. Towson v. Bank, 6 Har. & J. 47.
23. Cutler v. Bonney, 30 Mich. 259.
24. Howth v. Franklin, 20 Tex. 978.
25. Axon v. Newsom, 1 McCord, 509.
26. Morgan v. Ravey, 6 H. & N. 265.
27. Olson v. Crossman, 31 Minn. 222.
28. Howe Mach. Co. v. Pease, 49 Vt. 477.
29. 17 Ill. 302.

Profilet v. Hall,[30] it was decided that an innkeeper was not liable for baggage or for money for immediate expenses unless it was deposited with the innkeeper. Most states have statutes to the same effect as the above case.

Some courts have gone as far as to restrict the articles for which an innkeeper is liable. In *Neal v. Wilcox*[31] it was held that his liability was restricted to such goods and animals as a guest has with him for the purpose of his journey. Thus a mule brought by a guest and placed in a pasture nearby did not bind the innkeeper.

The word "baggage" has always caused a great amount of litigation concerning its meaning, because in many jurisdictions the liability depends upon whether or not the article comes under the definition. If the article comes under this definition it is not necessary for the plaintiff to prove negligence to make the innkeeper liable. Baggage is generally defined to be those articles necessary for the personal use of the guest during the journey, and not for exhibition or sale. In *Pettigrew v. Barnum,*[32] silver knives, forks and spoons were not considered to be baggage, and in *Giles v. Fauntleroy*[33] it did not include surgical instruments or pistols. Again in *Myers v. Cottrill*[34] the court held as follows: If a person going into a hotel as a guest takes to his room not ordinary baggage or those articles which generally accompany the traveler, but valuable merchandise such as watches and jewelry, and keeps them for show or sale, and from time to time invites parties to his room to inspect and to purchase; unless there is some special circumstance in the case showing that the innkeeper assumes his responsibility as of ordinary baggage; as to such merchandise the special obligations imposed by the common law do not exist, and the guest as to those goods becomes their vendor and uses his

30. 14 La. Ann. 524.
31. 49 N. C. 146.
32. 11 Md. 434.
33. 13 Md. 126.
34. 5 Bliss 465.

room for the sale of merchandise, he changes the ordinary relation of host and guest, and thus the innkeeper is not liable.

In *Williams v. Hardware Co.*,[35] a much later case, it was held that when property is brought to a hotel for the purpose of sale or show, such as the goods of a commercial traveler, the innkeeper is only held to the exercise of ordinary care and answerable only for negligence. This case shows the tendency of the modern view which holds the innkeeper liable only for his negligence, while the former case discharges him of all liability.

Practically all of the states have statutes that limit the liability of the innkeeper to the conformance of certain rules by the guest, such as leaving valuable packages in the office or safe; the failure on part of the guest will exonerate the innkeeper.[36] These required articles must be within reason, and not such articles as are essential to personal needs. Thus clothing and articles of daily use are not covered by this rule.[37] The guest must have reasonable notice of such a regulation and it is the duty of the innkeeper to inform him. In *Brown Hotel Co. v. Burchardt*,[38] the innkeeper informed the guest that "valuables" must be put in the safe. The court held that it was not definite enough to apply to mineral specimens which were not placed in the safe and as a result subsequently were lost.

Another way by which the liability of an innkeeper is limited is by the contributory negligence of the guest. This negligence need not be gross, but must be a direct and proximate cause of the loss.[39] In an action of this type where the point of contributory negligence is raised by the innkeeper, courts generally require a weighty proof on his part, as the contributory negligence alleged must be at the

35. 29 Okla. 331.
36. Stanton v. Leland, 4 E. D. Smith (N. Y.) 88.
37. Johnson v. Richardson, 17 Ill. 302.
38. 13 Colo. App. 59.
39. Lanier v. Youngblood, 73 Ala. 587.

time of the loss, not before or after.[40] Thus a failure to lock a bedroom door is not negligence on the part of the guest,[41] and also a failure to notify innkeeper that the door lock is broken is not negligence.[42] Again we find in *Dernbier v. Day*,[43] that when a guest who took out a large amount of money in the hotel lobby for the purpose of counting it and was consequently robbed, the innkeeper was discharged from liability as he was not guilty of negligence.

When does the innkeeper's liability commence? The general rule is that it commences from the moment that the relation of host and guest is established, until the time that this relation terminates. However there is some authority to the effect that the innkeeper's liability commences before the relation of host and guest commences. In *Dickinson v. Winchester*,[44] it was held that an arrangement by a baggage transfer company to haul a guest's baggage to the inn, places the liability on the innkeeper when the transfer company takes possession. The modern view tends to place liability on the innkeeper only when the above relation is established. This is shown in *Hirsh v. American Hotel Co.*,[45] where a traveling salesman forwarded his trunk to a hotel twelve days before his arrival and the trunk was deposited in the baggage room, the location of which was known to the traveler; the hotel proprietor was merely a gratuitous bailee and was not liable in the absence of proof of gross negligence for the contents of the trunk removed while in the baggage room. In such a case the relation of guest and innkeeper did not arise until the actual arrival of the owner of the trunk at the hotel.

At common law, an innkeeper was liable for the safe keeping of his guest's goods from the time that they were

40. Burrow v. Trieber, 21 Md. 320.
41. Classen v. Leopold, 2 Sweeny (N. Y.) 705.
42. Lanier v. Youngblood, 73 Ala. 587.
43. 12 Nebr. 596.
44. 4 Cush (Mass.) 114.
45. 53 Pa. Super. Ct., 387.

brought within the precincts of the inn. Thus in a case where the plaintiff gave trunk checks to a bell boy, on nondelivery of the trunks, the innkeeper was held liable.[46] In *Minor v. Staples*,[47] it was held that an innkeeper was not liable where a guest placed his goods in a bathing house outside of the inn. This case, while differing from the majority view, can easily be reconciled, due to its facts. However, if the innkeeper directs that the goods be kept outside of the inn, he is liable for their loss.[48] The weight of authority holds to the above first mentioned rule. We find in *Eden v. Dieg*,[49] where the goods of an intending guest were sent to an inn without knowledge of innkeeper, and the transfer company placed the goods on a platform of the inn and shouted "baggage," the innkeeper was liable for the subsequent loss. However, a person must become a guest or show his intention within a reasonable time after the delivery of his baggage to the transfer company.

If the guest retains possession of his goods, it is necessary that he keep them under his general control. In *Vance v. Throckmorton*,[50] it was held that when in the absence of the innkeeper, a guest took the key and undertook to look out for himself, the innkeeper was not liable. And again in *Neal v. Wilcox*,[51] where a horse of a guest was pastured in a field belonging to the innkeeper, but was taken care of by the owner, the innkeeper was not liable.

Another interesting question that arises is the status of host and guest after the relation has ceased. This relation does not cease when a guest temporarily absents himself from the inn. In *Hays v. Turner*,[52] it was held that where a guest goes out of the inn to see the town, intending to return before night, the relation continues, and in *Lynar v.*

46. Keith v. Atkinson, 48 Colo. 480.
47. 71 Me. 316.
48. Cohen v. Manuel, 91 Me. 274.
49. 75 Ill. App. 102.
50. 5 Bush. (Ky.) 41.
51. 49 N. C. 146.
52. 23 Iowa 214.

Mossap[53] we find that where a traveler hired a room to dress in, dressed and departed from the inn, the innkeeper was not liable for the loss of his goods, as he had no knowledge that he intended to return.

After a guest pays his bill and departs, leaving goods to be removed, the innkeeper is liable for the goods for a reasonable time pending removal. Thus where an innkeeper's servants, after guest had left, promised to deliver baggage to a certain railroad station, the innkeeper was held liable for the subsequent loss.[54] However, if guest departs, and leaves goods to be kept until called for, innkeeper is only a gratuitous bailee.[55] Also if an innkeeper receives goods after guest has departed, intending to forward them, he is only liable as a bailee, as the relation of guest and host has ceased.[56]

The Missouri statutes on this subject are in effect that no innkeeper shall be liable for any loss of any property of a guest in a total sum greater than $200, unless innkeeper by an agreement in writing shall assume greater liability, and the innkeeper shall not be liable unless goods are delivered to innkeeper and acknowledged by a claim check, unless the damage or loss occur through the willful negligence of the innkeeper, and a copy of the statute should be placed in every guest's room.[57] The innkeeper shall not be liable for the loss of any merchandise for sale, or samples belonging to the guest, unless a special written agreement is entered into.[58]

All the cases in the Missouri courts have been construed accordingly and as a rule follow the generally accepted lines described above.

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53. 36 L. B. 230.
54. Lassen v. Clark, 37 Ga. 242.
55. Hays v. Turner, 23 Iowa 214.
56. Murray v. Marshall, 9 Colo. 482.
57. R. S. Mo. 1919, Sec. 5865 (Amend. 1921).
58. R. S. Mo. 1919, Sec. 5866.