

CHAPTER 11

YOUR RESPONSIBILITIES FOR GUESTS' PROPERTY

11.1 LIABILITY FOR GUESTS' PROPERTY

- Common Law Liability
- Limits on Common Law Liability
- Ensuring the Limitation of Liability

11.2 BAILMENTS

- Bailment Relationship
- Types of Bailments
- Liability under a Bailment Relationship
- Detained Property
- Innkeeper's Lien

11.3 PROPERTY WITH UNKNOWN OWNERSHIP

- Mislaid Property
- Lost Property
- Abandoned Property
- Disposing of Unclaimed Property

“GOOD MORNING, LANCE,” said Trisha Sangus as she walked into the lobby of the hotel she managed.

“Good morning, Trisha. It’s a great day,” replied Lance Dani. As the front office manager, Lance was responsible for hiring and training the desk clerks, who checked guests in and out of the hotel, as well as the reservationists, who received reservations from the general public, the hotel’s national reservation system, and the sales department. In addition, Lance supervised the guest services area of

the hotel, which included bellstaff and shuttle van drivers. In short, Lance’s department would be the first and last contact most guests would have with the hotel. Because of that, Trisha spent extra time, whenever she could, helping to develop Lance’s skills, as well as those of his staff.

“I see you have rearranged the information,” said Trisha. “It looks good.” The day before, she had asked Lance to “declutter” the reception desk. The mandatory display of the franchise hotel directory, complimentary newspapers, credit card information, and

information on hotel services took up so much space on the front desk that it was often difficult to leave enough room for guests to check in and out. Trisha had asked Lance to review all the materials displayed at the front desk, with an eye toward removing anything that was not absolutely critical. Trisha liked a neat, efficient workspace, but now that he had complied with her request, something was bothering her, and she couldn't quite put a finger on it.

"Tell me what you've done," Trisha began, as her eyes swept across the front desk area.

"Well," replied Lance, "as you asked, I took a look at the material here at the front desk that the guests really use a lot. Then I tried to prioritize, you know, go from most used to least."

"That makes sense," replied Trisha, as she now saw, or rather did not see, the item whose absence had been the source of her uneasiness.

"Well," continued Lance, "after that it was just a matter of removing the things the guests didn't really use and keeping the important ones."

"The important ones?" asked Trisha.

"Right," said Lance, "like the complimentary newspapers and the guest comment cards."

"I notice you moved some signs also," said Trisha.

"Right," replied Lance. "After the desk area looked so good, we decided to move some signs so guests could see them better, such as the check-in and check-out times and the names of the credit cards we accept."

"Which signs did you remove altogether?"

"Just one," said Lance. "I moved the manager-on-duty sign back a bit. The letters are so large the guests can still easily see it. To make room for it, I removed the sign that informed customers we have safety deposit boxes. I talked to the clerks, and they said the guests almost never use the boxes."

"Let me see if I understand you correctly," said Trisha Sangus, in a voice Lance had come to know and did not look forward to hearing, "the desk clerks said that our guests only infrequently use our free safety deposit boxes, so you removed the sign stating we have them?"

"Yes," replied Lance slowly, adding a bit warily. "Is that okay? I made sure that each of our desk clerks knows that if a guest asks to use a safety deposit box, we would certainly accommodate him or her. I mean, we provide lots of guest services without a separate sign—pay-per-view movies, for example. And our guests watch pay-per-views a lot more than they use our safety deposit boxes."

"So, as you see it," continued Trisha, "the sign announcing the availability of safety deposits boxes was simply a convenience to our guests? A nice way to let them know about our services?"

"Right," replied Lance.

"Hmmm," replied Trisha. "Lance, please, come into my office. I want to show you something."

IN THIS CHAPTER, YOU WILL LEARN:

1. To understand fully the responsibility hospitality managers have to safeguard the personal property of their guests.
2. To carry out the procedures needed to limit potential liability for the loss of guest property.
3. To assess the theories of bailment so as to be able to implement policies that limit potential legal liability.
4. To create the procedures required to legally dispose of personal property whose ownership status is in question.

11.1 LIABILITY FOR GUESTS' PROPERTY

Most hotels and restaurants are safe places to visit and work. As explained in Chapter 10, "Your Responsibilities as a Hospitality Operator to Guests," you, as a hospitality manager, have a responsibility to make your facility as safe as possible. This responsibility pertains to the well-being of the guests themselves, and to the security of their property.

Common Law Liability

Historically, under common law, innkeepers were held responsible for the safety of a guest's property. In fact, the inns would often advertise that travelers could rely on their personal protection during their stay. For example, if a traveler stayed at the Heidelberg Arms Inn, he or she was under the protection of the Heidelberg family, including the "arms" (weapons) that the family would muster against any intruders who would dare attack. This was important because, in the past, travel was risky, and those travelers who arrived for a night's lodging needed to know that the innkeeper could provide them with a secure haven during their stopover. Because of the importance of providing protection when traveling, an innkeeper became, under common law, an insurer of the safety of a guest's property. If the common law had not required innkeepers to maintain a protected environment, robbers and bandits would have made the inns unsafe places indeed, and travel would have been greatly restricted.

In today's world, hotel and restaurant guests still face the threat of robbery. The number of crimes reported annually by hotels and restaurants is large and growing. Jewelry, credit cards, and cash, as well as personal property such as cameras, furs, and the like, all entice those who are not honest. Vacationers, business travelers, or simply those dining out are under the threat of an increasingly sophisticated type of thief. Unfortunately, even hospitality employees can also be a threat to guest property.

Hospitality managers must remain vigilant to various threats, from sophisticated con artists to "grab and go" thieves, because today's law may still hold those in the hospitality industry liable for the safety of their guests' property. Consider the case of Evan Gainer. Mr. Gainer checks into a hotel carrying a bag of diamonds valued at \$100,000. The bag is stolen from his room. Under common law, the innkeeper could be liable to reimburse Mr. Gainer for the value of his stolen diamonds, even if he or she was unaware that the luggage contained such valuable items.

Of course, property liability extends beyond the threat of theft. Consider the case of Tony Mustafa. Mr. Mustafa allowed a hotel's valet parking staff to park his new Mercedes-Benz convertible in its elevated parking garage. While retrieving the car, a valet driver scraped the side of the car against a concrete pillar, damaging it extensively. As could be expected, Mr. Mustafa was quite upset, and would, in all likelihood, hold the hotel responsible for the damage done to his vehicle. In this case, the guest's property, while not stolen, was clearly damaged while in the possession of the hotel.

In summary, theft, negligent handling, fire, flooding, and a variety of other factors can threaten a guest's property. The general rule of common law is that the innkeeper will be liable for damage to, or loss of, a guest's property; unless an act of nature, civil unrest, or the guest's own negligence caused the damage or loss. Consequently, hospitality managers have an extraordinarily difficult task. Fortunately, in every state, the legislatures have moved to modify, under very specific circumstances, the common law liability requirements placed on innkeepers.

Limits on Common Law Liability

When innkeepers face great liability exposure, they should also have a great deal of control over a guest's possessions. It was this recognition of the great risk taken by innkeepers that moved state legislatures to modify the centuries-old common law liability for innkeepers. Beginning in the mid-1800s, and continuing today, each state has developed its own view of the extent of innkeeper liability for the possessions of their guests. The laws in each state vary considerably, however, so it is extremely important that hotel managers familiarize themselves with the law in their own state.

Section 4721.01 Liability for Loss of Property (GC Section 5981)

An innkeeper, whether a person, partnership, or corporation, having in his [or her] inn a metal safe or vault in good order suitable for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers, and bullion, and keeping on the doors of the sleeping rooms used by his [or her] guests suitable locks or bolts, and on the transoms and windows of such rooms, suitable fastenings, and keeping a copy of this section printed in distinct type conspicuously suspended in the office, ladies parlor or sitting room, bar room, washroom, and five other conspicuous places in such inn, or not less than 10 conspicuous places in all, shall not be liable for loss or injury suffered by a guest, unless such guest has offered to deliver such property to such innkeeper for custody in such metal safe or vault and the innkeeper has omitted or refused to take and deposit it in the safe or vault for custody and give the guest a receipt therefore.

Section 4721.02 Extent of Liability Agreement (GC Section 5982)

An innkeeper should not be obliged to receive from a guest for deposit in the safe or vault property described in section 4721.01 of the Revised Code exceeding a total value of five hundred dollars, and shall not be liable for such property exceeding such value whether received or not. Such innkeeper, by special arrangement with a guest may receive for deposit in such safe or vault property upon such written terms as may be agreed upon. An innkeeper shall be liable for a loss of any of such property of a guest in his [or her] inn caused by the theft or negligence of the innkeeper or his [or her] servant.

Section 4721.03 Limit of Liability for as to Certain Property (GC Section 5983)

The liability of an innkeeper whether person, partnership, or corporation, for loss of or injury to personal property placed in his [or her] care by his [or her] guests other than that described in section 4721.01 and 4721.02 of the Revised Code shall be that of a depositary for hire. Liability shall not exceed one hundred and fifty dollars for each trunk and its contents, fifty dollars for each valise and its contents, and ten dollars for each box, bundle or package and contents, so placed in his [or her] care, unless he [or she] has consented in writing with such guests to assume a greater liability [sic].

Figure 11.1 State of Ohio limitations on innkeeper liability.

Figure 11.1 is a copy of the Innkeepers Liability statute for the state of Ohio. It is an excellent example of the type of law that state legislatures have passed for the benefit of innkeepers. Let's look carefully at several characteristics of the Ohio statute, which are common to most state liability laws.

Posting Notice

When a state legislature modifies the common law liability of innkeepers, it is only right that the guest be notified of the limitation. This is a critical point, and one that must be fully understood by the hospitality manager. Simply put, if a hotel wishes to take advantage of a state's laws limiting its liability for a guest's possessions, the guest must be made aware of the existence and content of that law. Notice that in the Ohio statute, guests must be made aware of the statute by requiring that the innkeeper keep "a copy of this section printed in distinct type conspicuously suspended in the office, ladies parlor or sitting room, bar room, washroom, and five other conspicuous places in such inn, or not less than 10 conspicuous places in all."

A Secure Safe

If a hotel is to limit its liability for a guest's possessions, the hotel must provide a safe where guests can keep their valuables during their stay. Note that the Ohio statute states an innkeeper must provide access to a "metal safe or vault." Hotels in most

states are required to provide a safe for guest valuables and to operate the safe in a reasonable manner. That is, the safe should be in good working order, and access to the safe should be restricted and closely monitored.

Suitable Locks on Doors and Windows

Obviously, the hotel that intends to limit its liability must provide a reasonably safe room for its guests. This would include providing functioning locks for doors and windows, or as stated in the Ohio statute, "suitable locks or bolts, and on the transoms and windows of such rooms, suitable fastenings."

Limits on Required Possession

In most states, an innkeeper is not required to accept for safekeeping an unlimited amount of personal property. A hotel is not a bank, and it is not reasonable to assume that it would be as secure as a bank. Note the limitation allowed the innkeeper in the Ohio statute, which states, "An innkeeper should not be obliged to receive from a guest for deposit in the safe or vault property described in . . . the Revised Code exceeding a total value of five hundred dollars, and shall not be liable for such property exceeding such value whether received or not."

Limits on Replacement Values of Luggage

Because it is impossible to know for certain exactly what may have been contained in a lost piece of luggage, most states place a dollar limit on the replacement value of such items. Thus, if a piece of luggage placed in the care of the innkeeper is lost, the hotel's liability will be limited to the dollar value specified in the statute. Note the wording in the Ohio statute: "Liability shall not exceed one hundred and fifty dollars for each trunk and its [sic] contents, fifty dollars for each valise and its [sic] contents, and ten dollars for each box, bundle or package and contents."

This limitation provision is very similar to that provided to airlines, by federal law, for lost or damaged luggage. Also, be aware that some limited liability laws also protect the innkeeper (and their insurance companies) in the event of a fire or natural disaster.

Penalty for Negligence

In nearly all states, if an innkeeper is negligent, the statute limiting liability becomes ineffective. As the Ohio statute states, "An innkeeper shall be liable for a loss of any of such property of a guest in his [or her] inn caused by the theft or negligence of the innkeeper or his [or her] servant." Note that the Ohio statute makes an innkeeper responsible for theft, if an employee (servant) commits it. Even more important, the innkeeper becomes liable for the full amount of any property loss resulting from the negligence of the hotel or its staff (subject to the contributory negligence of the guest).

Ensuring the Limitation of Liability

Although it is implied, rather than explicitly stated, in the Ohio statute, failure on the part of the innkeeper to fulfill the statute's requirements will cause the innkeeper to lose the protection of the statute. Simply put, it is the responsibility of the innkeeper to prove that the hotel fully complied with all requirements set forth in the state law (i.e., appropriate notice with the right language, posted in the right number of conspicuous places, in an easy-to-read format, etc.).

» ANALYZE THE SITUATION 11.1

TRACI KENNEAR CHECKED INTO the Pullman House Hotel. During her stay, jewelry with an estimated value of \$5,000 was stolen from her hotel room. Ms. Kennear maintained that the hotel should be responsible for the jewelry's replacement and sued the hotel for the amount of the stolen jewelry. The hotel stated that its liability was limited to \$300 under state law, because Ms. Kennear failed to deposit the jewelry in the safe deposit boxes provided by the hotel.

Ms. Kennear's attorney countered that the notice of the law, which the legislature stated must be "conspicuously posted" in order to be applied, was in fact posted on the inside of a dresser drawer filled with extra blankets for the guestroom, and that, further, the type size was so small that an average person would not be able to read the notice from a distance of 2 feet. The hotel replied that the notice was, in its view, conspicuously posted, and that Ms. Kennear should have asked for help from the hotel if she could not find or read the notice.

1. Did the hotel comply with the state legislature's requirement that the notice be conspicuously posted?
2. How could the hotel manager in this case ensure compliance with the "conspicuous posting" requirement of the state legislature?

11.2 BAILMENTS

LEGALESE

Bailment: The delivery of an item of property, for some purpose, with the expressed or implied understanding that the person receiving it shall return it in the same or similar condition in which it was received, when the purpose has been completed. Examples include coat checks, valet parking, safety deposit boxes, laundry, luggage storage, and delivery.

There are situations when a hotel or restaurant manager may be entrusted with a guest's property in circumstances not covered directly under a state's liability statute. For example, suppose that a guest arrives at a hotel and is greeted by a bellman who immediately takes the guest's bags and gives the guest a receipt before checking in. Who is responsible for the luggage? In this case, the guest has not had an opportunity to read the posted liability statutes, and has not even technically become a guest yet. However, because the bellman has taken voluntary possession of the bags, the hotel bears some responsibility for the safety of the guest's luggage.

Restaurants are not generally covered under the state laws that limit the liability of innkeepers. Nevertheless, restaurants too have responsibilities for the safety of their guests' property, especially in situations in which the restaurant takes temporary possession of that property.

These responsibilities have been established by the courts through the application of a legal concept known as a *bailment*. In the hospitality industry, bailments are quite common. Coat checks, valet parking, safety deposit boxes, laundry services, luggage storage, and luggage delivery services are all examples of bailments. Restaurant and hotel managers must understand that they are responsible for the safety of a guest's property when a bailment is established.

Bailment Relationship

In a bailment relationship, a person gives property to someone else for safekeeping. For example, a restaurant guest may check his or her coat in a coatroom. The diner assumes that the restaurateur will safely hold the coat until he or she comes back for

it. While there may or may not be a charge for the service, the restaurateur assumes responsibility for the safety of the coat when it is received from the guest. In this situation, a bailment has been created.

The word bailment is derived from an old French word *bailler*, which means “to deliver.” In a bailment relationship, the person who gives his or her property to another is known as the *bailor*. The person who takes responsibility for the property after receiving it is known as the *bailee*.

To create a bailment, the property must be delivered to the bailee. The bailee has a duty to return the property to the bailor when the bailment relationship ends. Thus, if a guest delivers a suit of clothes to an in-house hotel tailor, the bailment relationship begins when the tailor accepts the clothing and ends when the clothing has been returned to the guest.

It is important to note that a bailment may be for hire; that is, the bailor may have to pay the bailee to hold the property (as in paying for valet parking), the bailee may pay for the privilege of using the property (as is the case when renting a car), or the relationship may take the form of a *gratuitous bailment*.

Types of Bailments

The law surrounding bailments is vast and varied. Essentially, however, bailments are divisible into three kinds:

1. *Bailments for the benefit of the bailor*: In this arrangement, only the bailor gains from the agreement. This arrangement exists, for example, when a refrigeration repairman asks if he can leave his tools in a restaurant’s storeroom for the night so they do not have to be reloaded into the repair truck. The tools will be used the next day to finish a repair job covered by the refrigerator’s warranty. The restaurant that accepts the tools for safekeeping also accepts the responsibility of a bailment relationship, and so must exercise a high degree of care for the safety of the property (tools). If the restaurant is unwilling to do so, it can, of course, simply refuse to accept possession of the property.
2. *Bailments for the benefit of the bailee*: In some cases, the person holding the property gains from the bailment relationship. When the foodservice director of the local country club borrows chafing dishes from the food and beverage director of the local athletic club in order to service an extremely large wedding, the bailment is for the benefit of the bailee only. Again, it is important to note that this bailment relationship could be a gratuitous one, or the dishes could be rented to the country club. In either case, the bailee who benefits from the relationship is responsible for the safety of the property while it is in his or her possession.
3. *Bailments for the benefit of both parties*: In many cases, a bailment, either for payment or gratuitous, is for the benefit of both parties. This would be the case, for example, when a restaurant agrees to park its guests’ cars for them while they dine. The guests (bailors) gain the convenience of having their cars parked for them, and the restaurant (bailee) gains because of the increase in business that comes from providing the parking service.

Although the rule of law varies somewhat in each of these three arrangements, as a manager, you need to realize that guest property, when in your possession, subjects you to the duty of reasonably caring for that property. A simple way to consider your responsibility is to assume that you should exercise as much care for the property of a guest as you would for your own property. If you cannot exercise that degree of care, it is best not to enter into a bailment relationship.

LEGALESE

Bailor: A person or entity that gives property to another in a bailment arrangement.

LEGALESE

Bailee: A person or entity that receives and holds property in a bailment arrangement.

LEGALESE

Gratuitous bailment: One in which there is no payment (consideration) in exchange for the promise to hold the property.

» ANALYZE THE SITUATION 11.2

THE FOX MOUNTAIN COUNTRY Club was a popular location for weddings in a midsized town. In the winter, the country club offered a free coat check service to its guests. A staff member employed by the country club operated the coat check service. The coat checkroom was located just outside the entrance to the club's Crystal Ballroom.

At a wedding held on June 15, Mrs. Kathy Weldo presented her full-length sable coat to the uniformed coat check attendant at the country club. Mrs. Weldo was given a small plastic tag with a number, which she observed corresponded to the number on a coat hanger where her coat was hung. Standing outside the coatroom, Mrs. Weldo had a clear view of her fur as it hung on the coat rack. Mrs. Weldo remarked to the attendant that the coat was "very valuable," and that she hoped the attendant would watch over it carefully.

Upon leaving the club at 1:00 A.M., Mrs. Weldo went to the coat check area to retrieve her coat, only to find that it was missing. When she inquired about the coat's location, the coat check attendant apologized profusely but could not explain the coat's disappearance. The attendant stated that he had left the coatroom unattended only twice that evening, one time for a 15-minute dinner break and the other for a 5-minute cigarette break. The door to the coatroom was left open and unlocked during those periods, so that guests who left early could retrieve their own coats.

Mrs. Weldo returned to the club the next day to speak to Ms. Miles, the club manager. Ms. Miles pointed to a sign prominently displayed near the coatroom door stating, "The club is not responsible for lost or stolen property." She recommended that Mrs. Weldo refer the matter to her insurance company.

1. What was the nature of the bailment relationship in this situation?
2. Did the club exercise reasonable care in the handling of Mrs. Weldo's coat?
3. What should the club manager do in the future to avoid situations such as this?

Liability under a Bailment Relationship

A hospitality facility is liable only if a bailment relationship is established. For example, many restaurants and hotels provide coat racks or unattended coatrooms for their guests. Generally, a restaurant would not be responsible for any theft or damage to a patron's property on an unattended coat rack, because the restaurant did not legally take possession of the property. Thus, a bailment was never created.

This concept also applies to items inside bailed property. For example, a restaurant that offers valet parking would be liable for damage to a guest's automobile. When the guest presents the car keys to the valet, possession of the car is transferred from the guest to the restaurant, and a bailment is established. However, the restaurant would probably not be liable for the loss of an expensive camera that was left

inside the car. The restaurant knowingly accepted ownership only of the automobile. No bailment relationship was established for the camera left inside the automobile.

It is important to remember that, in cases where a bailment relationship does not exist, and a hospitality operation does not assume liability, managers should still exercise a degree of care over their guests' property to avoid the risk of a negligence lawsuit.

When a bailment relationship has been established, a hospitality operation will be liable for any loss or damage to a guest's property. In many states, a hotel or restaurant's liability for damage will be limited if the operation (bailee) can prove that it exercised the standard of care required under the law.

A bailee can also reduce its liability by establishing a set liability limit in an express agreement with the bailor, provided the limitation is not in violation of law or public policy. For example, a country club may post a sign stating it will reimburse guests for lost property up to a set amount. Although some states may recognize this type of sign as a reasonable agreement between bailor and bailee to limit liability, other states do not recognize the validity of such a posting. Thus, a hospitality manager should read his or her state law carefully, or consult an attorney, before posting such a sign.

A hotel may also be liable for any bailed property of nonguests using its facilities, such as a hotel guest who has already checked out, or an individual using a hotel's restaurant or meeting room. However, the hotel's liability for such property may be limited under the terms of the state's liability law.

In all cases, if the loss or damage to a guest's property is the result of the hospitality operation's own negligence or fraud, the hospitality operation will be liable for the full amount of that property. By the same token, if a guest's own negligence contributes in some way to the property's loss, the hospitality operation's liability may be reduced, or even eliminated altogether.

Note that, historically, the common law held a hotel liable for the loss of a guest's property if the property and the guest were within the premises of the hotel. This concept was known as *infra hospitium*. Today, most states determine responsibility for lost or stolen items by applying bailment and/or negligence theories.

Consider the case of Alexis Lee. Alexis operates a tailor shop in the city. As part of her business, she makes the rounds of local hotels, seeking alteration and mending jobs. One day, Alexis takes an expensive man's suit from a guest staying at the Ritz hotel. The guest had delivered the suit to the bellstand for pick-up by the alteration company. Unfortunately, in her hurry to finish her collection rounds, Alexis leaves her truck unlocked, and the suit is stolen from the back of it before she returns.

In this situation, it is likely that the guest would expect the hotel to replace the suit. The hotel, of course, may be able to press a case against Alexis if it can be shown that her actions were negligent. However, a bailment was created between the bellman and the hotel guest. Under the law, an outside agent acting as a bailee on behalf of a restaurant or hotel may subject the operation to liability. Even though the suit was outside the physical confines of the hotel, the bailment between the hotel guest and the bellman, and the subsequent bailment established between the bellman and Alexis, served, in effect, to extend the confines of the hotel to include Alexis's truck. Thus, the hotel could be liable for the loss of the suit.

Perhaps the most difficult application of bailment and liability concerns the safekeeping of guests' automobiles. Under common law, innkeepers were responsible for the protection of their guests' means of transportation (which, up until the twentieth century, typically meant the care and feeding of horses). Today, however, the use of automobiles presents a unique challenge, as they generally exceed the state's liability amounts, yet cannot be placed in a safe.

In cases where a restaurant or hotel offers valet parking, the situation is clear. The guest turns over his or her key to the valet, creating a bailment relationship, thereby placing liability for the automobile with the restaurant or hotel. In situations where a hotel has an agreement with an independent parking garage, the hotel may

LEGALESE

Infra hospitium: A Latin term meaning "within the hotel."

still be liable for a guest's automobile, since the garage could be considered to be an agent of the hotel.

Many motels have free parking lots on their premises but accept no liability for their guests' automobiles. Guests are permitted to park on the lot if they so desire, but must keep their car keys with them. Thus, no bailment relationship is established between the guest and the motel that would cover any loss or damage to the automobile; that is, the motel would not be liable. That said, some states consider the availability of a parking lot to be a gratuitous bailment, which would hold the hospitality operation liable for any damage. In cases where guests keep their car keys, but a fee is charged for use of the parking lot, the courts may decide that the charging of a fee creates a bailment relationship, which could hold the parking lot owner liable. The laws covering liability for automobiles vary widely from state to state. As a hospitality manager, you should have a thorough knowledge of all the liability provisions included in your state's laws.

Detained Property

Bailees have significant responsibilities when a bailment is created, but so too do bailors. The bailee has the right to charge a fee to cover any costs that may be associated with holding or protecting property, such as a parking fee or charges for the services of a dry cleaner or tailor. However, the bailor may be required to pay reasonable charges for property requiring special handling or maintenance. If the bailor is unwilling or unable to pay the agreed-on charges, the bailee may detain or keep the goods of the bailment as a lien until full payment is made.

Consider the case of the hotel that operates a parking garage and charges a nightly parking fee for guests. A guest arrives at the front desk to check out one morning and claims to be dissatisfied with the hotel and its services. The guest refuses to pay for either the room charges or the parking fees incurred. The hotel may choose to withhold the automobile from the guest until payment is made. In this situation, the automobile would be considered *detained property*. Of course, during the time the property was being withheld, the hotel, as the bailee, would have an obligation to protect the detained property from harm with the same measure of care it would normally exercise.

The situation just described illustrates not only the concept of detained property, but also why you must use your legal knowledge, as well as good judgment, when operating a hospitality facility. The hotel manager may well be within his or her legal rights to detain the automobile and demand payment, but that action may not be in the hotel's best interest. To maintain good customer relations, and to avoid a lawsuit, the manager may decide that a better approach would be to release the automobile. The procedure of detaining property can subject you to a possible lawsuit if not done properly. It is a course of action that should be pursued only after careful consideration of the legal consequences.

Innkeeper's Lien

The innkeeper's lien is a concept that helps to protect innkeepers from nonpaying guests. Essentially, it enables a hotel to detain certain property that guests may bring with them into the inn if they refuse, or are unable, to pay their bill. Most states allow the innkeeper to hold a guest's property until the appropriate charges have been paid. In the event the guest chooses not to pay the bill, the innkeeper is usually authorized to sell the items and apply the proceeds from the sale to the bill. The innkeeper can also use the proceeds to pay any costs that may have been associated with selling the property. Any surplus left over must be returned to the guest. Certain personal items, such as necessary clothing and wedding rings, have been held to be outside the scope of the innkeeper's lien.

LEGALESE

Detained property: Personal property held by a bailee until lawful payment is made by the bailor.

Ordinarily, the lien can be used only to pay charges incurred by the guest directly with the hotel. So, a charge incurred by the guest at an independent business center, for example, even though located within the hotel, would not qualify. State laws vary, so be sure to consult with the state hotel association for the proper methods to be used. Remember, though, that if at any time a guest pays the bill, the lien is extinguished and the property must be returned immediately.

To see a review of the history of innkeeper statutes, and a proposed uniform statute for all states, go to www.HospitalityLawyer.com and read the article titled “Proposed Model Innkeeper’s Limitation of Liability Statute.”

Search the Web 11.1

Go online to www.law.cornell.edu/ucc/ucc.table.html. You will arrive at the Uniform Commercial Code.

1. Select: Article Seven from the list of articles available.
2. Scroll to Part 2, Warehouse Receipts: Special Provisions.
3. Select and read: §7-209. Lien of Warehouseman and §7-210. Enforcement of Warehouseman’s Lien.
4. What does it mean if a bailee has a lien on a bailor’s property?
5. Does a lien permit the possessor of property to sell it to satisfy the lien?
6. What are the implications of section 4 of 7-209 for the hospitality manager proceeding without an attorney?

11.3 PROPERTY WITH UNKNOWN OWNERSHIP

As a manager, you may experience occasions when you and your staff will discover personal property whose ownership is uncertain. Under common law, there are three classifications of property whose ownership is in doubt, each of which carries with it unique responsibilities for the hospitality manager:

1. Mislaid property
2. Lost property
3. Abandoned property

Mislaid Property

Mislaid property comes into existence when the property owner forgets where he or she has placed it. For example, in a restaurant, a guest may enter with an umbrella, place the umbrella in a stand near the door, but upon leaving the restaurant, forget to retrieve it. In this case, the umbrella is considered to be mislaid property, and the restaurant’s manager or owner is responsible for the safekeeping of the umbrella until the rightful owner returns. In fact, if the umbrella is given by the manager to someone who claims to be the owner, but who in fact is not, common law would find the manager liable to the true owner for the value of the umbrella.

LEGALESE

Mislaid property: Personal property that has been put aside on purpose but then has been forgotten by the rightful owner.

A manager is required to use reasonable care to protect mislaid property until the rightful owner returns to claim it. If the rightful owner does not return in a reasonable amount of time, ownership of the property would be transferred to the property finder. Most hotels and restaurants require their employees to turn in any mislaid property they find in the normal course of their work. Thus, ownership of the mislaid property would be transferred to the employer, not the employee.

Lost Property

LEGALESE

Lost property: Personal property that has been inadvertently put aside, then forgotten by the rightful owner.

Lost property comes into being when the rightful owner accidentally or inadvertently forgets where he or she has placed the belonging. Under common law, the individual who finds lost property in a public place is allowed to keep it unless the rightful owner returns to claim it. In many states, the finder has a legal obligation to make a reasonable effort to locate the rightful owner of both lost and mislaid property.

Like mislaid property, employees who find lost property in the course of their work must turn the property over to their employer. This is true even if the property was found in a public place. Thus, a hotel lobby cleaning attendant who finds a portable computer on the floor near a chair would be required to turn the property over to the hotel, because the employer could be responsible for the value of the property if the rightful owner were to return to claim it.

A question can arise over the length of time a finder of lost property must retain that property. One would expect the length of time that the property should be held would increase with the value of the property. Thus, a pair of diamond earrings found in a hotel guestroom would likely require a greater holding time than a pair of gym shoes. Many hotel operators solve this problem by requiring that all property be held a minimum length of time before it is given to the employee who found it (as a reward for honesty) or given to charity. Figure 11.2 is a sample form that a hotel or restaurant can use to properly track these lost-and-found items.

Abandoned Property

When an owner abandons property, he or she has no intention of returning to reclaim it. Obviously, it can be difficult for a manager to know when property has been abandoned, and not just misplaced or lost.

LEGALESE

Abandoned property: Personal property that has been deliberately put aside by the rightful owner with no intention of ever returning for it.

Under common law, a finder has no obligation to take care of, or protect, *abandoned property*. In addition, the finder of abandoned property is not required to seek out its true owner. Broken umbrellas, magazines, worn clothing, and inexpensive toilet articles such as razors, toothbrushes, and the like are all common examples of abandoned property found in hotels. The statement that “one man’s trash is another man’s treasure” certainly holds true in regard to abandoned property. Still, it is a good idea to make sure that any property discarded by the hotel is, in fact, abandoned. When in doubt, it is always best to treat property of doubtful ownership as mislaid, or lost, rather than abandoned.

Disposing of Unclaimed Property

When items of value are found in a hotel or restaurant, your first goal as a manager or owner should be to return the property to its rightful owner. When that is not possible, your next goal should be to safely protect the property until the rightful owner returns for it. Only after it is abundantly clear that the original owner will not be returning should the property be liquidated.

As a guardian of guest property, it is your responsibility as a manager to protect and, when appropriate, properly dispose of property with unknown ownership. If you do so correctly, your guests and your employees will benefit.

Lost-and-Found Ticket	
Facility Name _____	Today's Date _____
Item Description _____	

Location found: _____	Room Number _____
Name of finder _____	
Supervisor who received item(s) _____	

DISPOSITION OF PROPERTY	
Date item returned to owner _____	
Owner Name _____	Owner Address _____
Owner Telephone _____	_____
Returned to owner by _____	
Date item: _____	
Returned to finder _____	Disposed of _____

Figure 11.2 Form used to track lost-and-found items.

» ANALYZE THE SITUATION 11.3

KARI RENFROE WAS EMPLOYED as a room attendant at the Lodge Inn motel. One day, as she came to work, she discovered an expensive leather jacket stuffed inside a plastic shopping bag in the employee section of the parking lot. The jacket had no ownership marks on it, and neither did the plastic bag. Kari turned the jacket over to the manager of the motel despite the fact that there was no policy in place regarding items found outside the motel.

The jacket was still unclaimed 120 days later, at which time Kari approached the manager and asked if she could have the jacket, since she found it. The manager refused to give Kari the jacket, stating that all unclaimed property found on the motel's premises belonged to the motel.

1. Would the jacket be considered mislaid, lost, or abandoned property?
2. Who is the current, rightful owner of the jacket?
3. How could the motel manager avoid future confusion about handling "found" property?

LEGALLY MANAGING AT WORK:**Disposing of Found Property**

The following six guidelines can help you as you devise a policy to protect the rights of original property owners and to reward the honesty of your employees:

1. Review your state's lost-and-found laws to determine any unique requirements that apply to the property in question.
2. Require all employees and management staff to turn in to the property manager or to his or her designee all personal property found in public places (lobbies, foyers, restrooms, etc.), as well as property found in rented areas such as guestrooms, suites, cabins, and campgrounds.
3. Keep a lost-and-found log book, wherein you record the name of the finder, the individual who received the found goods, the location where the property was found, and the date found.
4. If the value of the found item is significant, make all reasonable efforts to locate the rightful owner, and document these efforts.
5. Hold found property for a period of time recommended by your company or a local attorney familiar with the laws in your state regarding found property. Sixty days should be a minimum length for most found property.
6. Permit only the property manager or his or her designee to return found property to purported owners, but only after taking extra care to return the item only to its rightful owner.

If the original owner does not come forward, dispose of the property in accordance with written procedures, which have been shared with all employees and reviewed by your attorney. Many managers give found property to those who found it as a reward for employee honesty. They theorize that it is in the best interest of the facility and its guests to have all property returned promptly, and rewarding employees for doing so is one way to achieve this goal. Other facilities donate all valuable lost property to a local charity, while still others sell lost property once or twice a year to liquidation companies.

**INTERNATIONAL SNAPSHOT***Limited Liability of Innkeepers in Canada*

In Canada, innkeepers' liability is governed provincially. With the exception of Quebec, all provinces and territories limit liability for damage to a guest's property subject to two exceptions.¹ Innkeepers are liable where

goods are stolen or lost through the neglect of the innkeeper or his or her employees, or when goods are deposited for safe custody with the innkeeper (unless the goods were kept in a safe or other sealed device).

¹While most provinces provide for no liability in circumstances where the exceptions do not exist, in three of the provinces, the liability is capped at a stated amount. For instance, the cap is \$200 in Newfoundland, \$100 in Saskatchewan, and \$40 in Ontario.

Some provinces have additional limitations and exceptions. For example:

- In Quebec, innkeepers can be liable for up to 10 times nightly rate, and where the loss is caused intentionally, the liability can be unlimited.
- In nine jurisdictions,² innkeepers can be liable for refusing to receive goods for safe custody or where guests are unable to deposit the goods for safe custody through the fault of the innkeeper. This liability is limited where the establishment does not have a proper safe and the guest is informed of this when the innkeeper refuses to receive the goods.
- Saskatchewan provides that the innkeeper will not be liable for goods lost in a part of the hotel other

than the guestroom of the owner of the goods.

The innkeeper is also not liable for trunks or their contents or personal effects left by a guest in his or her room, if there is a proper lock and key for the door of the room, unless the room is locked during the absence of the guest and the key is left at the office.

- In Alberta, innkeepers may be liable for property belonging to persons who are not registered guests.

Given the variations between jurisdictions, it is critical to consult the legislation of the relevant province.

Provided by Frank Zaid, a partner, and Jasmine Lew, a student-at-law, with Osler, Hoskin & Harcourt LLP, Barristers and Solicitors, in the firm's Toronto, Ontario, Canada office. www.osler.com.

²These clauses were found in the statutes of British Columbia, Ontario, Quebec, Manitoba, Saskatchewan, New Brunswick, Nova Scotia, Newfoundland and Labrador, and the Northwest Territories.

WHAT WOULD YOU DO?

You are the manager of a restaurant in a downtown area of a large city. Because of your location, no parking is available directly adjacent to your facility.

For the past five years, you have made valet parking service available to your customers through A-1 Parking. Essentially, A-1 provided valet drivers who would stand outside your restaurant doors, approach cars as they arrived, give guests a claim check for their cars, and deliver the car to a parking garage owned by A-1. The parking garage is located one-fourth of a mile from your restaurant. When guests finish dining, the valet outside your restaurant radios the parking lot with the claim check number, and a driver from A-1 delivers the car to your front door, where guests pay a parking fee before they regain possession of their car. A-1 currently provides this service to several restaurants.

The arrangement has been a good one for both you and A-1. No trouble of any kind has ever been

reported. Today, however, the owner of A-1 has announced he is retiring; he approaches you to inquire whether the restaurant would be interested in buying his business.

Draft a letter to the owner of A-1 Parking stating whether or not you wish to buy the parking garage business. In your letter, be sure to address the following points:

1. How operating the valet parking service yourself would change the relationship you have with your restaurant customers.
2. The need for insurance to cover potential damages to automobiles and other areas of liability you might need to insure against.
3. The potential pros and cons of assuming the responsibility for parking your guests' automobiles, as compared to the current situation.
4. The agency, liability, and bailment issues that would arise if the purchase were made.

To familiarize yourself with how complying with the requirements of a limited liability statute saved a motel \$36,000, read the case of *Emerson v. Super 8 Motel*, 1999 Conn. Super. Lexis 965 (Conn. Super. Ct. 1999).

FACTUAL SUMMARY

Lannell Emerson (Emerson) stayed at a Super 8 Motel (Super 8) in Stamford, Connecticut, on November 12, 1997. Emerson was carrying \$36,000 in cash in the glove box of his car. Sometime during the night his car was broken

THE HOSPITALITY
INDUSTRY IN
COURT

into and the cash was stolen. Emerson sued Super 8 Motel for failure to keep his property safe.

QUESTION FOR THE COURT

The question for the court was whether Super 8 was obligated to keep the personal property of guests safe during their stay. Super 8 argued that under Connecticut law it had no duty to keep Emerson's personal property safe unless he gave the property to the person in charge of the office for safekeeping. The law specifically required motel guests to deliver the property to the person in charge of the office for safekeeping and to take a written receipt. The law also required the motel to post a notice of the availability of a safe in the guestrooms or motel office.

Emerson's only argument was he did not see a notice regarding the safe in either the office or the motel guestroom. He argued that Super 8 failed to comply with the Connecticut law by not posting a notice, hence it could not escape liability for the loss of his property. Super 8 offered evidence showing the notices were in place. Emerson submitted an affidavit stating he did not see the notices, but offered no other evidence.

DECISION

The court found for Super 8 and did not hold it liable for the loss of property suffered by Emerson. The court concluded Emerson failed to offer reliable evidence regarding the notices posted in the guestrooms or office. Super 8 was relieved of liability under the Connecticut law.

MESSAGE TO MANAGEMENT

A hotel must comply precisely with the requirements of the limited liability statutes in each state or face possible liability in situations like this one.

To learn the dire consequences of noncompliance, consider the case of *Frockt v. Goodloe*, 670 F. Supp. 163 (W.D.N.C. 1987).

FACTUAL SUMMARY

Marvin Frockt (Frockt), a traveling jewelry salesman, stayed at a Comfort Inn in North Carolina. Frockt had in his possession a jewelry sample case containing jewelry valued at about \$150,000. Upon checking in, Frockt requested the case be placed in a safe at the inn. He also signed his registration card, which contained a statement saying the inn would not be responsible for loss of valuables. The clerk accepted the case to be placed in either the safe or a closet where the petty cash was kept. The clerk was not informed about the contents of the case nor their value. Frockt did state the case was very valuable. The clerk did not offer Frockt a receipt, but Frockt wrote out his own receipt keeping one copy and attaching the other to the case. When Frockt asked for the case the next day, it could not be located. Frockt sued the owners of the Comfort Inn for failing to keep his property safe.

QUESTION FOR THE COURT

The question for the court was whether the Comfort Inn was responsible for the loss of the jewelry case. Frockt argued Comfort Inn was responsible based on North Carolina common law giving innkeepers the duty to receive and safely keep all property at the request of the guest. North Carolina also had a statute dealing with guest personal property. It required innkeepers to receive money, jewelry, and valuables for safekeeping upon the request of a guest. The law limited the value of property required to be held by the inn to \$500. The law also required the innkeeper to keep a copy of the law posted in every guestroom and the office of the inn, and stated the law did not apply if the innkeeper failed to post notice. Frockt offered evidence showing Comfort Inn did not post a copy of the statute in the guestroom or the office.

Frockt argued Comfort Inn's failure to post the statute meant it was not applicable to his case. He argued the common law applied and Comfort Inn was unconditionally responsible for all his property.

Comfort Inn argued it was free to place conditions on the receipt of property. Specifically, Comfort Inn argued it could condition acceptance of Frockt's case on his agreement to not hold Comfort Inn responsible for loss. Comfort Inn also argued that Frockt agreed to not hold the inn responsible when he signed his registration card with the release from liability statement on it.

DECISION

The court decided Comfort Inn was responsible for Frockt's lost jewelry case. The release from liability statement on the registration card was void because it violated public policy. Additionally, since Comfort Inn failed to post copies of the statute dealing with valuables, the statute did not apply. The common law of North Carolina held innkeepers completely liable for all property left with the innkeeper for safekeeping.

MESSAGE TO MANAGEMENT

You cannot rely on exculpatory clauses. You need to follow the legal requirements precisely.

As a hospitality operator, you have a responsibility to take reasonable steps to safeguard the personal property that guests bring with them onto your premises. Fortunately, laws have been passed in all states that limit the liability of the operator. There are several requirements that must be met by the operator for the limits to apply. Because the laws vary widely, it is crucial that you become familiar with the requirements of the statute in your state.

From time to time, operators will voluntarily accept possession of guest property (e.g., valet parking, luggage storage, etc.). These are called bailment relationships. Your responsibilities vary, depending on the type of bailment that is created. As innkeeper's lien gives a lodging establishment the right to detain a guest's belongings in the event the guest refuses to pay the bill.

Property can also be mislaid, lost, or abandoned, and a manager must understand the distinctions between those three classifications in order to dispose of the property responsibly.

WHAT DID YOU
LEARN IN THIS
CHAPTER?

After you have studied this chapter, you should be prepared to:

1. Discuss the impact that the common law liability of innkeepers had on the development of the early travel industry, and give three reasons why state legislatures have chosen to limit that liability.
2. Using the Internet, contact the offices of your state hotel and motel association to secure a copy of the current innkeeper's liability law. Review the document and create a list of posting/notice requirements that you would implement if you operated a hotel in your state. Explain your rationale for each item on the list and its posting location.
3. Give a restaurant example of a bailment for the benefit of a bailor and one for the benefit of the bailee.
4. Innkeepers are generally held responsible for an even higher degree of care than ordinary bailees. Why do you think this came to be under common law?

RAPID REVIEW

5. When a guest places a coat on a coat rack attached to his or her table in a restaurant, is a bailment created? Why or why not?
 6. List ten examples of bailment relationships in the hospitality industry.
 7. Think of and write out an example you could use to teach employees the difference between mislaid and abandoned property. Why is such an example useful?
 8. Create the portion of a lost-and-found policy for a hotel's room attendants that refers to disposition of unclaimed mislaid, lost, or abandoned property. Did you give the property to the employee who found it? Why or why not?
-

TEAM ACTIVITY

In teams, draft a policy and procedures guide (not to exceed five double-spaced pages) for a large restaurant chain that will instruct employees as to how to handle and protect guest property. Be sure to include bailment issues such as valet parking and coat checks, as well as items that may be left behind by guests and found by an employee. Once you have developed a policy, present it to your class in the form of a ten-minute training session that would be used to educate employees about the new policy.