Matthew Ford discusses how a quirk of English law means that hotel proprietors might be strictly liable for the loss or damage of guests’ possessions

Guests are now bringing more valuable items into hotels than ever before. In addition to more traditional belongings, such as clothes, watches and jewellery, the modern traveller has with them a growing list of expensive electronic playthings – MP3 players, laptops, mobile phones, and digital cameras. Having to compensate a guest for loss or damage to a complete set of these goods is enough to give any hotel proprietor a nasty shock.

One of the quirks of English law means that hoteliers are often liable for the full value of any of their guests’ property which is broken or stolen, even if it is through no fault of the establishment. This is because English law imposes a duty of strict liability for such damage, provided that the goods were not damaged or stolen through the negligence of the customer. This goes back, in the words of one judge, to ‘olden times’ when “it was not an uncommon thing for highwaymen and innkeepers to be in league together.”

The medieval rule that made the innkeeper compensate their guest for any property lost in unexplained circumstances and acted to deter the unscrupulous, might be said to be an expensive nuisance in the 21st century. Fortunately, there are a number of ways to effectively limit potential liability, which proprietors and managers of hotels should pay close attention to.

The Hotel Proprietors Act

By the middle of the 20th century, traditional inns had largely disappeared and were supplanted by hotels, which were often on a larger, more commercial scale, and less likely to be owned and managed as a family business. Parliament recognised this significant change in the Hotel Proprietors Act 1956 (“the Act”). Instead of abolishing the strict liability of innkeepers altogether, Parliament actually extended them to owners.

The Act did, however, introduce reforms which partially softened the regime of strict liability. It abolished hotel proprietors’ liability for damage to guests’ vehicles (or goods inside them) and their animals. Any harm to a motor car, or injury to a pet brought to an establishment, therefore falls outside the scope of the owner’s duty, although this is only in England and Wales, not Scotland. Furthermore, the Act only extends to customers for whom “sleeping accommodation has been engaged”.

Persons visiting a hotel, such as restaurant-only guests, cannot claim damages under the strict liability rule. It should also be noted that ‘frolics’ – guests staying for a longer period and with whom individual terms have been negotiated – never fell within its scope.

The most significant reform, however, is that the Act provided was its introduction of a mechanism by which hotel proprietors could limit their liability. It specified that owners would only be accountable for £50 per item lost or damaged, and £100 in the aggregate, if a statutory notice had been conspicuously displayed so that it could be read by guests at, or near the reception (or, if there was no latter, at or close to the entrance). It is very important to recognise that the wording of the notice, if it is to be effective, must follow the prescribed text by verbatim, which may be found in Schedule Two of the Act.

In the Greater London area, the limits have been increased to £750 per item and £1,500 in aggregate by the London Local Authorities Act 2004.

Where Liability Cannot Be Excluded

Displaying the statutory notice does not allow a hotel proprietor to escape their liability altogether. The Act specifies that the imitation of the owner’s accountability does not take effect in three circumstances:

i. Where the property was stolen, lost or damaged as a result of the “default, neglect or wilful act” of the proprietor or one of his employees. Consequently, to take some examples, owners may be liable when a room cleaner negligently damages an item with a vacuum cleaner, or if they leave a bedroom door open and goods are stolen.

ii. Where the guest has deposited his property with the hotel for ‘safe custody’. The old case law suggests that this will only be effective when the visitor gave the items to the proprietor, or some employee with the authority to take them, and informed that person in a reasonable and intelligent manner that the deposit was for safe custody – see the case of Moss v Russell (1884) 1 TLR 13.

In terms of which employees have authority to receive deposits, the guest need not have been informed – it may, for instance, be assumed that people working on reception have it – but not all employees necessarily do. In Moss v Russell, the Court of Appeal held that a shoe-shine boy did not have the implied authority to receive belongings from a guest. Conversely, a hotel porter, or some other employee, has implied authority.

iii. Where the proprietor or an employee refused to receive the item, or the guest wished to deposit it, but was prevented from doing so by some ‘default’ of the hotel. Refusal to accept a belonging for safe keeping does not therefore appear to protect an owner from liability under the Act.

What amounts to a default, which prevents a deposit, is rather unclear. However, there are clear examples that would be likely to fall into this exception, such as where a guest was unable to leave an item because the reception was closed at an hour when it should reasonably have been open.

Practical Steps to Avoid Liability

These statutory exceptions to the power of hotel proprietors to limit their liability under the Act cover a wide variety of situations. It is therefore strongly advisable that establishments use an inventive combination of practical steps which bring the risk of paying out to the lowest possible level. The first step, obviously, is to ensure that the statutory notice is prominently displayed, as described above.

The next step would be to encourage guests to assume responsibility for their own property, and so discourage them from seeking to deposit their valuables with reception. An effective way to do this is to provide safes within each room, which customers can place their valuables in and remember their own password into.

Of course, at the same time businesses must ensure that such systems are fully secure, otherwise there is a risk that any loss would be the result of the hotel’s default or negligence. This means, as a minimum, that management should make sure that access to any master keys and lock decoders is severely restricted.

Likewise, other potential security breaches should be minimised. For instance, the keys to individual rooms should not be handed out to persons presenting themselves at reception, without a proportionate identity check.

A further measure that hotels can take, particularly when high-value items are presented for deposit by guests, is to store the belongings securely off the premises with a reputable or security company. One peculiarity of the old innkeepers’ liability was that it only applied within the ‘hospiatum of the inn’ – the building itself. Whilst this may add a small additional cost, it will obviate the risk that the hotel has to indemnify a guest in receipt of valuable stolen items.

The strict liability of hotel proprietors is something of which everyone who owns and manages a hotel should be aware. The claims are difficult to defend and careful scrutiny of all procedures relating to security and the acceptance of a guest’s property for safe keeping, is advisable. It will be more economical in the long run to invest in removing the potential cause of damage and thefts, than paying out on claims that they cannot defend.

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