
The Illinois Innkeeper and the Goods of His Guests

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systems, these three statutes, "wire-tap," "fraud by wire" and "extortion by interstate communication" must be looked upon in relation to each other. Also, there is the rule which keeps the judiciary from exceeding its powers and invading the province of the legislature that intended to enact an effective law and not to have done a "vain and meaningless" act.¹⁶ Finally, there is the rule that related statutes must be construed together so as to give effect to both and not to render one meaningless.¹⁷

In applying these rules to the "fraud by wire" and "extortion by interstate communication" statutes and in the light of the wire-tap statute, it is to be observed that to hold Section 605 applicable to situations involving the other two statutes would render these acts of Congress "futile" or "nugatory," for, as a practical matter, without this means of proof, they are virtually unenforceable.

In conclusion then, since the general rule on this topic is a "matter of policy," the *Olmstead* case never having been overruled, the admissibility of wire-tap evidence where it can be had without a violation of this "policy" should be permitted.

¹⁶ *Armstrong v. Nu-Enamel Corp.*, 305 U.S. 315 (1938), rehearing denied 305 U.S. 675 (1939); 50 Am. Jur. Statutes, § 357 (1944); Crawford, *Statutory Construction*, § 177 (1940).

¹⁷ *United States v. Borden*, 308 U.S. 188 (1939).

THE ILLINOIS INNKEEPER AND THE GOODS OF HIS GUESTS

It is the duty of an innkeeper or hotel proprietor to keep safely the goods of his guests, so that no loss might occur by reason of the fault or negligence of the innkeeper or his servants. This is a well-recognized common law rule for breach of which he is liable to his guest for the loss sustained.¹

This rule, originating centuries ago when travel was by horseback or stage and travelers were easy prey, has always been predicated upon the theory of public policy. In this day of modern travel and accommodations, argument in support of the ancient rule would seem specious, yet the rule has been preserved, nearly intact, for over 600 years. The majority of jurisdictions today, in the absence of some statutory modifications, still hold the innkeeper to be practically an insurer as to the goods of his guests, absolved from liability only when he affirmatively shows that the loss resulted from an act of God, or was caused by the public enemy, the inherent nature of the goods themselves, or by the contributory fault of the guest.²

In some jurisdictions, including Illinois, the rule is ameliorated in that

¹ *Stoll v. Almon C. Judd Co.*, 106 Conn. 551, 138 Atl. 479 (1927).

² *Ibid.* Accord: *Morgan v. Raney*, 6 H. & N. 265, 158 Eng. Rep. 109 (1861); *Richmond v. Smith*, 8 B.E.C. 9, 108 Eng. Rep. 946 (1828).

the innkeeper may discharge himself from his prima facie liability if he can show that the loss was not occasioned by his negligence or default.³ However, even in those cases that do not adhere to the strict rule that the innkeeper is an insurer of the goods brought by a guest, the innkeeper is usually not exonerated from a loss by reason of theft, on the ground that he guarantees the good conduct of those persons he admits under his roof. When goods are so lost, even though the thief be unknown, the law always imposes liability on the innkeeper, provided the patron was, at the time of the loss, a guest, in the legal sense.⁴

WHO IS A GUEST?

Thus, the basic question arises "Who is a guest?", since the special liability of the innkeeper for such goods applies only to those who come to the hotel as travelers and to whom the courts have given the technical designation of guests. The permanent lodger or boarder is not within this protection, and for the loss of his goods, the innkeeper is liable only if guilty of negligence. The imposition of the special liability was for the protection of travelers, and those who are not travelers are not entitled to it.⁵

It has been said that the distinction between a guest and a boarder is that "[t]he guest comes without any bargain for time, remains without one, and may go when he pleases, paying only for the actual entertainment which he received; and it is not enough to make [a guest into] a boarder [merely because one has] stayed a long time in the inn. . . ."⁶

³ *Elcox v. Hill*, 98 U.S. 218 (1878); *Johnson v. Richardson*, 17 Ill. 302 (1855); *Miles v. International Hotel Co.*, 167 Ill. App. 440, 124 N.E. 599 (1912); *Hulbert v. Hartman*, 79 Ill. App. 289 (1898); *Eden v. Drey*, 75 Ill. App. 102 (1897). Under either rule, once the guest proves a loss or injury to his goods, the burden shifts to the innkeeper to show facts which, in that jurisdiction, will relieve him of liability. Accord: *Rockhill v. Congress Hotel Co.*, 237 Ill. 98, 86 N.E. 740 (1908); *Kelsey v. Berry*, 42 Ill. 469 (1867); *Metcalf v. Hess*, 14 Ill. 128 (1852). Cf., *Rosin v. Central*, 345 Ill. App. 411, 103 N.E. 2d 381 (1952); *Burton v. Drake Hotel Co.*, 237 Ill. App. 76 (1925); *Hall v. Hotel Sherman*, 236 Ill. App. 386 (1925); *Rice v. Warner Hotel Co.*, 201 Ill. App. 530 (1916); *St. George v. Hamburg-American Line*, 198 Ill. App. 96 (1916); *Gross v. Saratoga*, 176 Ill. App. 160 (1912).

⁴ 14 R.C.L., *Innkeepers* § 16 et. seq. (1929); 32 C.J., *Innkeepers* § 35 et. seq. (1923); *Beale Innkeepers* §§ 181-188.

⁵ *Gray v. Drexel Arms Hotel*, 146 Ill. App. 604 (1909), where lodging housekeeper was held only to use of ordinary care in relation to property of his lodger. Accord: *Clifford v. Stafford*, 145 Ill. App. 247 (1908). As to necessity of being a guest, the court in *Vigeant v. Nelson*, 140 Ill. App. 644 (1908) said "[a]n innkeeper is not an insurer against loss of baggage by theft or otherwise unless the owner of such baggage be a guest, as distinguished from a mere boarder." Accord: *Coulson v. Wenzel Hotels, Inc.*, 248 Ill. App. 540 (1928).

⁶ *Shoecraft v. Bailey*, 25 Iowa 553, 555 (1868). Accord: *Neely v. Latt Hotels Co.*, 334 Ill. App. 91, 78 N.E. 2d 659 (1948); *Holman v. Indianapolis Life Ins. Co.*, 297 Ill. App. 649, 18 N.E. 2d 112 (1938); *Baldwin Piano Co. v. Congress Hotel*, 243 Ill. App. 118 (1927); *Burton v. Drake Hotel Co.*, 237 Ill. App. 76 (1925).

There is, however, no single satisfactory test to determine who is a guest. . . . The decision on this question turns upon all the circumstances of the case. The duration of the plaintiff's stay, the price paid, the amount of accommodation afforded, the transient or permanent character of the plaintiff's residence and occupation, his knowledge of any difference of accommodation afforded to, or price paid by boarders and guests. All are to be regarded in settling the question. It is well settled that the mere circumstance that a bargain is made for special rates by the day, week, or month, is not conclusive to prove that the resident, at the defendant's hostelry, is a boarder and not a guest. Neither does a stay for several weeks, or even months, conclusively prove that the party involved belongs to the former category. Neither is it necessary that a party, to achieve the status of guest, reside in a different city from that in which the hotel is located. A resident of the same city may sojourn as a transient at a hotel therein, and be entitled to the extraordinary rights and privileges of a guest.⁷

In Illinois, the rule is that a person paying on a weekly or monthly basis, at a rate below the daily rate, is not a guest, if a stay for a definite period has been agreed upon. This is true even though such period has been renewed many times and even if such renewal was a part of the original agreement. Thus in one case, the evidence showed that the plaintiff rented a room from the defendant for the definite period of one week, for which she agreed to pay, and did pay, a definite amount. In holding that she was not a guest, the appellate court said:

In our opinion the point upon which the question of liability turns is the fact that a specific agreement was made between the parties for the room for a definite term at a price named. Whatever the [hotel keeper's] relations may have been to travelers who came to his hotel for lodging and entertainment for no definite time or price but for a reasonable consideration, under the contract made between the parties in the case, [the plaintiff] became a mere lodger, and [the defendant] was a keeper of a lodging house. . . .⁸

Thus, one who comes transiently to a hotel for the purpose of procuring sufficient accommodations, without any express contract for time of stay, and leaves when he wishes is a guest. But the courts have enlarged this concept, especially in the older days when they found others to be guests also. This occasionally produces difficulty today in cases of (a) a guest of a guest; (b) a patron of the hotel bar or restaurant; (c) user of the hotel

⁷ Brown, *Personal Property*, c. xii, § 104 (1936), and citations at footnote 9 therein.

⁸ Clifford v. Stafford, 145 Ill. App. 247, 249 (1908). Compare, Miles v. International Hotel Co., 167 Ill. App. 440 (1912) where the plaintiff registered as a patron of the defendant's hotel and was assigned to a room which she occupied for a period of six months, paying a stipulated weekly rate. It was held that the relation of innkeeper and guest did not exist between the parties, although no definite period of stay seemed to have been agreed upon, with Vizeant v. Nelson where the court said: "Nor was the [plaintiff] such a guest. He had contracted for a stay by the week at a fixed price, and it has been frequently held that if a boarder enter into a contract, even with an innkeeper, for such a fixed period, at a stipulated price, he ceases to be a guest and becomes a boarder." 140 Ill. App. 644, 646 (1908).

lobby, stores, etc.; (d) a visitor to a banquet, ball, club meeting, etc. given within the hotel by some third party, and (e) other miscellaneous problems.

GUEST OF A GUEST

All decisions since *Gastenhofer v. Clair*⁹ are to the effect that the innkeeper has no liability to a guest of a guest. In the *Gastenhofer* case, it was said "[p]ersons who merely visit the inn or hotel for purposes of meeting friends, or dining with them, are not guests of the hotel. They may be transients, but they are not there for the purpose of obtaining the accommodations that the hotel usually and generally gives to its patrons. They are really guests of the persons whom they visit, and not guests of the inn."¹⁰

PATRON OF THE HOTEL BAR OR RESTAURANT

Herein the law has undergone a marked change. The early decisions commonly held the innkeeper an insurer in these parts of the inn, whether or not such facilities were under the management of the innkeeper.¹¹ This was logical in view of the problems and conditions of England and early America, and the perils of their day. However, as transportation and communication have improved, the law has changed with the times. Presently, the general rule is that there must be an intention, on the part of such patron to become a guest, otherwise the courts will not find the extraordinary liability of the innkeeper to have attached. As one leading textwriter has said:

A person who resorts to the hotel, only for the purpose of meals or refreshment at the bar, should not be entitled to protection as a guest, unless he be indeed a traveler in the common acceptance, stopping at the hotel for some other purpose than merely for food and drink. Just as a hotel keeper may depart from his usual business and become a caterer, or ballroom proprietor, may he not also depart from such business and become a restaurant or bar room proprietor?¹²

Other American cases follow this line.¹³ "One who enters the dining room of an ordinary inn and calls for food, without notice to the inn-

⁹ 10 Daly (N.Y.) 265 (1881).

¹⁰ *Ibid.*, at 266. Cf. *Rosin v. Central Plaza Hotel, Inc.*, 345 Ill. App. 411, 103 N.E. 2d 381 (1952); *Tulane Hotel Co. v. M. F. Holohan*, 112 Tenn. 214, 79 S.W. 113 (1904) to the effect that one procuring no accommodations for himself, personally, is not a guest.

¹¹ *Gastenhofer v. Clair*, 10 Daly (N.Y.) 265 (1881); for earlier cases see 16 Am. and Eng. Ency. of Law 519 (2d ed., 1905).

¹² *Brown*, Personal Property c. xii, § 104 (1936). Accord: *Carter v. Hobbs*, 12 Mich. 52, 56 (1863); *Arcade Hotel Co. v. Wiatt*, 44 Ohio St. 32, 4 N.E. 398, 405 (1886); *Scholer*, "Bailments" § 280 (3d ed., 1897); *Dobie*, "Bailments and Carriers" § 90 (1914).

¹³ E.g. *Curtis v. Murphy*, 63 Wis. 4, 22 N.W. 825 (1885); *Wallace v. Shoreham*, 49 A. 2d 81 (Mun. Ct. of Apps. for D.C., 1946). But while one may become a guest by

keeper, does not thereby become a guest; a waiter is not a servant authorized to receive guests."¹⁴ Here, the patron's subjective intent is controlling. A real or presumed intention to become a guest of an innkeeper is a controlling factor in determining whether one is, in fact, a guest.¹⁵

USE OF THE HOTEL LOBBY, STORES, ETC.

A person admitted to an inn becomes a guest only if he is received to be treated as a guest.¹⁶ Hence, a person does not become a guest merely by availing himself of the facilities and comforts, such as the use of the lobby, lounging room or hotel stationery, which the innkeeper furnished gratuitously to the public at large.¹⁷ A person cannot become a guest of a hotel unless he procures some accommodation.¹⁸ In other words, he must offer to purchase something "of the innkeeper, before he becomes a guest."¹⁹ Here too, the Illinois cases agree; the rule being that to establish the relations of innkeeper and guest, the parties must intend to do so. The person accommodated must be received as a guest, and must procure accommodations in that capacity, although it is not essential that he register.²⁰

A VISITOR TO A BANQUET, BALL, CLUB MEETING, ETC., GIVEN WITHIN THE HOTEL BY SOME THIRD PARTY

American decisions find that this person is not a guest. "Where a hotel proprietor turns over a portion of his premises for a banquet or dance, those attending the function are not guests of the hotel, entitled to extraordinary protection as such. In such instances, the innkeeper departs from his customary duties and assumes the capacity of a caterer, or dancehall

being served with a meal, it is essential that he be so served as a guest, and his intention in that respect is material. If he comes to the inn for some other purpose than becoming a guest thereof, and as an incident of his being there, takes a meal, he is not regarded as a guest. *Cake v. D.C.*, 33 App. D.C. 272, 17 Ann. Cas. 814 (1909).

¹⁴ *Gastenhofer v. Clair*, 10 Daly (N.Y.) 265 (1881).

¹⁵ *Amey v. Winchester*, 68 N.H. 447 (1896); *Kopper v. Willis*, 9 Daly (N.Y.) 460 (1881); *Minor v. Staples*, 71 Me. 316 (1880); *Krohn v. Sweeny*, 2 Daly (N.Y.) 200 (1867); *Wintermute v. Clark*, 7 N.Y. Super. 242 (1851).

¹⁶ *Chicago v. Drake Hotel*, 274 Ill. 408, 113 N.E. 718 (1916); *Hill v. Memphis Hotel Co.*, 124 Tenn. 376, 136 S.W. 997 (1911); *National Malted Foods Corp. v. Crawford*, 254 Ill. App. 415 (1929).

¹⁷ *Hill v. Memphis Hotel Co.*, 124 Tenn. 376, 136 S.W. 997 (1911).

¹⁸ *Ibid.*, at 380 and 999.

¹⁹ *Tulane Hotel Co. v. Holohan*, 112 Tenn. 214, 215, 79 S.W. 113, 114 (1904). Contrast *Wallace v. Shoreham*, 49 A. 2d 81, 82 (Mun. Ct. of Apps. for D.C., 1946), "One who is merely a customer at a bar, restaurant, barbership, or newsstand [even if] operated by [the] hotel does not thereby establish [the] relation of 'innkeeper and guest.'"

²⁰ E.g., *National Malted Foods Corp. v. Crawford*, 254 Ill. App. 415 (1929); *Hall v. Hotel Sherman Co.*, 236 Ill. App. 386 (1925); *Palas v. Harvey Room Co.*, 211 Ill. App. 580 (1919).

proprietor, with the obligations only that are attached to such types of business."²¹ Again, "although supplying food is one of the purposes for which an inn is kept, yet those attending a banquet are not guests. This has been held to be true, even as to one who has a room in the hotel or inn where the banquet was given."²² A person attending a banquet, if he is a guest at all, is the guest of those who give it, and not the innkeeper.²³ The criterion, as before, seems to be the innkeeper's right to charge for some entertainment had by the individual.²⁴

OTHER MISCELLANEOUS PROBLEMS

The tone of present day decisions is that where the innkeeper cannot look to a patron for personal liability to pay for the accommodations received, i.e. if the innkeeper's lien does not attach on the patron's individual goods, neither does the innkeeper's liability as an insurer so attach.

EFFECT OF THE ILLINOIS STATUTE

In many states, statutes have been enacted, some merely declaratory of the common law, but most of them modifying, to some extent, the common law rule by limiting, or prescribing a mode of limiting, the liability of the innkeeper.²⁵

It will be perceived that the Illinois statute below works a considerable modification of the common law liability of an innkeeper. The rights and liabilities of the parties are to be determined by these statutory provisions so far as they are applicable, and by the common law only as to those principles which remain unaffected by the statute. "Insofar as these statutes are in derogation of the common law, they are to be strictly construed."²⁶

The Illinois Statute provides, in part, as follows:

§ 1. . . . whenever the proprietor of any hotel in this state shall provide . . . a safe or other repository, . . . and shall inform his guests by posting notices in not less than ten conspicuous places in such hotel that he will receive from his

²¹ *Amey v. Winchester*, 68 N.H. 447 (1896); *Fitch v. Casler*, 17 Hun (N.Y.) 126 (1879); *Carter v. Hobbs*, 12 Mich. 52 (1863).

²² *Amey v. Winchester*, 68 N.H. 447 (1896).

²³ *Carter v. Hobbs*, 12 Mich. 52, 53 (1863); 28 Am. Jur., § 15 (1936) with footnotes cited therein.

²⁴ *Cayle's Case*, 8 Coke 32a, 77 Eng. Rep. 520, 521 (K.B. 1585); *Hulbert v. Hartman*, 79 Ill. App. 289 (1875); 32 C.J., *Innkeepers* §§ 35 and 15 (1923); Contrast *Amey v. Winchester*, 68 N.H. 447 (1897). One may be an innkeeper without being a club caterer or vice versa, or both, but if he is both, the two employments are so far separate and distinct as to make him not responsible in the one capacity for liabilities incurred in the other.

²⁵ See Appendix, Beale, *Innkeepers*.

²⁶ Accord: *Epp. v. Bowman-Biltmore Hotels Corp.*, 12 N.Y.S. 2d 384, 385, 171 Misc. 338, 340 (1939); 14 R.C.L., *Innkeepers* § 29 (1929).

guests their money, jewelry and other valuables . . . for safe keeping, when requested by them so to do, and such guests shall neglect or fail to deliver [same] . . . such hotel proprietor shall not be liable for the loss of, nor injury to such [items] . . . , unless such loss or injury shall occur through the fault or negligence of said hotel proprietor, or by his servants or employees in said hotel, and said hotel proprietor shall in no event be liable for . . . [loss or injury] exceeding the sum of \$250, except by special contract in writing between said hotel proprietor and guest, unless such loss or injury shall occur through the fault or negligence of the said hotel proprietor or through his servants or employees in said hotel.

§ 3. It shall be the duty of a guest of any hotel in this state, upon delivering to the proprietor of such hotel, or to his servants, any baggage or other article of property of such guest for safe keeping, elsewhere than to the room assigned to such guest, to demand, and of such proprietor to give, a check or receipt therefor, to evidence the fact of such delivery; and no hotel proprietor shall be liable for the loss of, or injury to, such baggage or other article of property of his guest, unless the same shall have been . . . [so delivered] and, in the event any such baggage so checked shall be lost or injured, said hotel proprietor shall not be liable for such loss or injury in excess of the following amounts, respectively:

Trunks and contents	\$150.00
Valises and traveling cases and contents	50.00
Boxes, parcels and packages and contents	10.00
All other miscellaneous effects, including wearing apparel and personal belongings	50.00

It may easily be seen from the cases, that the Illinois courts strictly construe the statute, to the effect that "the common law liability is not modified by provisions of the Innkeeper's Act when loss . . . occurs through [fault or]²⁷ negligence of the innkeeper or his servants."²⁸ This follows the old rule that the innkeeper is an insurer of property entrusted to him for safekeeping by a guest.²⁹

The statute, however, does create some relief for the innkeeper in permitting him to limit his liability by requiring his guests to conform to "reasonable" regulations, at least within the bounds of the act.³⁰ This is generally done by posting such regulations in the several rooms of the hotel. Nevertheless, "mere posting on a hotel wall, a sign [limiting liability] without any showing that it was brought to the guest's knowledge, is not

²⁷ *Hall v. Hotel Sherman Co.*, 236 Ill. App. 386 (1925); cf. *Kammerer v. Graymont Hotel Corp.*, 337 Ill. App. 434, 86 N.E. 2d 383 (1949).

²⁸ *Burton v. Drake Hotel Co.*, 237 Ill. App. 76 (1925). Accord: *Rockhill v. Congress Hotel Co.*, 237 Ill. 98, aff'g 141 Ill. App. 503 (1908); *Gross v. Saratoga European Hotel and Restaurant Co.*, 176 Ill. App. 160 (1912).

²⁹ *National Malted Foods Corp. v. Crawford*, 254 Ill. App. 415 (1929); cf. *Palas v. Harvey Room Co.*, 211 Ill. App. 580 (1918); *Hardcastle v. Ryder*, 175 Ill. App. 430 (1912); *Zimmerman v. Murphy*, 131 Ill. App. 56 (1907).

³⁰ *Palas v. Harvey Room Co.*, 211 Ill. App. 580 (1918).

sufficient to relieve an innkeeper from liability.”³¹ Where reasonable regulations have been made, and the guest has had actual notice of them, he will be bound by them if it appears that by reason of his failure to so comply with the regulations, the loss occurred. For in such a case, it could be reasonably concluded that the loss was occasioned by the negligence of the guest.³²

For example, where an innkeeper maintained a checking system for the safeguarding of the coats of patrons of the hotel dining room, and had printed menus and wall signs to the effect that the hotel would be “not responsible unless so checked,” the innkeeper was held not liable for loss of a customer’s coat, hung on a wall hook near his table, since no affirmative negligence on the part of the innkeeper was proved.³³

On the theory that failure to comply with such reasonable regulations places the cause of loss on the negligence of the guest, the above example is further endorsed by the rule of the American Law Institute, which demands possession by a bailee (here the hotel keeper) to the extent of actual physical control, and an intent to exercise such control to the exclusion of all persons.³⁴ Therefore, no liability as an innkeeper is incurred where the guest retains control.³⁵ Where the defendant provided a check-room and plaintiff chose to use hooks elsewhere provided, defendant had no actual knowledge of a bailment, and so could not be held liable.³⁶

Further examples of such statutory modifications would be mere repetition. Suffice to say that the benefits and liabilities under the innkeeper’s statute are, in Illinois, strictly construed, and strictly adhered to.

CONCLUSION

Thus, it is clear that the modern Illinois position regarding the liability of an innkeeper for loss or damage to goods of his guest has progressed substantially from the early common-law rules. The innkeeper today has been relieved of liability except as to *guests* of his hotel, and even then, only when the goods are under his domination and control. Further, the statute limits liability in many cases, as indicated therein, by providing maximum limits on certain bailments.

³¹ *Ibid.*, at 581.

³² Van Zile, *Bailments and Carriers* § 359 (3d ed., 1908) and the citations therein.

³³ *Wiley v. Childs*, 211 Ill. App. 496 (1917). Same words used earlier in *Duckworth v. Codrington*, 136 N.Y.S. 68, 69 (1912).

³⁴ 1 Rest., *Torts* § 216. Refer also to Holmes, *The Common Law* at 216 (1881), and Brown, *Personal Property* §§ 74 and 75 (1936). For further information on this phase of the problem, read 47 Mich. L. Rev. 268, 269 (1948).

³⁵ *Zimmerman v. Murphy*, 131 Ill. App. 56 (1907); 32 C.J., *Innkeepers* § 57 (1923).

³⁶ *Wentworth v. Riggs*, 143 N.Y.S. 955 (1913).

The modern innkeeper, in the absence of affirmative negligence, is free of much of his common law strict liability as an insurer. In most circumstances, he finds himself in no worse a position than that of an involuntary bailee. He is able to rebut a prima facie case against him by showing adherence to a normal standard of care, a showing that the plaintiff was not a guest, or a showing of contributory negligence on the part of the guest himself. In this state, the term "insurer" no longer applies to the innkeeper.