

A HOTELIER'S GUIDE TO AVOIDING AND DEFENDING LAWSUITS

In an effort to keep you, the hotel owner and/or operator, abreast of the law in California that could have an impact on your business, I have prepared this article that discusses pertinent cases and statutes. While this article is not a substitute for legal advice from a lawyer of your choosing, it should at least give you some ideas, and possible strategies, for avoiding a lawsuit, and defending a lawsuit if and when your hotel is sued.

I. LIABILITY OF A HOTEL TO GUESTS FOR PERSONAL INJURIES SUSTAINED AS A RESULT OF DEFECTIVE OR DANGEROUS CONDITIONS.

As a general rule, a hotel has a duty of "maintaining the hotel premises in a reasonably safe condition, and of exercising reasonable care to protect them (guests) while in the hotel and in the part thereof open to the public from personal injury through his negligence." *Adams v. Dow Hotel* (1938) 25 Cal.App.2d 51, 53-54. A hotel is not generally liable for injuries resulting from property it does not own, possess, or control. Nor does a hotel typically have a duty to warn of dangers beyond its boundary, unless it did something to create those dangers. See, *Princess Hotels International v. Superior Court* (1995) 33 Cal.App.4th 645.

A. Swimming Pool.

If a guest is injured or killed in a swimming pool accident, the hotel is liable if its negligence was the cause of the accident. Each case is determined on its particular facts, and even similar facts can lead to contrary results.

In *Haft v. Lone Palm Hotel* (1970) 3 Cal.3d 756, a hotel was found liable for the drowning death of two hotel guests. In that case, the hotel failed to post warnings when a lifeguard was not present, did not mark the edges or depth of the pool, failed to post signs warning children not to use the pool without an adult in attendance, did not post telephone numbers for the nearest ambulance or rescue services, and did not post diagrammatic illustrations of artificial respiration procedures.

In finding the hotel liable, the court explained: "In failing to satisfy all of these mandatory safety requirements, which were clearly designed to protect the class of persons of which the victims were members, defendants of course were unquestionably negligent as a matter of law." *Id.* at 763.

Other factors that could possibly contribute to a finding of a hotel's pool-related negligence are: (1) failing to provide the necessary safety, rescue, or first-aid equipment or instruction, (2) failing to keep the pool sufficiently filled with water, (3) failing to identify depth markings, (3) having inadequate pool lighting, (4) failing to post warning signs, (5) providing unregulated access to the pool, (6) not removing dangerous objects

in the pool, and (7) failing to provide adequate fencing around the pool.

If a plaintiff causes or contributes to the pool-related injuries, this can be a partial or total defense. Thus, a plaintiff can be found contributorily negligent if he/she dives or slides into shallow water, horses around in and around the pool, or does other acts which contribute to his/her injury. A plaintiff can also be found to assume the risk of injury where he/she engages in unusual or dangerous conduct in or around the pool.

B. Slip and Fall.

1. Sidewalks.

In *Sala v. Christensen* (1959) 167 Cal.App.2d 580, a hotel was found liable for injuries sustained by a guest who fell on a sidewalk that ran along the side of the hotel. In finding the hotel liable, the court noted there was a defect in the sidewalk, the defect could not be seen at night because it was not properly illuminated, and there were no signs or warnings prohibiting travel over this area by guests. The court rejected the hotel's defense that the guest was contributorily negligent, noting that since the guest was not aware of the hazard, he did not act unreasonably in assuming there was no danger.

2. Ramps.

Hotels have been held liable for injuries that occurred while a guest was using a ramp or other inclined surface. In *Gilbert v. Bluhm* (1960) 291 SW 2d 125, the court held a hotel was liable for injuries suffered by a guest who fell down while walking on an asphalt and tile covered ramp. In its ruling, the court noted there were no lights immediately over the ramp, and it had been recently waxed, and was therefore very slippery.

Similarly, in *Sheraton Whitehall Corp. v. McConnell* (1953) 88 Ga.App 725, a hotel was held liable for an injury sustained while a guest was walking to a speaker's platform. In finding the hotel negligent, the court noted that the walking surface was a slippery, sloped board that gave the illusion of being flat, and not sloped.

3. Stairs.

Where stairs are not properly illuminated, are not properly maintained, have no safety rails, or are otherwise maintained in such a manner as to contribute to an accident, the hotel is liable for all resulting injuries. On the other hand, when the hotel does nothing wrong, and the guest simply slips and falls of his/her own accord, the hotel is not liable.

In *Fuller v. Vista Dell Arroyo Hotel* (1941) 42 Cal.App.2d 400, the court held a woman who was injured while descending a flight of concrete stairs to the walk surrounding the hotel swimming pool did not have a claim because she failed to show her accident had anything to do with conditions created by the acts or omissions of the hotel.

In *Gibbons v. Los Angeles Biltmore Hotel Company* (1963) 217 Cal.App.2d 782, the court ruled in favor of the hotel, in a case in which the plaintiff claimed she slipped and fell down the stairs, where the evidence failed to establish that the fall was the result of any dangerous or defective condition.

In *Hall v. Bakersfield Community Hotel Corp.* (1942) 52 Cal.App.2d 158, the court affirmed a jury verdict in favor of a guest who was injured as a result of falling down stairs which led from a hall into the hotel's banquet room. The court found there was substantial evidence to establish the hotel's negligence in that there was insufficient lighting, the steps were improperly constructed and maintained, and were the same color as the floor so they could not easily be seen.

In *Staudinger v. Whitlock* (1952) a hotel was held liable to a guest who missed her footing on a step, and fell to the floor, suffering serious damage to her right arm. The court found the evidence supported a finding of negligence in that the stairway was not properly lighted, the handrail was inadequate, and the steps were so similar in color as to make them indistinguishable from each other in the dim light.

C. Falling Plaster.

In *Mintzer v. Wilson* (1985) 21 Cal.App.2d 85, a hotel was held liable for injuries suffered by a guest who was struck by a large piece of plaster falling from the ceiling while lying in his bed. In finding the hotel liable under such circumstances, the court noted that the ceiling was within the exclusive control of the hotel, and plaster does not ordinarily fall from properly constructed ceilings.

D. Defective Room Furnishings.

A hotel guest sits down on a chair or bed which, unbeknownst to the hotel, had a crack, loose screw, or other defect. The guest topples to the ground, injures his back, and files a lawsuit. Is the hotel liable? In *Green v. Watson* (1964) 224 Cal.App.184, the court said no.

In *Green*, a hotel guest sustained back injuries when the canvas chair in which he was attempting to sit collapsed. The guest argued that in furnishing a bedroom with a defective chair, the hotel breached its duty to maintain the premises in a reasonably safe condition. In affirming the jury award in favor of the hotel, the appellate court found the jury could have reasonably concluded the guest contributed to the injury by preventing

the hotel from accessing her room, and the guest's misuse of the chair caused the chair to collapse.

In *Shattuck v. St. Francis Hotel & Apartments* (1936) 7 Cal.2d 358, a hotel was found liable on a breach of warranty theory for injuries sustained by a guest when three screws from the upper bracket of a wall bed door jam broke, and the frame and head of the bed dropped onto her face.

In *Nole v. Sixty-Five O Four, Inc.* (1951) 104 Cal. App. 2d 632, the court held a hotel was not liable for personal injuries suffered when a chair in a furnished room broke when the plaintiff sat in it. Characterizing the relationship between the guest and hotel as invitor and invitee, the court concluded the hotel could only be liable if it either had actual knowledge of the defect, or constructive knowledge the chair was in a defective condition.

The court explained that in order to find the hotel had constructive knowledge of the defect, the condition would have to have existed for such a period of time that a reasonable person exercising ordinary care would have discovered it. As the guest presented no such proof, there was no basis for finding constructive knowledge of the defective chair.

E. Fire.

In considering the liability of a hotel to a guest resulting from fire, the courts have generally held a hotel is under a duty to use reasonable care to provide for a guest's safety. The general duty of reasonable care is to eliminate fire hazards, timely warn of a fire, promptly notify the fire department, maintain adequate fire escapes, and otherwise act in an reasonable manner. Violation of fire safety regulations could, arguably, give rise to liability.

Chyten's Bottom Line: Routinely inspect all areas of the hotel, including the rooms and surrounding areas, for potentially defective or dangerous conditions. If a condition is not visible, and does not arise as a result of improper maintenance, liability will be more difficult for the plaintiff to establish.

II. LIABILITY TO HOTEL GUESTS FOR ACTS OF THIRD PARTIES.

A hotel's liability to a guest injured by criminal or tortious conduct of third parties is determined on a case-by-case basis after consideration of a number of factors. These factors include foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendants' conduct and the injuries suffered, the moral blame attached to the defendants' conduct, the policy of preventing future harm, the burden of eliminating or preventing the risk, and

the prevalence of insurance for the risk involved. *Rowland v. Christian* (1968) 69 Cal.2d 108, 113.

Whether a hotel has a duty to act in some way to protect or warn guests who are injured as a result of the tortious or criminal acts of a third party is based on these factors and principles.

In *Gray v. Kircher* (1987) 193 Cal.App.3d 1069, the court held a hotel was not liable for an armed attack by one tenant upon another, following a complaint about excessive noise from the injured tenant's stereo. The court based this decision on the fact there was no evidence of any prior similar conduct or circumstances at the hotel, no history of violence on the part of the attacking tenant, and no evidence the hotel was aware the attacking guest possessed a gun. The court concluded, under those circumstances, that the attack was not foreseeable.

Chyten's Bottom Line: While a hotel, like any business, has the right to assume all individuals will use reasonable care, and not violate the law, if the wrongful conduct of a third party is foreseeable, a hotel could be liable for all resultant damages. In that foreseeability is determined on a case-by-case basis, it is best to monitor and report any known or suspicious criminal conduct to the appropriate authorities.

III. LIABILITY OF HOTEL TO THIRD PARTIES.

A. Objects Thrown From Rooms.

The general principle is that a hotel is required to use reasonable and ordinary care to maintain the hotel so as not to be a source of danger to persons using the streets adjacent thereto. Although not an insurer, a hotel is liable if it knows, or has reason to know, of the danger of injuries to passers-by from the acts of its guests within the hotel. If so, the hotel is under a duty to take reasonable steps to avoid such injury.

While walking on a sidewalk adjacent to defendant's hotel, plaintiff was struck on the head by a chair that was thrown from the hotel. Is the hotel liable for the plaintiff's injuries in that case? In *Larson v. St. Francis Hotel* (1948) 83 Cal.App.2d 210, the court said no. Noting that the plaintiff failed to prove the hotel had control of the falling chair, or that the injury could have been prevented through the exercise of ordinary care, the court reasoned the hotel was not negligent or liable under such circumstances.

B. Visitors.

What is a hotel's duty to someone who visits a registered guest, and what is the hotel's liability where it fails to satisfy that duty and the visitor sustains injuries as a result? If the visitor is invited by a registered guest, the hotel has a duty to use ordinary and reasonable care to protect his/her safety while at the property. If, on the other hand, the visitor is not invited by a registered guest, and/or is not at the hotel for some other lawful purpose, the hotel's duty is much less.

In *Nunneley v. Edgar Hotel* (1950) 36 Cal.2d 493, an invitee of a guest, while accompanied by the guest, was injured when she sat on a mattress that appeared to be resting upon the roof of a small house, but turned out to be the opening of a vent shaft. The visitor fell to the bottom of the shaft, and suffered severe injuries. The court found this evidence supported a finding of negligence against the hotel.

In *Koppelman v. Ambassador Hotel Co.* (1939) 35 Cal.App.2d 537, a hotel was held liable to a customer of a bank, that leased space in the hotel, when she tripped over a piece of timber on the floor. The court held the hotel had a duty to keep the premises reasonably safe, and breached that duty by failing to keep the public walkways free of debris.

Chyten's Bottom Line: A hotel has the same duty of care to a person who is at the hotel at the invitation of a guest as it has to the guest itself.

IV. HOTEL LIABILITY FOR LOSS OF PERSONAL PROPERTY.

At common law, an innkeeper was an insurer of the property of its guests, and hence liable for all injury or loss, unless the cause was an act of God, public enemy, or negligence of the guest. That common rule law was changed by statutes enacted in 1895.

California Civil Code §1859 provides that the liability of a hotel for personal property is limited to \$250 for a traveling bag, \$500 per trunk, \$250 for all other personal property, and \$1,000 in the aggregate. Under Civil Code §1860, the hotel's liability is limited to \$500 in the aggregate for "articles of unusual value", including money, jewelry, documents, and furs.

These statutory limits can be increased pursuant to an agreement between the hotel and guest. However, any such agreement must be in writing.

California Civil Code §1860 provides if a hotel maintains a fire-proof safe, and gives notice in a prominent place in the office or room that the renter's valuables can be stored in the safe, the hotel is not liable for loss of such valuables "except so far as his acts contribute thereto, for any loss or injury to such articles", and in no case more than

\$500. Thus, when a hotel guest who receives the proper notice chooses not to avail himself/herself of the hotel safe, and valuables are stolen, the hotel's liability is limited to the statutory limits provided in Civil Code §1859. *Nagashima v. Hyatt Wilshire Corp.* (1991) 228 Cal.App.3d 1006.

A good example of how protective Civil Code §1860 can be is provided by *Robert Altman v. The Biltmore Hotel* (1961) 190 Cal.App.2d 274. In that case, a jewelry salesman checked into a hotel, and stored three sample cases, filled with jewelry, in the hotel's vault. Through the negligence of the hotel, two of those sample cases were lost. The court nonetheless held the hotel was only liable for the statutory limit of \$250 per bag. "Should a guest wish protection in excess of the statutory limitation, it must declare the value of the property to give the innkeeper an opportunity to confirm the estimated value. He can then refuse to assume the greater liability or if he assumes it he can take proper precautions for the protection of the property." 190 Cal.App.2d at 280.

In *Baxter v. Shanley-Furness Co.* (1924) 193 Cal. 558, the court held the hotel did not comply with the statute, and was not exempt from liability for valuable articles, where its notice read "[p]ossibly not responsible for any valuables unless left at hotel office", but did not make any reference to a fire-proof safe.

In *Cline v. Dimmick* (1927) 82 Cal.App.155, the hotel posted a notice stating it would not be liable for the loss of money, jewelry, "or other articles of valuable taken from the room", as such valuables could be stored in safe-deposit boxes. However, the notice made no mention of "furs, fur coats, and fur garments", as provided in the statute. The court held that since the notice did not comply with the statute, the hotel was liable for the guest's entire loss.

Bottom Line: Civil Code §§1559 and 1560 limit a hotel's liability for loss of a guest's personal property if the strict requirements of these statutes are satisfied. Hotel's should be careful to provide the requisite notice, and to otherwise comply with the exacting requirements of these statutes.

V. LIABILITY OF HOTEL FOR REFUSAL TO HONOR RESERVATION.

Where a hotel overbooks, and accepts reservations in excess of the accommodations available, such that a guest with a confirmed reservation is denied a room, is the hotel liable? While not addressed in many cases, this would seem to constitute, at minimum, a breach of contract. See, e.g. *Rainbow Travel Service, Inc. v. Hilton Hotels Corp.* (10 Cir. 1990) 896 F.2d 1233 [dishonoring a hotel reservation is both a breach of contract, as well as a breach of the common-law innkeeper's duty]; *Dold v. Outrigger Hotel* (Hawaii 1972) 501 P.2d 358 [the refusal to honor a reservation, after it had been confirmed and a deposit accepted, constitutes fraud.]

Chyten's Bottom Line: A hotel faces a fine and difficult line in attempting to maintain high occupancy levels without turning away the occasional guest who cannot be accommodated because the hotel is overbooked. From the standpoint of both public relations and lawsuit avoidance, alternative accommodations should be paid for, or other arrangements made that satisfy the needs of an overbooked guest.

VI. INCLUSION OF SERVICE CHARGE ON ROOM SERVICE BILL IS NOT AN IMPROPER PRACTICE.

Many hotels have a practice of including a service charge for all room service deliveries on a guest bill that also includes a blank line for tip or gratuity. In *Searl v. Wyndham International, Inc.* (2002) 102 Cal.App.4th 1327, this practice was found to be legal.

In rejecting the plaintiff's contention that this constituted an unfair and deceptive business practice, the court explained as follows: "In the final analysis we are not offended by the hotel's practice of treating the service charge as a means of providing reliable compensation to its employees and not as a substitute to the customary tip. The hotel's service charge practices provide a guaranteed level of compensation for its servers and at the same time encourage its servers to provide the hotel's guests with good service." *Id.* at 1336.

Chyten's Bottom Line: While this practice appears to be lawful, guests will be the ultimate judge.

VII. HOTEL NOT LIABLE WHEN IT MISTAKENLY REPORTS POSSIBLE CRIMINAL CONDUCT OF GUEST TO POLICE.

If a hotel reports what it believes to be criminal conduct of a hotel guest to the police, and it turns out there was no criminal conduct taking place, the hotel is not generally liable. See, *Hunsucker v. Sunnvale Hilton Inn* (1994) 23 Cal.App.4th 1498.

Chyten's Bottom Line: There is a fine line between a hotel's duty to report what it believes to be unlawful conduct, and a guest's right of privacy.

VIII. RENTAL OF HOTEL ROOMS TO PERMANENT RESIDENTS DOES NOT VIOLATE ORDINANCE WHICH REQUIRES ROOMS TO BE OFFERED FOR "TOURIST USE".

In *Tenderloin Housing Clinic, Inc. v. Astoria Hotel* (2000) 83 Cal.App.4th 139, the plaintiff housing clinic sued a hotel for allegedly violating a San Francisco ordinance requiring a certain number of rooms "be used, rented, or hired out to guests (transient visitors) intending to occupy the room for less than 32 consecutive days." The court concluded that a "tourist unit is *either* a room not occupied by a permanent resident ...*or* a room certified as a tourist unit ", and" may be rented to a permanent resident, until

voluntary vacation of that unit by the permanent resident or upon eviction for cause, without changing the legal status of that unit as a tourist unit." 83 Cal.App.4th at 144-145.

Chyten's Bottom Line: In San Francisco, or in areas where there is a legal requirement that a certain number of rooms be allocated to tourists, long term rentals to permanent residents does not appear to violate the law.

IX. SALE OF HOTEL INCLUDES FURNITURE AND LIQUOR LICENSE.

Does the sale of a hotel pursuant to a written contract that does not mention furniture or a liquor license, include these items? In *Bisno v. Montecito Hotel* (1946) 75 Cal.App.2d 235, the court said yes. In that case, the buyer of a hotel was orally advised the purchase price included all furnishings, as well as the hotel's liquor license. Even though the furniture and liquor license were not mentioned in the purchase contract, they were referred to in an earlier memorandum, and the court found it was implicit that such items were therefore included in the sale price.

Chyten's Bottom Line: In that California's statute of frauds, Civil Code §§1624 and 1624.5, requires the sale of all real property, and all personal property in excess of \$5,000.00, to be in writing, it would be prudent to specify in the purchase and sale agreement for any hotel what is and is not included in the purchase price.

X. CHYTEN'S BOTTOM, BOTTOM LINE:

_____A hotelier's goal, like that of an ethical attorney, is to work hard, do good work, and make a decent living. Lawsuits against hotels do not help hotels make money; they only help lawyers make money. But like any ethical doctor whose goal is for his or her patients to stay healthy, and to treat them only if they get sick in spite of following his advise, an ethical attorney wants his or her clients to avoid getting sued, and wants to represent them only if they get sued in spite of following his advise. A hotelier should do what it can to avoid a lawsuit, but prepare itself to win if it does get sued.

_____Litigation is never fun, is usually expensive, and should be avoided if at all possible. A conscientious lawyer can help a hotel avoid litigation by eliminating conditions that can invite lawsuits. If a hotel is nonetheless sued, an attorney can guide his client through the litigation process, and help it decide whether to settle or go to trial. If the decision is made to go to trial, the hotel should retain an attorney who has the experience, guile, intelligence, and tenacity to make sure that justice is ultimately served

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VARIOUS PRINCIPALS RELATING TO CERTAIN ASPECTS OF HOTEL LAW. IT IS ONLY INTENDED FOR EDUCATIONAL PURPOSES AND IT IS NOT MEANT TO GIVE SPECIFIC LEGAL ADVISE OR AS A COMMENT UNDER ANY PARTICULAR SITUATION OR SET OF FACTS. FOR SPECIFIC LEGAL ADVISE CONCERNING A PARTICULAR SITUATION, THE AUTHOR STRONGLY SUGGESTS YOU CONSULT WITH AND RETAIN AN ATTORNEY.

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