

# Introduction to Contract for Hotel Accommodation

Private Law Aspects of Booking and Staying in a Hotel

Applicable to Common Law Jurisdictions

2010



# Terms and Conditions of Use

- ⦿ These slides are intended for use as a teaching resource for teachers of tourism, travel and hospitality law and for no other purpose.
- ⦿ They are not intended for any use in relation to real or anticipated legal proceedings.
- ⦿ No liability is accepted by IFTTA or its agents or any contributors to these slides in relation to the content or use of these slides.



# Terms and Conditions ...

- ◎ It is a condition of the use of these slides that:
  - ◆ the role of IFTTA in preparing these slides is acknowledged
  - ◆ the slides are not altered in any way
  - ◆ no reliance will be placed on the content of these slides in relation to any legal proceedings
  - ◆ no claim will be made against IFTTA or its agents or any contributors in relation to these slides.



# Main Headings

- I. Introduction
- II. Making the Contract of Accommodation
  - Booking a hotel
- III. The Terms of the Contract
  - Staying in a hotel
- IV. Breach of Contract
  - Remedies for not keeping contract promise



# I. Introduction

- Booking a hotel bedroom and staying in the hotel gives rise to legal rights and duties for hotel and consumer
- Slides focus:
  - on legal framework or sources/types of rights/duties linking hotel and consumer
  - on private, not public law duties
- In civil law jurisdictions (typically non-English-speaking) rights/duties are found primarily in written legislation

# Introduction

- In common law jurisdictions (English-speaking states) rights/duties are also found in case-law (previous court judgements - precedents)
- The legal framework which identifies hotel/consumer rights/duties and decides if they have been observed/broken is a mix of:
  - **Contract law**
  - **Other laws**



# Contract Law

- Contract law is the main part of the legal framework linking hotel and consumer
- Its role is to:
  - decide when a booking creates a contract
  - what the contract rights/duties are (what each side must do)
  - identify when rights/duties are not observed (the contract is broken)
  - identify the legal consequences of breach of contract



# Other Laws

- Varies depending on state and legal system
- General **consumer** protection law which:
  - Controls unfair B2C **pre-contract** activities (marketing, advertising, website content, booking procedures)
  - Controls unfair B2C contract terms (bans them)
  - Forces display of information





# Other Laws

- Sometimes states have **specific hotel laws** which:
  - Promote hotel standards/quality (through hotel registration/grading)
  - Deal with rights of service/admission, compensation for physical injury and property loss/theft
  - Usually no specific hotel laws for, say, online bookings



# Other Laws

- **Data protection laws**
- **General civil liability** laws (tort/delict)
- Constitutional/human rights laws
- Building standards/construction laws
- Food hygiene laws



# Other Laws

- **Equity law** – (in common law jurisdictions) legal principles based on fairness/justice which shadow contract law to prevent injustice
  - e.g. sometimes forcing a hotel (only if its fair) to respect a non-paid understanding to give ‘first call’ on bedrooms to a tour operator or a function room for a wedding

# Other Laws

- ⦿ Historically hotels (old English term - inns) were subject to a legal duty to **admit/serve 'travellers'**
- ⦿ Duty based on status, not contract
- ⦿ In effect a **pre-contract duty** to make a contract of accommodation
- ⦿ In some states same duty now also based on legislation
- ⦿ Law also says hotel can refuse to admit for reasonable grounds



# Other Laws

- ◎ Specific **equality laws** in many states now also ban refusals by all retailers (including hotels) to admit/serve customers for listed reasons
- ◎ Banned reasons typically include race, ethnicity, nationality, politics/religion, sex, sexual orientation, age, family status etc



# Basic Contract Law says

- An agreement between hotel and consumer to provide the use (allow short-term occupancy) of a hotel bedroom ('sell' the room) in return for payment creates a legally binding contract
- Meaning legal remedies are available from courts if contract not performed as agreed



# Basic Contract Law says

- **Booking** a hotel bedroom means making a contract to be performed **in the future**
- A booking does not have to be in writing to create a valid contract
  - A phone booking can create a valid contract, but this might not be wise because ...
- Hotels/consumers are generally free to make their contracts/structure their booking procedures as they wish
- Lawyers/judges search for parties **intentions** as key to resolving contract disputes



# Basic Contract Law says

- But this freedom is subject to various rules dealing with, say:
  - making illegal contracts (selling a bedroom for prostitution, selling liquor to under-age children via bedroom mini-bar)
  - making a mistake (booking wrong dates/type of bedroom/hotel)
  - under-age children making a booking





# Basic Contract Law says

- Contract for accommodation consists **only** of what was **agreed before or when** the booking was made
- Hotel cannot afterwards unilaterally insert extra terms (typically hotels' written standard contract terms) into contract, say, via a confirmation or invoice

# Basic Contract Law says

- Unless consumer stayed in hotel before and knew about the terms
- Online hotel booking makes it easy for hotel to include all of its standard terms before booking is made because ...
- Contents of a contract of accommodation are called **terms**:
  - **Express** terms (mentioned)
  - **Implied** terms (not mentioned, but part of contract for various reasons discussed later)

