

# III. Staying in a Hotel - Terms of Accommodation Contract

## ⊙Headings:

- ◆Terms
- ◆Standard terms
- ◆Implied terms
- ◆Noise
- ◆Privacy and data protection



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# Terms

- The contents of contracts are called 'terms' which consist typically of:
  - ◆ **express** (mentioned in writing or orally) and
  - ◆ **implied** (not mentioned but still there) terms
- Typical accommodation contract expressly mentions only a few core terms - price, dates, parties and length of stay



# Terms

- But many other issues can arise while staying in a hotel
- Must be dealt with through some legal framework
- Most apt is the contract of accommodation, terms implied under it and also some other areas of law



# Standard Terms

- Hotels typically make contracts of accommodation using the same (standard) written terms (also called 'booking conditions')
- Typically these contracts are drawn up in advance by the hotel to ensure it uses only terms which suit itself/safeguard its interests and not the consumer's



# Standard Terms

- Not surprisingly standard terms focus more on the consumer's obligations than hotel's
- Standard terms typically deal with dates/times when room is available, stay-overs, special requirements, payment schedule, cancellation procedure and fees, late arrivals, release times, departure times, rules of resident behaviour (house rules)



# Standard Terms

- Standard terms are increasingly in writing and online
- In some states they are subject to general consumer protection laws which ban them if they are **unfair** to consumers
- Also, if written they must be in **plain intelligible** language



# Release Times

- Term in contract entitling hotel to terminate contract and its obligation to retain bedroom for booker if room not occupied/hotel not informed of late arrival by set time
- Protects hotel against booker of, say, 3 nights turning up on second night and legally expecting room
- If room given away too early or if hotel has not properly inserted clear release-time term, hotel may be in breach of contract

# Stay-overs

- Once initial occupancy period ends, consumer right to occupy room terminates
- However, if consumer wants to stay on in hotel a new contract arises typically subject to similar terms as initial contract
- Can be a daily or longer contract
- Hotel does not have to provide same room
- Hotel is free to seek payment before agreeing to new contract



# Implied Terms

- Many important issues affecting consumer welfare while staying in hotel are not mentioned in hotel standard terms
- But must still be legally covered by the contract of accommodation because they concern staying in the hotel



# Implied Terms

- Contract law says such issues are dealt with as **implied** contract terms (there but not mentioned)
- Contract law also says that an express term can displace/override an implied one except usually not ones implied by legislation
- Different ways for figuring out how/what terms are implied



# How are terms implied?

- From the **nature of the subject-matter** of the contract (most important for consumers) i.e. contract is for a bedroom to sleep in
- By knowing some terms from **previously staying** in the hotel
- By **trade custom** and practise (paying hotel/restaurant bill at end when leaving, maybe allowing pre-authorisation at check-in)
- By **legislation** (consumer protection legislation)

# Nature ...

- Consumer never says – ‘there must be a bed with legs, mattress, sheets, toilet paper, hot water’ etc
- But consumer must and does have a legal right to such things because contract cannot be properly performed without them or (same thing) because it is reasonable to assume both sides contemplated them



# Nature ...

- So, in all accommodation contracts there will be a wide range of implied terms under which the hotel is deemed to makes promises about:
  - Presence and condition of the facilities and equipment of bedroom and other parts of the hotel to which access and use is granted
  - Quiet access to, possession of and fitness of use of bedroom for sleeping in

# More Implied Terms

- Hotel is also probably deemed to make contract promises that hotel will comply with:
  - All binding local laws or recommended standards (particularly safety standards) dealing with building control/planning/fire/food hygiene, leisure/swimming pools etc.



# More ...

- Any local laws setting legally binding quality standards for hotels
- The quality standards of any grade given to the hotel (by a public or private grader) which it advertises and was known to the consumer when booking was made



# More ...

- Consumer protection law in many states also says there is an implied term under which the supplier of a service promises it has the skill to supply the service and will supply it with due skill, care and diligence
- With hotels this means a legal promise the bedroom/hotel service will be of an appropriate quality and provided in a physically safe way



# Noise

- Wide range of sources of noise from outside bedroom (internal/external) which can hinder using bedroom for sleeping
- Hotels seldom expressly promise that bedroom is sound insulated in a way that outside noise is kept below a defined decibel level
- Few, if any, laws force hotels to advertise a bedroom decibel level



# Noise

- But (because sleeping is primary purpose for occupying room) hotel will probably be deemed to make an implied promise that decibel level of noise from outside bedroom **will not exceed ...**
- Subject to force majeure (emergency sirens, but not normal traffic)
- Defining decibel level is tricky



# Noise

- Can potentially be identified from any precise/vague noise insulation standards contained in **legally binding** hotel standards law (registration/grading) or general building standards law
- Otherwise, hotel location, room location (street-side, inside), consumer familiarity with hotel etc. will be used to define decibel level

# Noise

- If consumer knows noise will hinder sleep before making booking cannot legally complain about breach of implied term
- But if hotel only warns consumer (who has previously booked) at check-in about noise from disco/wedding party consumer can complain about breach of implied term
- Because warning at check-in cannot alter implied contract promise already made unless consumer gives real consent to change of term



# Privacy

- Different legal grounds of hotel resident's entitlement to privacy:
  - Constitutional/human right to privacy
  - Implied term in contract of accommodation
- Main privacy issues:
  - Bedroom
  - Hotel disclosing resident's presence
  - Data protection as hotels increasingly facilitate resident's use of internet

# Privacy

- Meaning of privacy rights
- Being left alone, not spied on/disturbed, not disclosing/discussing resident behaviour or information
- Different types of accommodation offer different levels of privacy – contrast single en-suite hotel bedroom and hostel dormitory/communal showers
- So, extent of legal right to privacy is contextual

# Hotel Bedroom

- Hotel bedroom is main locus of privacy expectation
- But contract made against background that:
  - Average hotel bedroom is **not** an independent living space and **depends** on hotel housekeeping etc to be used as intended
  - Room is provided with a door which is intended to be locked and resident is provided with a key to lock it



# Hotel Bedroom

- This suggests there is an implied contract term that:
  - ◆ Resident is entitled to be left alone while in the bedroom and to prevent unauthorised access
  - ◆ Hotel has a duty to enter to service bedroom, but will not enter for unauthorised purpose or in a way which disrespects resident



# Entering Bedroom

- Entering bedroom when wake-up call fails to wake-up resident is unlawful unless resident previously consents (say, by ticking tick box on request card)
- Manner of entry must respect privacy
- Relevant factors – guest use of hotel sign to clean or not disturb, whether before/after check-out time, knocking, waiting, listening, contacting reception, ringing bedroom before entering
- Examining guest belongings, trying on clothes/perfume/new purchases



# Privacy

- **‘Peeping Toms’** - staff/others listening/filming/spying on guests in bed/bathroom is a clear breach of right to privacy
- But, unless caught in the act, can be legally difficult to prove privacy was actually infringed or, if so, that hotel is ultimately responsible



# Privacy

- Except when (regardless of who did the spying or whether any took place), hotel can still be made liable because it **was careless in not discovering the spying** since it controls the opportunities for spying
- Where no proof of actual spying, resident might receive less compensation



# Limits on Resident's Right to Privacy

- Hotels seldom list in contract of accommodation reasons entitling staff to enter bedroom for non-housekeeping purposes
- If no such list, and based on assumption that both sides intended the resident will not act unlawfully while in the bedroom or subject the hotel to the risk of criminal prosecution, there is **probably an implied contract term allowing staff to enter a bedroom on reasonable suspicion that:**



# Limits ...

- The bedroom is being used for illegal activities (drugs, firearms, liquor) or to damage hotel/other guest property and
- That the bedroom is being used for disorderly purposes so as to create a risk of the hotel being prosecuted for permitting, say, disorderly conduct on licensed premises/under-age or non-resident after-hours drinking

# Limits ...

- Also, based on hotel legal duty of care for safety of residents, there is probably an implied contract term allowing hotel staff (on reasonable suspicion and while respecting privacy) to enter bedroom to see if resident is ill/injured/dead
- But, probably no implied term allowing staff enter bedroom if wake-up call does not work
- Probably need to obtain prior consent, say, by ticking tick-box on registration card

# Police Entry into Bedroom

- No infringement of resident right to privacy if police enter bedroom:
  - with resident's **genuine consent**
  - with **valid search warrant**
  - without a search warrant but under a **law which allows warrantless search**, (typically, drugs and liquor law) or because of threats to public order, assaults etc.
- Hotel owner/manager **cannot give permission to police** to enter if neither has valid entry authority



# Disclosing Presence of Residents

- Resident presence in hotel is no one's business except hotel, resident and guest registration law
- Probably an implied contract term that hotel will **not reveal** resident's presence etc to others
- But (even without mentioning it) residents typically want their presence revealed to receive callers/visitors
- So there is:
  - ◆ probably an implied contract duty on hotel to disclose presence
  - ◆ And not a breach of resident right to privacy



# Resident Data Protection

- Hotels collect resident personal data to facilitate bookings, special requests, services preferences, payments, marketing etc
- Hotels increasingly encourages electronic trafficking of personal and business data by providing internet access
- Resulting in hotels being data procesors and subject to data protection laws

# Resident Data Protection

- State data protection laws are administered/enforced by state data body
- Probably an implied term in contract of accommodation that **hotel promises to observe data protection law** when handling resident **personal data**
- ‘personal’ data is data from which individual can be identified



# Data

- Extent of implied term depends on what data protection law says
- Such laws are designed to protect **personal** privacy principally from unfair computer data processing
- **Non-personal** individual data not protected
- Law applies to data stored electronically and sometimes to an organised manual filing system and sometimes to any manual data

# Basic Principles of Data Protection Law

- Personal data must be collected and used **fairly**, meaning:
  - hotel must have a **valid reason** for collecting it
  - hotel guest should generally **know** it is being collected and why



# Basic ...

- hotel should not use data for a purpose different from the **original purpose**
- hotel should **not keep data longer** than original purpose requires
- hotel should have security systems to prevent **unauthorised access/use** of data
- hotel should ensure data is accurate and **corrected**

# Hotel Guest Registration

- ◎ Aliens legislation typically requires hotels enter and keep details of residents in a register for defined period
- ◎ But some hotels use this data to speed up registration next time guest checks-in
- ◎ Probably a different purpose from original so prior guest consent needed



# Photocopying Passports

- At check-in **keeping/photocopying passports** (without genuine consent and without real need) is probably illegal
- Because unless hotel registration law requires it, hotel has no need to keep passport details
- Not really needed to verify resident identity because ...



# Cards and CCTV

- Room **key cards** record guest movement in/out of room, can be personal data and must be fairly collected (inform resident why) etc.
- **CCTV** collects personal data so must be collected fairly (valid reason which is disclosed unless its obvious
- Collecting **business cards** in drop-in box for prize but using for marketing purposes

# Check-out

- Check-out can raise data issues regarding:
  - Guest data on **computer screen** visible to others during check-out
  - Discussing out loud bill details (say, bill for adult entertainment) during check-out
- No unfair processing if hotel gives invoice without comment to guest



# Check-out

- If guest orally queries bill, guest has implicitly consented to risk of being overheard
- Credit card details should not be retained for next visit unless guest expressly consents to it



# Deleting Data

- Fair use also means guest personal data must be **deleted** when original reason for its collection/retention no longer exists
- Typically when likelihood of bill query diminishes (which can be much longer with corporate accounts)
- Retaining guest data after check-out for future marketing activities requires express consent, not by use of pre-ticked tick box because ...



# Data ...

- Hotel can of course keep non-personal data relating to type of guest/room, spending, use of hotel facilities etc. so long as individual identification is not possible
- Generally hotel can seek guest permission to retain personal data for future marketing purposes