

## ATTORNEY AT LARGE

BY RICHARD HARTZMAN

### OVERBOOKING AND THE LAW

Having all or part of a group turned away from a hotel where it has reservations may be an infrequent problem—but it does happen. What recourse does the law provide?

To answer this question, we start with the common law principle, devel-

oped in medieval England (when travelers needed a safe refuge from highwaymen at night): it is an innkeeper's duty to accommodate, without discrimination, all proper travelers who arrive with the ability to pay for their night's lodging.

This common law duty was carried over into American law and is not only still recognized but is also part of the

the accommodation is therefore a breach of contract and, if a comparable alternative is not found, the guest (or group) may be entitled to damages.

Hoteliers argue that overbooking is necessary because there are always cancellations and no-shows. But this is no satisfaction to those who arrive with reservations and are told that they cannot have rooms.

And, in rare instances, the motive for overbooking is a practice called "bait and switch," by which a more attractive hotel—say, with a beach location—accepts all reservations and refers the overflow to a less attractive property in return for a kickback.

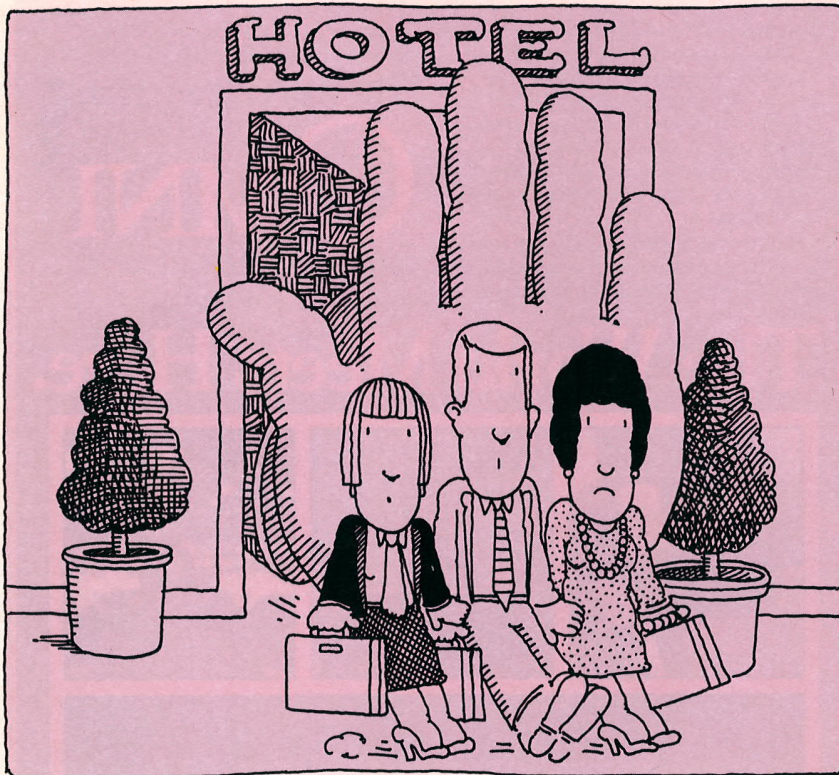
Whatever the motivation, courts have generally not looked kindly upon hotel overbooking. In some cases they have awarded substantial compensatory damages—even for emotional distress. The same legal principles apply whether individual or group reservations are involved.

Planners should note that a travel agent, tour operator or other intermediary making reservations can be held legally responsible when overbooking occurs. Planners themselves are responsible when they overbook or fail to verify and confirm reservations made through them.

Hotels and tour operators that cannot make good their reservations, can, depending on the circumstances, be held liable for double payments for lodging and, perhaps, for other consequential damages.

Alternatively, a tour operator may be entitled to damages from a hotel that overbooks. In a Minnesota case, a tour operator contracted with a Las Vegas hotel for a block of 58 rooms. The hotel unjustifiably cancelled the reservation, whereupon the tour operator sued and was awarded \$71,500 in damages; \$69,595 was to cover lost profits.

In response to consumer complaints, Congress and the Federal Trade Commission have investigated hotel reservation practices, and at least one state,



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foundation of hotel law.

As with most rules of law, the innkeeper's duty to accommodate has its exceptions. For example, an innkeeper is excused from the duty if his hotel is full—if all available rooms are occupied or held under reservation. Thus, the law reflects *our* normal expectations.

Legally, when a guest has a confirmed reservation and has submitted a deposit, there is a binding contract for the accommodation. Failure to provide



Florida, has regulations prohibiting overbooking.

In Florida, a hotel is required to provide lodging when the guest has a pre-paid reservation. If the hotel has overbooked, it must "make every effort to find other comparable accommodations," must refund the deposit, and is subject to a \$500 fine for every guest turned away because of overbooking.

### What you can do

When dealing directly with a hotel, try to find out if it overbooks. In any case, be sure to verify and confirm reservations. When working through a travel agent or wholesaler, again try to find out their practices regarding overbooking. Use reliable operators and hotels.

If you still are concerned about possible overbooking for a particular event, investigate alternative accommodations in the area. It will minimize your frustrations.

If you should run into an overbooking problem, press the hotelier to help you make other arrangements.

One meeting planner recently experienced a situation requiring alternative lodging for the first night of a meeting. The hotel helped find rooms in another property, paid for the accommodations; provided bus transportation to and from the other hotel and threw a cocktail party for the group. This kind of solution may not totally compensate for the disruption and inconvenience, but it is one way to save the day.

Richard Hartzman is a member of the bar in New York and Colorado. He practices law in New York City and writes for *M&C* on a variety of subjects.

### Answers to Oct. puzzle:

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