

HOTEL SECURITY

SAFEKEEPING: A HOTEL'S RESPONSIBILITY

BY RICHARD HARTZMAN

Some years ago, while staying at New York's Waldorf-Astoria, Zsa Zsa Gabor was robbed of a reported \$253,000 in jewelry in the hotel's elevator. She sued, claiming that the hotel was negligent, but the jury found in the hotel's favor. Although we may rue Zsa Zsa's loss, the case illustrates some of the legal principles which limit a hotel's responsibility to protect the belongings of its guests.

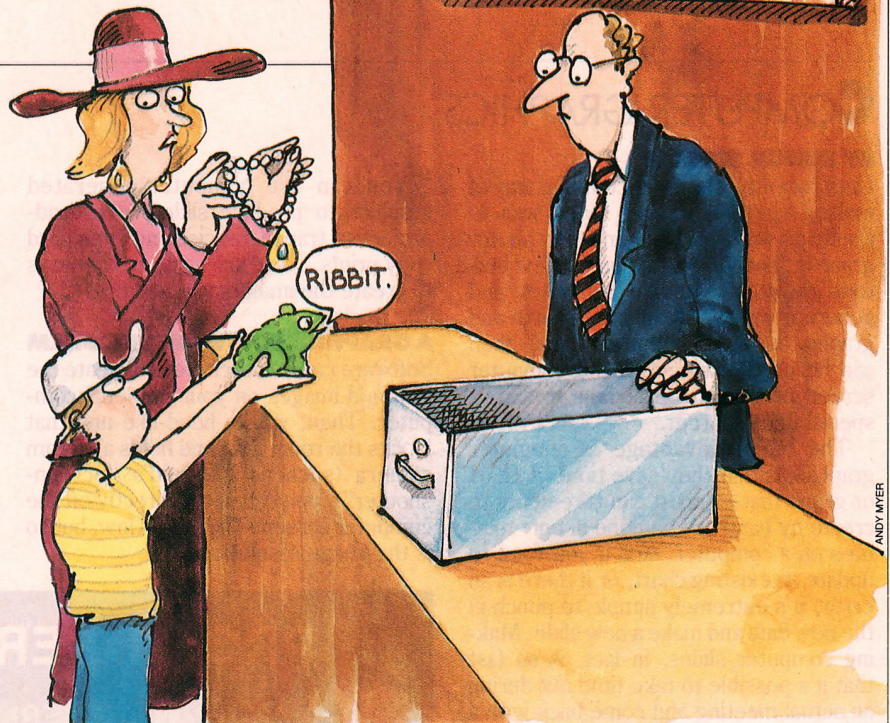
The English courts first held an innkeeper responsible for the loss of his guest's property in the year 1367. From this precedent grew the common law rule that a hotelier is an insurer and strictly liable for any loss or damage to his guest's belongings, whether or not he or his employees are negligent. The innkeeper would not be considered liable, however, if the loss was the result of fraud or negligence *on the part of the guest*, or of an act of God (flood, lightning, etc.) or the public enemy (i.e., an act of war).

Today, this rule of strict liability is followed in all states except six: Indiana, Illinois, Kentucky, Maryland, Texas and Vermont. In these states a hotel is presumed liable for the loss, but it may exonerate itself from liability by proving that the loss did not occur through any fault or negligence on its part.

If these common law rules were the only ones applicable, it's likely that Gabor would have won her suit. In 44 states, she would only have had to prove that she did, in fact, lose property while a guest in the hotel. In the other six states, she would have won if the loss had been proven and the hotel could not prove an absence of negligence.

But the common law rules are hedged—in all 50 states—by statutes limiting hotel liability for loss of property. These statutes are similar across the country, though they differ in detail from state to state. They generally divide property into four categories: 1) money and valuables; 2) property destroyed by fire; 3) property in transit, and 4) all other property. Each is subject to different rules regarding liability.

Ms. Gabor's loss, of course, fell into the first category.



MONEY AND VALUABLES

The New York statute, which is more or less typical, limits a hotel's liability to \$1,500 for loss of "any money, jewels, ornaments, bank notes, bonds, negotiable securities or precious stones," if 1) the hotel provides a safe *in the hotel office* for the safekeeping of these valuables, and 2) the hotel conspicuously posts a notice that such a safe is available.

Moreover, a hotel does not have to accept property for safekeeping if the value of that property exceeds \$1,500. If it does accept it and the property is lost, the \$1,500 liability limit applies unless the hotel agrees *in writing* to a higher liability or it is shown to be negligent.

What this means for guests is that a hotel complying with the statute is *not* responsible for the loss of money and valuables if the guest failed to deposit them in the hotel's safe. This is why Gabor lost her lawsuit.

But what about small amounts of money and such items as watches, valuables guests need to use and therefore can't deposit in a hotel safe? The rules here vary from state to state. Some states take the position that if a guest keeps only an amount of money usual and common for a traveler's use, a hotelier *is* liable for its loss even though the guest did not deposit it in the safe. Other states require that all monies must be deposited for the hotel to be liable.

In some states, items like watches (even with diamonds) and expensive cuff links are *not* considered to be "jewels" or "ornaments" and thus need not be deposited in the hotel safe. In others, "jewels" and "ornaments" have been held to include wedding rings, diamond rings, necklaces and lockets, studs and pens.

ROOM SAFES

Some hotels now provide room safes for the convenience of guests. There hasn't been any litigation yet involving these safes, nor have any statutes been signed into law concerning them, except in Hawaii. The Hawaiian statute provides that a hotel shall not be liable for loss of valuables if it posts a notice that security boxes are available in guest rooms and explains the hotel's liability. This rule, however, does not apply if the loss is due to the hotel's negligence.

In other states, the liability regarding room safes, is not clear. Because there is no legal precedent, it cannot be said whether the usual limitations on liability would apply to a loss from a room safe. Therefore, a guest would be wise to use a room safe only for items used regularly during a visit and to place more valuable items in the hotel's office safe.

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