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NOTES

THE INNKEEPER'S LIEN IN THE TWENTIETH CENTURY

INTRODUCTION

For the greatest measure of man's existence upon the earth, his means of transportation has been unsophisticated, tiresome and quite slow. For this reason, the vocation of maintaining a public house for the entertainment and repose of travellers is one of the oldest known to man.¹ The Bible makes reference to such establishments,² and inns existed in all civilized countries.³ Concomitant with the rise of the innkeeper was the "innkeeper's lien," a device designed to afford the host a means of protection from his guest's non-payment of the bill. As a part of the common law of England, these liens were transplanted to the United States and have flourished. However, recent statutes and case law reveal a change in attitude toward the desirability of the innkeeper's lien and a reappraisal of the justifications for its existence. This note will examine the development of the common law lien, the modern statutory adaptations and abrogations of the lien, and the relevance of such liens in modern society

THE HISTORICAL DEVELOPMENT OF THE LIABILITY OF THE INNKEEPER

The conditions of travel in England during the Middle Ages caused the innkeeper to play an important role in the social make-up of the country. Roads were poorly constructed and often impassable, and there was considerable danger to the traveller from the numerous outlaws who infested the forest.⁴ While it was possible to find protection in numbers during daylight hours, the traveller was forced to find a house which would offer him protection as well as lodging for the night.⁵

The English courts, recognizing the plight of the traveller and his

1. Navagh, *A New Look at the Liability of Inn Keepers for Guest Property under New York Law*, 25 *FORDHAM L. REV.* 62 (1956) [hereinafter cited as NAVAGH].

2. *Id.* at 62. The Nativity of Christ; "there was no room for them in the inn." *Luke* 2:7 (King James); The Good Samaritan; "he brought him to an inn and took care of him." *Luke* 10:33-34 (King James).

3. J. BEALE, *LAW OF INNKEEPERS AND HOTELS* § 1 (1960) [hereinafter cited as BEALE]; J. SCHOULER, *LAW OF BAILMENTS* 245 (1880) [hereinafter cited as SCHOULER].

4. NAVAGH, *supra* note 1, at 62.

5. BEALE, *supra* note 3, §§ 3, 4.

reliance upon the innkeeper, put the innkeeper in a special position with regard to the law. A special liability of the innkeeper was created, based neither on strict tort principles nor in contract, but on what has been called the "custom of the realm." It was the custom of the realm to impose special duties upon certain callings which involved public confidence and the exercise of special skills and competence.⁶

Basically, the courts in this country have continued to place upon the innkeeper certain special duties. The first of these is the requirement that all travellers be accepted who properly apply to be admitted as guests.⁷ While there are specific exceptions to this rule,⁸ it is apparent that the innkeeper's duty is quite broad as to whom he must admit.⁹

The innkeeper's second principal duty is to receive with the guest, all goods which could be properly called baggage. This obligation now requires the acceptance of all that the guest brings with him, provided the item is not dangerous or a nuisance.¹⁰ Along with the duty to accept the guest's baggage, liability is imposed upon the innkeeper for loss of the guest's baggage or property. The latter duty rests upon the rationale that the traveller, having entrusted his property to the servants of the innkeeper, is at the innkeeper's mercy, and would likely have little success in an action in the local courts.¹¹ The innkeeper, being the one person able to determine and insure the honesty of his servants, is answerable for their conduct.¹² Therefore, the liability of the innkeeper in most cases amounts to that of an insurer.¹³

6. *McClain v. Williams*, 11 S.D. 227, 228, 76 N.W. 930-31 (1898). See also R. A. BROWN, *THE LAW OF PERSONAL PROPERTY* § 102, at 481-82 (1955) [hereinafter cited as BROWN].

7. BEALE, *supra* note 3, § 61, at 42.

8. See generally BEALE, *supra* note 3, 63-69.

9. *Willis v. McMahan*, 89 Cal. 156, 26 P. 649 (1891).

10. BEALE, *supra* note 3, § 68, at 47; SCHOULER, *supra* note 3, at 258.

11. NAVAGH, *supra* note 1, at 63.

12. *Price v. Hovsepian*, 114 Cal. App. 2d 385, 250 P.2d 252 (1952); BROWN, *supra* note 6, at 483.

13. The leading case in this country to this effect is *Hulett v. Swift*, 33 N.Y. 571, 88 Am. Dec. 405 (1865), wherein the innkeeper was found liable for loss of goods which were in the guest's carriage in the inn's stable. The goods were destroyed by fire not shown to have been the result of the defendant's negligence. Where goods are lost by theft or simply disappear, the insurer's responsibility is clearly the majority doctrine. *Turner v. Weitzel*, 135 Ark. 503, 207 S.W. 39 (1918); *Holstein v. Phillips*, 146 N.C. 366, 59 S.E. 1037 (1907); *Fisher v. Bonneville Hotel Co.*, 55 Utah 588, 188 P. 856 (1920); *Watt v. Kilbury*, 53 Wash. 446, 102 P. 403 (1909); *Featherstone v. Desert*, 173 Wash. 264, 22 P.2d 1050 (1933); *Jalie v. Cardinal*, 35 Wis. 118 (1874). See also 29 AM. JUR. *Innkeepers* § 81 (1960).

Several states have adopted a less stringent rule, holding that while the innkeeper is *prima facie* liable for loss or damage to the goods of his guests, he may be able to absolve himself by offering proof of the exercise of due care.¹⁴ While this standard has been applied to losses by theft,¹⁵ it has been recognized by a majority of jurisdictions only in cases involving losses by fire.¹⁶ Under either view, the liability extends only to goods which are *infra hospitium*.¹⁷ It is interesting to note that this liability has been applied to a guest's automobile.¹⁸

SCOPE OF TERMS

In order better to understand the intricacies of the innkeeper's lien, a definition of relevant terms is in order. Of special importance are the words inn and hotel.¹⁹ Generally, an inn or hotel is a house held out to the public as a place which will receive for compensation all transient persons who are in a fit condition as guests.²⁰ It does not lose its character as such because of its mode of construction, the name given it by its proprietor, or a lack of eating facilities.²¹ A hotel can be distinguished from a boarding house in that a hotel must accept all fit persons and is

14. BROWN, *supra* note 6, § 102, at 484; 29 AM. JUR. *Innkeepers* § 82 (1960). Rockhill v. Congress Hotel Co., 237 Ill. 98, 86 N.E. 740 (1908); Bowell v. De Wald, 2 Ind. App. 303, 28 N.E. 430 (1891).

15. Johnson v. Richardson, 17 Ill. 302, 63 Am. Dec. 369 (1856); Hulbert v. Hartman, 79 Ill. App. 289 (1898); Dallas Hotel Co. v. Davison, 23 S.W.2d 708 (Tex. Com. App. 1930); McDaniels v. Robinson, 26 Vt. 316, 62 Am. Dec. 574 (1854).

16. Roueche v. Hotel Braddock, Inc., 164 Md. 620, 165 A. 891 (1933); Cutler v. Bonney, 30 Mich. 259, 18 Am. Rep. 127 (1874); Johnson v. Chadbourn Finance Co., 89 Minn. 310, 94 N.W. 874 (1903). See also BROWN, *supra* note 6, § 102, at 485.

17. Mason v. Thompson, 9 Pickering 280, 20 Am. Dec. 471 (Mass. 1830); Cohen v. Manuel, 91 Me. 274, 39 A. 1030 (1898); Cutler v. Bonney, 30 Mich. 259, 18 Am. Rep. 127 (1874); Hulett v. Swift, 33 N.Y. 571, 88 Am. Dec. 405 (1865).

18. Goodyear Tire & Rubber Co. v. Altamont Springs Hotel Co., 206 Ky. 494, 267 S.W. 555 (1924); Park-O-Tell Co. v. Roskamp, 203 Okla. 493, 223 P.2d 375 (1950); Andrew Jackson Hotel v. Platt, 19 Tenn. App. 360, 89 S.W.2d 179 (1935) (no liability where auto not *infra hospitium*).

19. While at one time there was a distinction between an inn and a hotel, it has now been removed and the terms are synonymous. 29 AM. JUR. *Innkeepers* § 2 (1960); 43 C.J.S. *INNKEEPERS* § 1 (1945).

20. BEALE, *supra* note 3, § 11, at 10; BROWN, *supra* note 6, § 103, at 489; SCHOULER, *supra* note 3, at 249.

21. 43 C.J.S. *Innkeepers* § 1 (1945). A motel may also be deemed a hotel. Schermer v. Fremar Corp., 36 N.J. Super. 46, 114 A.2d 757 (1955). Also a motor court. Langford v. Vandaveer, 254 S.W.2d 498 (Ky. Ct. App. 1953).

generally more public.²² Yet the ultimate determination of whether an establishment is a hotel is for the jury²³

The term guest as used in relation to innkeepers, refers to a transient who receives accommodations at an inn.²⁴ This includes any person accepted *infra hospitium*, whether he remains overnight or not.²⁵ He may be one who comes to the inn only for food or drink,²⁶ and may be from the same town.²⁷ The services rendered may be slight and yet be sufficient to render the person a guest.²⁸

A guest is to be distinguished from a boarder primarily by his transient character, as opposed to the idea of residence associated with a boarder.²⁹ While a person who contracts to stay a considerable period of time and receives a special rate may well be found to be a boarder or lodger,³⁰ neither of these conditions alone is sufficient to force such a characterization.³¹ The status of a particular sojourner is a mixed question of law and fact,³² although there is generally a presumption that the person who is accommodated becomes a guest.³³ The distinction is important to the issue of liability for damage to goods as an innkeeper is responsible to a boarder or lodger only if the innkeeper is negligent.³⁴

22. On the other hand, the proprietor of a boarding house may refuse certain persons and normally arranges with his patrons to provide for them during some more or less definite period. 29 AM. JUR. *Innkeepers* § 7 (1960)

23. BROWN, *supra* note 6, § 103, at 489.

24. 43 C.J.S. *Innkeepers* § 3a (1945); 29 AM. JUR. *Innkeepers* § 12 (1960).

25. SCHOULER, *supra* note 3, at 255.

26. MacDonald v. Edgerton, 5 Barb. 560 (N.Y. 1849); Read v. Amidon, 41 Vt. 15, 98 Am. Dec. 560 (1868).

27. Walling v. Potter, 35 Conn. 183 (1868).

28. Hill v. Memphis Hotel Co., 124 Tenn. 376, 136 S.W. 997 (1911).

29. Walling v. Potter, 35 Conn. 183 (1868); Hall v. Pike, 100 Mass. 495 (1868); Horner v. Harvey, 3 N.M. 197, 5 P. 329 (1885); Lawrence v. Howard, 1 Utah 142 (1874).

30. Haff v. Adams, 6 Ariz. 395, 59 P. 111 (1899); Moore v. Long Beach Development Co., 87 Cal. 483, 26 P. 92 (1891); Johnson v. Reynolds, 3 Kan. 257 (1865).

31. R. L. Polk & Co. v. Melenbacker, 136 Mich. 611, 99 N.W. 867 (1904); Fisher v. Bonneville Hotel Co., 55 Utah 588, 188 P. 856 (1920); Jalie v. Cardinal, 35 Wis. 118 (1874).

32. 29 AM. JUR. *Innkeepers* § 12 (1960); 43 C.J.S. *Innkeepers* § 3d (1945); BEALE, *supra* note 3, § 131, at 82.

33. 29 AM. JUR. *Innkeepers* § 12 (1960); 43 C.J.S. *Innkeepers* § 3e (1945); BEALE, *supra* note 3, § 131, at 82.

34. BROWN, *supra* note 6, § 104, at 490. This distinction as to his liability has been erased in some states by statute. Levesque v. Columbia Hotel, 141 Me. 393, 44 A.2d 728 (1945); Leon v. Kitchen Bros. Hotel Co., 134 Neb. 137, 277 N.W. 823 (1938).

THE COMMON LAW INNKEEPER'S LIEN

Because of the obligation of innkeepers to receive all travellers for whom they have accommodations, and because of the extraordinary responsibility for the goods of the guest brought by him into the inn, there developed at common law an accompanying principle, based on the custom of the realm,³⁵ that the innkeeper would have a lien on the property of the guest for the innkeeper's reasonable and just charges made to the guest.³⁶ While at early common law this lien was extended even to the guest's person,³⁷ this view was soon rejected due to the possible indignities and serious disturbances of the peace that might arise from such a policy.³⁸

It should be noted that the innkeeper's lien differs from other possessory liens in that it attaches to goods of the guest not for services performed in relation to those goods, but for the general balance of the guest's account.³⁹ The lien also attaches to goods which are not the property of the guest, but which are brought by him to the innkeeper without knowledge of their true ownership.⁴⁰ While normally no lien is allowed where the innkeeper knows the property belongs to a third party,⁴¹ the innkeeper might still acquire a lien if he knows the guest to be in lawful possession of the goods.⁴² The innkeeper is allowed a lien if he has no knowledge of the guest's wrongful possession, even if the goods are stolen.⁴³ Should the innkeeper discover that the goods have

35. Hogan, *The Innkeeper's Lien at Common Law*, 8 HAST. L. J. 33, 43 (1956).

36. *Ruff v. Hanson*, 222 Ala. 676, 133 So. 716 (1931); *Cedar Rapids Inv. Co. v. Commodore Hotel Co.*, 205 Iowa 736, 218 N.W. 510 (1928); *Cohen v. London Guarantee & Accident Co.*, 247 Mich. 226, 225 N.W. 549 (1929); *Hull Hosp. v. Wheeler*, 216 Iowa 1388, 250 N.W. 637 (1933); *Halsey v. Svitak*, 163 Minn. 253, 203 N.W. 968 (1925); *Sargent v. Usher*, 55 N.H. 287, 20 Am. Rep. 208 (1875); *Cook v. Prentice*, 13 Ore. 482, 11 P. 226 (1886); *Shaw v. Webb*, 131 Tenn. 173, 174 S.W. 273 (1915).

37. *Newton v. Trigg*, 89 Eng. Rep. 566, 1 Shower 268 (K.B. 1692).

38. *Grinnel v. Cook*, 3 Hill 485, 38 Am. Dec. 663 (N.Y. 1842). BROWN, *supra* note 6, § 114, at 549-50; RESTATEMENT OF SECURITY § 63(1), comments d, e (1941).

39. BROWN, *supra* note 6, § 114, at 549.

40. *Baldwin Piano Co. v. Congress Hotel*, 243 Ill. App. 118 (1926); *Brown Shoe Co. v. Hunt*, 103 Iowa 586, 72 N.W. 765 (1897); *Covington v. Newberger*, 99 N.C. 523, 6 S.E. 205 (1888); *M & M Hotel Co. v. Nichols*, 5 Ohio Ops. 387, 32 N.E.2d 463 (1935); *Nance v. O. K. Houck Piano Co.*, 128 Tenn. 1, 155 S.W. 1172 (1913). *But see* *Domestic Sewing Machine Co. v. Watters*, 50 Ga. 574 (1874).

41. *Pate Hotel Co. v. Blair*, 207 N.C. 464, 177 S.E. 330 (1934); *Cook v. Prentice*, 13 Ore. 482, 11 P. 226 (1886). *See also* 9 HARV. L. REV. 216 (1895). This rule has frequently been changed by statute. *See* 44 N.C. L. REV. 322, 351 (1966).

42. *Nat'l Malted Food Corp. v. Crawford*, 254 Ill. App. 415 (1929).

43. *Black v. Brennan*, 5 Dana 310 (Ky 1837); *Horace Waters & Co. v. Gerard*, 189

been stolen, after charges have been incurred, he nevertheless retains a lien on the stolen property for the charges which accrued before he discovered the theft.⁴⁴

The lien is specific in that it does not cover charges for a prior period of lodging,⁴⁵ nor does it extend to charges for harm the guest may have caused.⁴⁶ The lien normally does not extend to charges for money lent during the guest's stay at the inn,⁴⁷ although there is some authority for such a position.⁴⁸ The lien has been found applicable to horses and wagons kept in the stable of the inn⁴⁹ and also to automobiles.⁵⁰

Under early American common law, the innkeeper could not dispose of property claimed under the lien,⁵¹ and his only recourse was in the courts of equity.⁵² But under modern practice, he may convert the security by sale as prescribed by law.⁵³ Should the guest deprive the innkeeper of his lien by removing the property held as security, the guest may be guilty of larceny.⁵⁴

THE STATUTORY LIABILITY AND LIEN

The common law rules concerning both the innkeeper's liability and lien have been modified by statute in all jurisdictions but one. Most statutes expand the lien while limiting the liability. Appendix A to this note contains a general survey of the recent legislation in this area with interpretations based upon a literal reading of the statute. Appendix B contains a graphic summary

N.Y. 302, 82 N.E. 143 (1907); *Grinnel v. Cook*, 3 Hill 485, 38 Am. Dec. 663 (N.Y. 1842); *M & M Hotel Co. v. Nichols*, 5 Ohio Ops. 387, 32 N.E.2d 463 (1935).

44. RESTATEMENT OF SECURITY § 63, comment 1 (1941). See also 44 N.C.L. REV. 322, 348 (1966).

45. 44 N.C.L. REV. 322, 350 (1966).

46. RESTATEMENT OF SECURITY § 63, comment f (1941).

47. 43 C.J.S. *Innkeepers* § 26 (1945).

48. In the one reported case, the guest was an infant and the money was for necessities. *Watson v. Cross*, 63 Ky. (2 Duv.) 147 (1865).

49. SCHOULER, *supra* note 3, at 292; 29 AM. JUR. *Innkeepers* § 151 (1960).

50. *Pollock v. Landis*, 36 Iowa 651 (1873); *Park-O-Tell Co. v. Roskamp*, 203 Okla. 493, 223 P.2d 375, 377 (1950). The lien was held not to apply to the auto of guest who rented an apartment and kept the auto in the hotel's garage, as it was not baggage. *Cedar Rapids Investment Co. v. Commodore Hotel Co.*, 205 Iowa 736, 218 N.W. 510 (1928).

51. *Case v. Fogg*, 46 Mo. 44 (1870); *People v. Husband*, 36 Mich. 306 (1877); *Lambert v. Nichlass*, 45 W. Va. 527, 31 S.E. 951 (1898).

52. *Fox v. McGrerror*, 11 Barb. 41 (Sup. Ct. N.Y. 1851); *Southwood v. Myers*, 66 Ky. (3 Bush) 681 (1868).

53. *Coates v. Acheson*, 23 Mo. App. 255 (1887).

54. *Henry v. State*, 110 Ga. 750, 36 S.E. 55 (1900).

By grouping the statutes under general headings as in Appendix B, the trend of legislation becomes more apparent. Very few states' statutes impose the liability of an insurer. Almost all have some statutory provision for the limitation of liability and minimum standard of care required.

While many statutes indicate that a lien exists as to goods of a third party, the cases involving this point are difficult to reconcile. Some statutes specifically grant the lien, but do not allow enforcement against a third party's property.⁵⁵ At least one case holds that stolen property is not "under the control of" the guest.⁵⁶ In another case the court refused to find the existence of a lien where there was no specific charge against the property seized, although the applicable statute provided for a lien on "all property which guest has legally acquired."⁵⁷ Some new statutes seem to allow a lien but annotate cases disallowing the lien, based on interpretations of the older statutes.⁵⁸ Other courts continue to allow the statutory lien to be enforced against goods of a third party brought in by the guest.⁵⁹ This difference of opinion is the most conspicuous inconsistency in the law concerning innkeeper's liens.

By referencing the chart, Appendix B, it is apparent that all but three states allowing an innkeeper's lien permit enforcement by sale without court action, and all but 10 have expanded the lien beyond hotels and inns.

In addition to these general provisions modifying the common law lien, there have been other statutory changes in the rights and duties of the innkeeper. Regarding the statutory limits on liability, almost every state enacted a provision to the effect that this liability may be increased by agreement between innkeeper and guest. In addition, every state has a requirement that the innkeeper provide a safe for valuables, and post notices as to its availability. In most states, failure of the guest to utilize the safe for valuables absolves the innkeeper from liability as to depositable items.

In enforcing the lien, no state requires notice before the lien attaches,

55. *Rudolph Wurlitzer Co. v. Farb*, 120 Cal. Rptr. 773, 6 P.2d 358 (1931); *McClain v. Williams*, 11 S.D. 227, 76 N.W. 930 (1898).

56. *M & M Hotel Co. v. Nichols*, 5 Ohio Ops. 387, 32 N.E.2d 463 (1935).

57. *Domestic Sewing Machine Co. v. Watters*, 50 Ga. 574 (1874).

58. *Nicholas v. Baldwin Piano Co.*, 71 Ind. App. 209, 123 N.E. 226 (1919).

59. *L. E. Lines Music Co. v. Holt*, 332 Mo. 749, 60 S.W.2d 32 (1933) (where innkeeper had no notice of title in third party); *Nance v. O. K. Houck Piano Co.*, 128 Tenn. 1, 155 S.W. 1172 (1913) (where innkeeper had no notice); *Brown Shoe Co. v. Hunt*, 103 Iowa 586, 72 N.W. 765 (1897) (where innkeeper had notice of title in third-party).

but all require notice before sale. Many states provide that the guest is guilty of larceny or conversion if he should seize the property covered by the lien once the innkeeper has taken possession.

Regarding the availability of the lien to persons other than innkeepers, even in the 10 states that do not make such a provision in the particular innkeeper statute, these same provisions often appear in statutes involving other professions.

THE CONSTITUTIONALITY OF THE LIEN

One of the most recent and far-reaching decisions involving the innkeeper's lien is *Klim v. Jones*,⁶⁰ wherein the California Innkeeper's Lien Law⁶¹ was held to be unconstitutional due to its "failure to provide any kind of hearing prior to the imposition of the innkeeper's lien thereunder, thus depriving the boarder of property without due process of law"⁶² The federal district court decided the case in spite of the fact that it involved a state statute which had been frequently construed by the state courts.⁶³ The court said that "exhaustion of available state remedies is not a prerequisite to the maintenance of an action in the federal courts"⁶⁴

In rendering this decision, the district court relied primarily upon the holding of the Supreme Court of the United States in *Smadach v. Family Finance Corp.*⁶⁵ *Smadach* found that "absent notice and a prior hearing pre-judgment garnishment procedure violates the fundamental principles of due process."⁶⁶ By analogizing the evils caused by pre-judgment garnishment, the *Klim* court pointed out the greater deleterious effect of the California Innkeeper's Lien Law⁶⁷ The court stated that its primary impact would be on those who were either financially embarrassed or of extremely limited means.⁶⁸ In addition, the innkeeper's lien applied to all of the boarder's possessions, whereas the garnishment law encumbered only wages.⁶⁹ Furthermore there existed the possibility

60. 315 F Supp. 109 (N.D. Cal. 1970).

61. CAL. CIV. CODE § 1861 (West 1954).

62. *Klim v. Jones*, 315 F Supp. 109 (N.D. Cal. 1970).

63. *Id.* at 118.

64. *Id.* at 117.

65. 395 U.S. 337 (1969). California declared unconstitutional its own state prejudgment wage attachment statute in *McCallop v. Carberry*, 1 Cal.3d 903, 83 Cal. Rptr. 666, 464 P.2d 122 (1970).

66. 395 U.S. 337, 341-42 (1969).

67. *Klim v. Jones*, 315 F Supp. 109, 122 (N.D. Cal. 1970).

68. *Id.*

69. *Id.* at 123.

that the law might result in the loss of a boarder's job,⁷⁰ or due to the economic leverage created by the lien, in payment of dubious or fraudulent claims.⁷¹ Lastly, there were only two exemptions to the California statute.⁷²

In addition to the constitutional question, the court indicated that since the conditions that had spawned the innkeeper's lien had passed from existence, the strictness of the lien should be curtailed. The court found that California, like most other states, had abandoned the rule of strict liability for the guest's goods.⁷³ The court stated that "when the reason behind a rule disappears, so should the rule."⁷⁴

Furthermore, the court held that the only way such a statute could be sustained would be through a finding that it served some overriding state or creditor interest. As no sufficient state or creditor interest was presented the court found that the statute could not be allowed to stand.⁷⁵ The court noted that the innkeeper could best protect himself by requiring payment in advance.⁷⁶

This decision underlines the fact that innkeeper's liens may be subjected to close judicial scrutiny in the near future, with the possible result that they will be found to violate the rationale of *Smadach v. Family Finance*.

CONCLUSION

While the implications of the holding in *Klim* are subject to dispute, each state legislature should be prompted to review its innkeeper's lien law in comparison with its statutes on the innkeeper's liability. The logical underpinnings of the *Klim* decision are valid, and cast serious doubt on the wisdom of lien laws as they exist in the United States today.

Yet, the constitutional reasons set forth in *Klim* for eliminating the lien are somewhat questionable. While the court refuted the allegation of overriding creditor interest,⁷⁷ it could certainly be argued that such an

70. *Id.*

71. *Id.*

72. *Id.* The two exemptions are musical instruments and prosthetic devices. CAL. CIV. CODE § 1861 (West 1954).

73. *Klim v. Jones*, 315 F. Supp. 109, 121 (N.D. Cal. 1970).

74. *Id.* at 120.

75. *Id.* at 124.

76. *Id.* This argument had been rejected by an earlier court as being impractical where there is uncertainty as to the anticipated length of the guest's stay. *Horace Waters & Co. v. Gerard*, 189 N.Y. 302, 82 N.E. 143, 150 (1907).

77. *Klim v. Jones*, 315 F. Supp. 109, 121 (N.D. Cal. 1970).

interest exists in the context of the innkeeper's lien. The innkeeper's lien is so firmly entrenched in our legal history that it will be difficult to find a taking of property without due process. The common law courts from the earliest times found the lien to be necessary to innkeepers in the pursuit of their profession. Even in *Snadach*, it was admitted that a showing of overriding creditor interest would allow a taking of property without a hearing.⁷⁸ It is difficult to imagine that the Court would extend the holding in *Snadach* to a lien so firmly a part of our common law.

In addition, the Court in *Snadach* indicated that it would allow a narrowly drawn statute to stand. The innkeeper's lien normally attaches only to property of guests who have absconded without paying the charges incurred. This is coterminous with one of the specific situations allowed by some of the more narrowly drawn statutes involving wage garnishment.⁷⁹

A further consideration concerning the due process question is that a hearing prior to the attachment of the lien would be practically impossible. The real power of the lien is its attachment at the time the charges accrue and before the guest can remove his baggage. If the innkeeper were required to obtain a court order before acquiring the lien, the lien would be emasculated.

Contrary to the statement in *Klim* concerning prior litigation on this point,⁸⁰ the constitutionality of the innkeeper's lien has been previously determined. In addition to *L. E. Limes Music Co. v. Holt*,⁸¹ at least four other cases have examined this issue. All four of these cases involved a lien on the property of a third party brought into the hotel by the guest, and three courts found the lien to be constitutional.⁸² The fourth case, although not allowing a lien on the third party's property, indicated that an innkeeper's lien on the property of the guest himself would be constitutional.⁸³ These cases, however, were decided before

78. *Snadach v. Family Finance Corp.*, 395 U.S. 337, 339 (1969).

79. See, e.g., Virginia statute on prejudgment wage attachment, allowing attachment upon an allegation that the debtor is about to flee the state. VA. CODE ANN. § 8-520 (Repl. Vol. 1969). The Virginia statute has not been challenged since *Snadach*, but the Virginia Attorney General feels it is still valid even after *Snadach*.

80. *Klim v. Jones*, 315 F. Supp. 109, 124 (N.D. Cal. 1970).

81. 332 Mo. 749, 60 S.W.2d 32 (1933).

82. *Brown Shoe Co. v. Hunt*, 103 Iowa 586, 72 N.W. 765 (1897); *Horace Waters & Co. v. Gerard*, 189 N.Y. 302, 82 N.E. 143 (1907); *Nance v. O. K. Houck Piano Co.*, 128 Tenn. 1, 155 S.W. 1172 (1913).

83. *McClain v. Williams*, 11 S.D. 227, 76 N.W. 930 (1898).

Smadach and therefore did not deal with the *Smadach* guidelines. In any event, they do indicate a difference of opinion on the question of the constitutionality of the lien, and represent the majority view that the lien is constitutional. It should also be noted that since the decision in *Klim*, the Supreme Court of the United States has indicated that it would prefer that the district courts refrain from deciding the constitutionality of state statutes, unless there is a clearly grievous deprivation of a federal right.⁸⁴

As to the second justification set forth in *Klim*—the disappearance of the conditions which originally justified the innkeeper's lien—the court's position is more tenable. Many of the original reasons for the creation of the lien have been minimized or have disappeared. The liability of the innkeeper for the goods of the guest has been almost universally reduced.⁸⁵ The hazardous travelling conditions prevalent in earlier times have largely disappeared and therefore the innkeeper is less of a fiduciary. Furthermore, the traveller has additional methods of protection such as insurance.⁸⁶ Some authors have advanced the theory that changed conditions have rendered the common law lien archaic.⁸⁷ Justice Douglas, speaking for the majority in *Smadach*, stated:

The fact that a procedure would pass muster under a feudal regime does not mean it gives necessary protection to all property in its modern forms.⁸⁸

Perhaps it is time for the lien to be reviewed in the perspective of modern exigencies. However, none of these opinions go so far as to suggest the elimination of the lien altogether. The answer undoubtedly lies in limiting the lien in a manner consistent with the limitation of the liability of the innkeeper. Recognizing that most states have now made provision for a maximum limit on the innkeeper's liability and a diminishing of the innkeeper's duty by requiring only reasonable care or diligence, the following provisions as to the lien are suggested.

First, the lien of the innkeeper should attach only to the property of the guest for charges incurred. This would avoid the obviously ques-

84. *Younger v. Harris*, 91 S. Ct. 746 (1971).

85. See chart on state statutes wherein almost all states now base the liability on some degree of care and limit the maximum liability Appendix B, *infra*.

86. See generally NAVAGH, *supra* note 1.

87. 72 GEO. L.J. 101 (1933).

88. 395 U.S. 337, 340 (1969).

tionable lien on goods of third parties which are brought into the hotel by the guest. However, the innkeeper should be protected from any claim of conversion if he surrenders such property upon a showing of title in any party other than the guest. Although the innkeeper would remain liable for the loss of a third party's goods as well as those of the guest, his surrender of the lien on these goods seems of small consequence. Requiring notice to fix the lien seems unnecessary as the guest is aware of the charges he has incurred.

Second, the innkeeper should be given a right to enforce his lien by public sale of the property after a specified period if he has given notice of his claim. At anytime before the expiration of this period, the owner should have a right to reclaim his property by paying the reasonable charges of his lodging plus the expenses incurred by the innkeeper in attempting to enforce his lien.

Third, the guest should be insured the right to a summary hearing in order to challenge the reasonableness of the charges prior to enforcement of the lien. This provision would effect a compromise with the proponents of the right to a prior hearing.

Fourth, the statute should provide for a reasonable list of exemptions for certain types of property of the guest. Those items which obviously are of no value to the innkeeper and the loss of which will cause a great hardship upon the guest or impair his wage earning capacity should not be subject to the lien. The innkeeper should be required to return such items upon demand and his doing so would insulate him from any allegation of conversion.

Hopefully, provisions along this line will bring about an innkeeper's lien more in keeping with the rights and liabilities of the innkeeper's profession as it exists today. This "modern" lien would be more constitutionally acceptable and would parallel modern limitations on innkeeper's common law liability.

ALVIN D TREADO

APPENDIX A

*Alabama*⁸⁹

The innkeeper is liable as at common law (as an insurer), but he has the right to require any prospective guest to contract to lessen this liability. The liability of the innkeeper for valuables is limited to \$300 if he provides a safe, but in no event will his liability exceed \$5000.

⁸⁹ ALA. CODE tit. 24, §§ 11, 12 (1958); ALA. CODE tit. 24, §§ 11, 13, 14 (Cum. Supp. 1969); ALA. CODE tit. 33, §§ 29, 30 (1959).

The innkeeper's lien extends to goods and personal baggage of the guest and may be enforced by sale. The lien is available to proprietors of hotels, inns, boardinghouses, and restaurants.

*Alaska*⁹⁰

The innkeeper is not liable for damage to baggage unless the loss was caused by his own negligence. The innkeeper's liability is limited to \$1000, unless a greater amount is agreed to in writing.

The operator of a hotel has a lien on all baggage and other property lawfully in the possession of the guest, unless the operator has actual notice of the ownership by another. This lien may be enforced by sale and is available to proprietors of inns, hotels, motels, and public lodging-houses.

*Arizona*⁹¹

The statutes require that the innkeeper provide a depository for jewels, money, documents, samples, and other articles of small size and unusual value, but limits liability of the innkeeper for loss of deposited items to \$500 unless negligence is involved. However, there is no reference to liability for other goods kept in the guest's room.

The lien of the innkeeper extends only to goods and property of the guest, and may be enforced by sale after four months. The lien is available to the proprietors of hotels and inns, boarding, lodging and apartment houses, and auto camps.

*Arkansas*⁹²

The innkeeper's liability is that of a depository for hire and he is held merely to the exercise of ordinary care. Maximum liability is \$150.

The innkeeper's lien extends to the baggage and other property belonging to or under the control of his guests, and may be satisfied by sale after 90 days. The lien is available to the proprietors of inns, hotels, rooming or boardinghouses, and private homes.

*California*⁹³

The liability of the innkeeper for lost goods is that of a depository for hire. A maximum limitation has been set on this liability

90. ALASKA STAT. §§ 08.56.050, .060 (1962); ALASKA STAT. §§ 34.35.510, .520, .530 (Cum. Supp. 1970).

91. ARIZ. REV. STAT. ANN. §§ 33-302, -951, -952 (1956).

92. ARK. STAT. ANN. §§ 71-1109 to -1112 (Repl. Vol. 1957). There appears to be no case limiting the right to sell a third party's property as in other jurisdictions.

93. CAL. CIV. CODE §§ 1859, 1861 (West 1954).

The innkeeper's lien extends to baggage and other property belonging to or under the control of the guest. Enforcement can be had by sale, but if any property is discovered to belong to a third party, it may not be sold and must be returned to the third party on demand.⁹⁴ The lien has been given to keepers of hotels, motels, inns, boardinghouses, furnished apartment houses, and lodginghouses.

*Colorado*⁹⁵

The innkeeper is liable for loss of goods, other than valuables, from the room of the guest unless the guest has possession of the key. Limitation on liability is \$5000 for deposited items and \$200 for goods kept in the room. The innkeeper is liable only for negligence in the event of loss due to fire or accident.

The innkeeper has a lien on all personal property belonging to his guest, and may enforce by sale after 30 days. The lien is available to proprietors of hotels, taverns, boarding and rooming houses, furnished apartment houses, and trailer courts.

*Connecticut*⁹⁶

The innkeeper's liability is that of an insurer of valuables placed in the safe or left in the room of the guest, but he is liable for loss or damage to goods placed elsewhere only if negligent. There is a maximum liability of \$1000 for any lost items.

The innkeeper has a lien on the baggage and effects of his lodger and may enforce by sale after 30 days. The lien is available to hotelowners and innkeepers.

*Delaware*⁹⁷

The innkeeper is not liable for loss of valuables which the guest fails to deposit in the safe. This is the only statutory limitation of the innkeeper's liability.

It appears that Delaware has no statute concerning the innkeeper's lien other than those referring to a stable or garage kept by an inn.

94. *Rudolph Wurlitzer Co. v. Farb*, 120 Cal. Rptr. 733, 6 P.2d 358 (1931).

95. COLO. REV. STAT. ANN. §§ 68-1-1, -5, to -9, -11, 86-1-1, -2, (1963).

96. CONN. GEN. STAT. ANN. §§ 44-1, -2, 49-69 (1958).

97. DEL. CODE ANN. tit. 24, § 1502; tit. 25, § 3901 (1953).

*Florida*⁹⁸

Statutes impose liability for loss of goods other than those deposited with the innkeeper only if the innkeeper is negligent. Maximum liability has been established for both goods and valuables.

The innkeeper is given a lien on all the property of the guest brought into the hotel. It appears from the statutes that the lien may be enforced only by suit in equity or at law. This lien is extended to cover apartments, rooming and boarding houses, as well as hotels and inns.

*Georgia*⁹⁹

As to his liability for loss of guests' goods, the innkeeper is held to the standard of extraordinary diligence. As a practical matter, therefore, the innkeeper is liable as an insurer unless he can show that the goods were lost due to the negligence or fault of the guest. The limit of liability for goods other than those deposited in the safe is \$100.

The innkeeper has a lien on all property brought into the hotel by the guest to which the guest has title or has lawfully acquired possession, but as to other goods no lien attaches unless there are charges upon the specific article.¹⁰⁰ The lien may be enforced by sale after 30 days. A lien is available to the proprietors of boarding, lodging and eating houses, as well as inns.

*Hawaii*¹⁰¹

The hotelkeeper is liable for the loss of the guest's property only if negligent, and the liability for deposited items is limited to \$250.

The hotelkeeper is provided with a lien on all the property in the hotel belonging to the guest, and he may enforce this lien by sale after three months.

*Idaho*¹⁰²

The liability of the hotelkeeper is that of a depository for hire, and is limited to a maximum of \$100 per trunk.

The hotelkeeper's lien extends to all property lawfully in the pos-

98. FLA. STAT. ANN. §§ 85.18, .19; 86.01 *et seq.*, 509.111 (1962).

99. GA. CODE ANN. §§ 52-105, -106, -108, -111 (1961).

100. *Domestic Sewing Machine Co. v. Watters*, 50 Ga. 574 (1874).

101. HAWAII REV. STAT. §§ 507-7 to -10 (1968).

102. IDAHO CODE ANN. §§ 39-1824, -1826, -1827 (1961).

session of the guest, unless the hotelkeeper has knowledge that the guest does not have title to the property. This lien may be enforced by sale after 60 days.

*Illinois*¹⁰³

Although there is no statute specifically dealing with goods lost from the room of the guest, it appears from the general intent of the statutes that the hotelkeeper would be liable only if negligent, and that this liability is limited in amount.

The lien of the hotelkeeper extends to all baggage and effects brought into the hotel by the guest and may be enforced by sale after 60 days.

*Indiana*¹⁰⁴

The liability of the innkeeper is based upon a finding of negligence and is limited to \$200 for personal property, \$400 for merchandise and \$600 for valuables.

The lien extends to baggage or other articles of value brought into the hotel by the guest and may be enforced by sale after 60 days. The lien is available to proprietors of hotels and inns, boarding, eating and lodginghouses, and restaurants.

*Iowa*¹⁰⁵

The liability of the innkeeper for loss or damage to personal property, other than valuables, is that of a depository for hire, and there are limitations on liability for various types of baggage.

The statutory lien extends to all baggage of the guest and may be enforced by sale after 90 days. The lien is available for the proprietors of inns, eating, and rooming houses.

103. ILL. REV. STAT. ch. 71, §§ 1-3 (1967). The lien was held to cover property brought in by the guest although he was not the owner in *Nat'l Malted Food Corp. v. Crawford*, 254 Ill. App. 415 (1929). See also *Baldwin Piano Co. v. Congress Hotel*, 243 Ill. App. 118 (1926) (seller had chattel mortgage on guest's goods).

104. IND. ANN. STAT. §§ 37-105 to -107, -206 (1949). Although the statute does not so state, the note following the statute indicates that it abrogates the common law lien on goods not owned by the guest. The lien on the goods of others was denied in *Nicholas v. Baldwin Piano Co.*, 71 Ind. App. 209, 123 N.E. 226 (1919) which was decided under an earlier statute not allowing such a lien.

105. IOWA CODE ANN. §§ 105.3, 4, 583.1, 2, 4 (1949). This lien was construed to include all baggage under the control of the guest in *Brown Shoe Co. v. Hunt*, 103 Iowa 586, 72 N.W. 765 (1897) decided under a previous similar statute.

*Kansas*¹⁰⁶

The innkeeper is liable only for goods delivered to the office and this liability is limited to \$250.

The lien extends to property brought by the guest, and may be enforced by sale after 90 days. The lien is designed to protect proprietors of inns, hotels, boarding, apartment, and rooming houses.

*Kentucky*¹⁰⁷

Liability is based on negligence and is limited to \$200.

The lien extends only to property owned by the guest, and may only be enforced by judicial proceedings. The lien covers hotels, inns, boardinghouses, and houses of private entertainment.

*Louisiana*¹⁰⁸

The liability of the innkeeper for articles entrusted to his keeping is that of a depository, not an insurer. Liability for loss is limited to \$100.

The innkeeper has a right of pledge on the property brought into the hotel whether that property belongs to the guest or not, and he may enforce the pledge by sale. The right of pledge is available to proprietors of inns, hotels, taverns, and other lodgings for travellers.

*Maine*¹⁰⁹

The liability of the innkeeper is that of a depository for hire—ordinary, prudent care being required—with a maximum liability of \$150.

The innkeeper enjoys a lien on all property belonging to or under the control of the guest, and may enforce it by sale after 90 days. The lien is designed to protect inns, hotels, and boardinghouses.

*Maryland*¹¹⁰

Although no cases appear to have been decided under the present statute, it seems that the innkeeper is liable as an insurer except in the case of valuables which were not deposited with him. There is a maximum liability for each of various types of property

106. KAN. STAT. ANN. §§ 36-201, -203, -402 (1964).

107. KY. REV. STAT. §§ 306.030, 376.340, 350 (1969).

108. LA. CIV. CODE art. 2937, 2965, 2971, 3232-3234 (Slovenko 1961).

109. ME. REV. STAT. ANN. tit. 30, §§ 2904, 2951, 2952 (1964).

110. MD. ANN. CODE art. 71 §§ 3-4 (1967).

The lien extends to all property belonging to or under the control of the guest and may be enforced by sale after 15 days. The lien is designed to protect hotels, boardinghouses, inns, and ordinaries.

*Massachusetts*¹¹¹

The liability of the innkeeper is limited both as to type of property and maximum amount. The innkeeper is required to exercise ordinary care.¹¹²

The lien extends to baggage and effects brought to the inn which belong to the guest, and covers boarding and lodging houses. The lien may be enforced by sale upon order of the court.

*Michigan*¹¹³

The liability of the innkeeper for loss of goods is that of a depository for hire and is limited in amount, depending on the nature of the lost item.

The lien extends to goods, baggage, and effects of the guests and may be enforced by sale after a specified period. The lien covers hotels, inns, boardinghouses, lodginghouses, and furnished apartments.

*Minnesota*¹¹⁴

The liability of the innkeeper is based on negligence and is limited in amount, based on the class of item lost.

The lien extends to all the goods belonging to the guest or under his control, unless the hotelkeeper has knowledge that title is in another party. The lien may be enforced by sale after 90 days and accrues to proprietors of inns, hotels, boardinghouses, and lodginghouses.

*Mississippi*¹¹⁵

The liability of the innkeeper is that of a depository for hire and is limited in amount, based on the type of article lost.

The lien extends to the goods and personal baggage of the guest which

111. MASS. GEN. LAWS ANN. ch. 140 § 10 (1958); MASS. GEN. LAWS ANN. ch. 255 §§ 23, 26-30 (1958).

112. *Weiser v. Lane*, 244 Mass. 340, 138 N.E. 391 (1923); *Coe v. Ricker*, 214 Mass. 212, 101 N.E. 76 (1913).

113. MICH. COMP. LAWS ANN. §§ 427.101, .201-.202 (1967)

114. MINN. STAT. ANN. §§ 327.02, .05-.06 (1966).

115. MISS. CODE ANN. §§ 7153, 7157, 7158 (1952)

may be sold after 10 days. The lien is available to proprietors of hotels, inns, boardinghouses, and restaurants.

*Missouri*¹¹⁶

The innkeeper is liable for lost property only in the event of his negligence, and liability is limited to \$200.

The innkeeper has a lien on baggage and other property brought to the hotel by, or under the control of, his guest, and may enforce the lien by sale after 90 days. The lien accrues to inns, hotels, and boardinghouses. The lien allowed by the statute on property of third parties was held to be constitutional in *L. E. Lmes Music Co v. Holt*.¹¹⁷

*Montana*¹¹⁸

The innkeeper is not liable for loss or damage to goods of the guest unless the innkeeper is negligent.

The lien extends only to the property of the guest and may be enforced by sale after six months. The lien is designed to protect hotels, boardinghouses, and lodginghouses.

*Nebraska*¹¹⁹

The innkeeper's liability for loss of baggage is based on negligence and is limited to \$1000.

The lien extends to all baggage and other property belonging to or under the control of the guest, and may be enforced by sale after 90 days. The lien is available to hotels, restaurants, apartment houses, tourist camps, motels, and rooming houses.

*Nevada*¹²⁰

The innkeeper is not liable for loss of property in the absence of gross neglect.

The lien extends only to property belonging to the guest and may be enforced by sale after 30 days. The lien accrues to hotels, inns, motels, motor courts, boardinghouses, and lodginghouses.

116. MO. ANN. STAT. §§ 419.010, .060 (1949).

117. 332 Mo. 749, 60 S.W.2d (1933).

118. MONT. REV. CODES ANN. §§ 34-103, -109 to -110 (1947).

119. NEB. REV. STAT. §§ 41-123.04, -124, -125 (1968).

120. NEV. REV. STAT. §§ 108.480, 651.010 (1968).

*New Hampshire*¹²¹

The innkeeper is liable for the loss of the guest's apparel or baggage only if negligent, and liability is limited to \$300.

The lien extends to the baggage and effects of the lodger and may be enforced by sale. The lien is designed to protect boardinghouses, lodginghouses, and inns.

*New Jersey*¹²²

The innkeeper is not liable for loss of property unless negligent and will not be liable for an amount greater than \$100.

The lien extends to all property brought upon the premises by any guest, and may be enforced by sale after three days. The lien is available to proprietors of hotels, inns, apartment hotels, and boardinghouses.

*New Mexico*¹²³

The hotelkeeper is liable for loss of the property of his guests caused by negligence, but liability is limited to \$1000.

The lien extends to all property placed in or upon the premises of the hotel, rooming house, apartment house, rental dwellings, auto court, trailer court, or campground. The lien may be enforced by sale after 10 days.

*New York*¹²⁴

The innkeeper is liable for loss of property only if negligent, and there is a limitation on liability depending on the nature and location of the guest's property

The keeper of a hotel, apartment hotel, inn, boardinghouse, rooming house, or lodginghouse has a lien on all property in the possession of the guest, unless the proprietor knew the property was not lawfully in possession of the guest when brought into the hotel. The lien may be enforced by sale after six months.

121. N.H. REV. STAT. ANN. §§ 353:1, 444:1, 448:1 (1966).

122. N.J. REV. STAT. §§ 2A. 44-48 to -50 (1952).

123. N.M. STAT. ANN. §§ 49-6-1, 61-3-11, 61-3-14 (1953)

124. N.Y. GEN. BUS. LAW §§ 200-203, 207 (McKinney 1968); N.Y. LIEN LAW § 181 (McKinney 1966).

*North Carolina*¹²⁵

The innkeeper is liable for loss of or damage to baggage only if he fails to exercise ordinary or reasonable care, and liability is limited to \$100.

The lien extends only to property of the guest and protects hotels, boardinghouses, and lodginghouses. The lien may be enforced by sale after 10 days.

*North Dakota*¹²⁶

The liability of the innkeeper for loss of a guest's property is that of depository for hire and is limited in amount based on the classification of property lost.

The keeper of any inn, hotel, or tourist camp has a lien on all property belonging to or under the control of the guest. The lien may be enforced by sale after 90 days.

*Ohio*¹²⁷

The liability of the innkeeper for lost property is that of a depository for hire and is limited to \$150.

The lien of the innkeeper extends to baggage and property belonging to or under the control of the guest. The lien may be enforced by sale after 60 days.

*Oklahoma*¹²⁸

The liability of the innkeeper is the same as under the common law, that is strict liability, with exception in certain unusual cases. The liability is limited to \$250.

The lien of the inn or boardinghouse keeper is upon all the property placed under his care and he may enforce the lien by sale.

*Oregon*¹²⁹

The liability of the innkeeper for loss of property other than valuables is that of a depository for hire and is limited in amount depending upon the classification of property lost.

125. N.C. GEN. STAT. §§ 44-30, -31 (1966); N.C. GEN. STAT. §§ 72.2-72.4 (1965).

126. N.D. CENT. CODE §§ 35-19-01, -02, 60-01-32 (1960).

127. OHIO REV. CODE ANN. §§ 4721.03-.05 (Page 1953). Does not include stolen goods. *M & M Hotel Co. v. Nichols*, 5 Ohio Ops. 387, 32 N.E.2d 463 (1935).

128. OKLA. STAT. ANN. tit. 15, §§ 501, 503b (1966). *Busby Hotel & Theatre Co. v. Thomas*, 125 Okla. 239, 257 P. 314 (1927) (fire in basement).

129. ORE. REV. STAT. §§ 87.525, .530, 699.030 (1967).

The inn or hotelkeeper's lien extends to all property belonging to or under the control of the guest, and may be enforced by sale after 60 days.

*Pennsylvania*¹³⁰

The liability of the innkeeper is that of a depository for hire and is limited in amount depending on the classification of property involved.

The innkeeper has a lien on all property belonging to or under the control of the guest, and may enforce it by sale after 30 days.

*Rhode Island*¹³¹

The innkeeper is not liable for loss of personal property of a guest, other than valuables, unless negligent. There is no limitation on liability for loss of property other than valuables.

The lien of the innkeeper extends only to the property of the guest and may be enforced by sale after six months.

*South Carolina*¹³²

The innkeeper is liable for loss of the guest's property only if negligent, and this liability is limited to \$500 for baggage and \$2000 for valuables.

The keeper of an inn or boardinghouse may sell any property left at the inn in order to satisfy the unpaid debt of a guest.

*South Dakota*¹³³

There is liability for loss of or injury to the goods of the guest only if the innkeeper is negligent, and liability is limited.

The keeper of a hotel, tourist camp, rooming house, or boardinghouse has a lien on the baggage and other property of the guest, but not for charges in excess of \$200. Under an earlier South Dakota statute, the

130. PA. STAT. tit. 37, §§ 64, 71-72 (1954).

131. R.I. GEN. LAWS ANN. § 5-14-1, -2, 34-33-1, -2 (1956). The limit does not apply to a loss caused by negligence. *Hoffman v. Miller & Co.*, 83 R.I. 284, 115 A. 2d 689 (1955).

132. S.C. CODE ANN. § 35-3 (1962); S.C. CODE ANN. § 35-4 (Cum. Supp. 1970).

133. S.D. CODE §§ 43-40-4, -5, 44-11-5, -7 (1967). *McClain v. Williams*, 11 S.D. 227, 76 N.W. 930 (1898). It is difficult to understand why the innkeeper would be given a lien if he cannot enforce it and in fact has to return the property on demand. *California* reaches the same curious result in *Rudolph Wurlitzer Co. v. Farb*, 120 Cal. Rptr. 773, 6 P.2d 358 (1931), citing *McClain*.

innkeeper enjoyed a lien on *all* property brought in by the guest, but could enforce only against the goods to which the guest had title. The lien is enforced by sale.

*Tennessee*¹³⁴

The innkeeper is not liable for loss of money, jewels, ornaments, or samples if he provides a place for their safekeeping and the guest fails to utilize it. As to other property, it appears that the innkeeper is not liable if he provides a checkroom and the goods are not checked. There is a maximum limitation on liability by class.

The innkeeper has a lien upon all property brought into the hotel by the guest, including the property of third parties if the innkeeper has no notice. All property left by the guest may be sold after 30 days. The lien accrues to hotels, boardinghouses, and lodginghouses. The Tennessee innkeeper's lien was held not to violate Tennessee's constitution in *Nance v. O. K. Houck Piano Co.*¹³⁵

*Texas*¹³⁶

The innkeeper is liable for the loss of property only if negligent and liability is limited to \$50.

The proprietor of a hotel, motel, tourist camp, rooming house, or boardinghouse has a lien on property of the guest and may enforce it by sale after 30 days.

*Utah*¹³⁷

The liability of the innkeeper is that of a depository for hire and is limited in amount depending on the type of article lost.

The keeper of a hotel, lodginghouse, or boardinghouse has a lien on all property belonging to or under the control of the guest. The lien may be enforced by sale after 30 days.

*Vermont*¹³⁸

The innkeeper is liable for the loss of the guest's baggage only if such loss occurs due to the innkeeper's negligence. Liability is limited to \$300.

134. TENN. CODE ANN. §§ 62-703 to -706, -709 (1956); TENN. CODE ANN. § 64-1701 (1956).

135. 128 Tenn. 1, 155 S.W. 1172 (1913).

136. TEX. REV. CIV. STAT. ANN. art. 4592, 4594, 4595 (1960).

137. UTAH CODE ANN. §§ 29-1-3, 38-2-2, -4 (1953). The allowance of a lien on property other than that of a guest was included in the statute in 1953.

138. VT. STAT. ANN. tit. 9 §§ 1952, 1954, 3143 (1970); VT. STAT. ANN. tit. 13, § 2572 (Cum. Supp. 1970).

The hotelkeeper has a lien on all baggage and other property belonging to or under the control of the guest. The lien may be enforced by sale after three months but the statutes do make a provision for the guest to challenge the reasonableness of the charges.

*Virginia*¹³⁹

The innkeeper is required to exercise only due care and diligence in protecting the property of the guest and his liability is limited to \$300.

The keeper of an inn, boardinghouse, or house of private entertainment has a lien on property of the guest or his employer. The lien may be enforced by sale after 10 days if the value of the property does not exceed \$600. If the value does exceed \$600, court action is required.

*Washington*¹⁴⁰

The innkeeper is liable for loss of or damage to personal property only if the loss is occasioned by his gross negligence. Liability is limited to \$200.

The hotel, boardinghouse, or lodginghouse keeper enjoys a lien on all property lawfully in the possession of the guest. This lien may be enforced by sale, unless the innkeeper receives actual notice before sale that the goods belong to another party, in which case the hotelkeeper is required to obtain a judgment and execution.

*West Virginia*¹⁴¹

The innkeeper is required to exercise due care and diligence to protect the property of the guest, but liability is limited to \$250.

The keeper of a hotel, lodginghouse, restaurant, eatinghouse, or boardinghouse has a lien on personal property brought into the hotel by, or with the consent of, the owner. The lien may be enforced by sale after 15 days.

*Wisconsin*¹⁴²

The innkeeper is not liable for loss of or injury to the guest's baggage unless the loss or injury is occasioned by the innkeeper's negligence. Liability is limited depending on the type of article lost.

139. VA. CODE ANN. §§ 35-10, 43-31, -34 (Repl. Vol. 1969).

140. WASH. REV. CODE ANN. §§ 19.48.070, 60.64.010 (1961)

141. W. VA. CODE ANN. §§ 16-6-22, 38-11-5,-14 (1966).

142. WIS. STAT. ANN. §§ 160.32-.33 (1957); WIS. STAT. ANN. §§ 289.43-.48 (1958).

The innkeeper has a lien on all baggage and other effects brought in by the guest, whether or not the guest has title, and the lien extends to hotels, boardinghouses, and lodginghouses. The lien may be enforced by sale after three months, unless the value of the property exceeds \$100, in which case a court action must be brought.

*Wyoming*¹⁴³

In the case of money, jewelry, and valuables placed in the hotel safe, liability of the innkeeper is based only on negligence. No mention is made of liability for other property, or of any maximum limitation.

The keeper of an inn, boardinghouse, or restaurant enjoys a lien on the property of the guest and may enforce it by sale after 60 days.

143. WYO. STAT. ANN. §§ 33-247, -249 (1957).

APPENDIX B

GRAPHIC CATEGORIZATION OF STATE INNKEEPER'S LIENS

	INSURER'S LIABILITY	LIABILITY BASED ON SOME DEGREE OF CARE	MAXIMUM LIMITATION ON LIABILITY	LIEN ON GOODS OF GUEST	LIEN ON GOODS OF THIRD PARTY	ENFORCEMENT BY SALE	EXTENSION OF LIEN BEYOND HOTELS
ALA	X ^a	X ^b	X	X		X	X
ALASKA		X	X	X	X ^c	X	X
ARIZ		X ^d	X	X		X	X
ARK		X	X	X	X	X	X
CAL		X	X	X	X	X ^e	X
COLO	X ^f	X ^g	X	X		X	X
CONN	X	X	X	X		X	
DEL							
FLA		X	X	X			X
GA	X		X	X	X ^h	X	X
HAWAII		X	X	X		X	
IDAHO		X	X	X	X ^c	X	
ILL		X	X	X	X	X	
IND		X	X	X		X	X
IOWA		X	X	X	X	X	X
KAN			X	X	X	X	X
KY		X	X	X			X
LA		X	X	X	X	X	X
ME		X	X	X	X	X	X
MD	X		X	X	X	X	X
MASS		X	X	X			X
MICH		X	X	X		X	X
MINN		X	X	X	X ^c	X	X
MISS		X	X	X		X	X
MO		X	X	X	X	X	X
MONT		X		X		X	X
NEB		X	X	X	X	X	X
NEV		X		X		X	X
N H		X	X	X		X	X
N J		X	X	X	X	X	X
N M		X	X	X	X	X	X

APPENDIX B (continued)

GRAPHIC CATEGORIZATION OF STATE INNKEEPER'S LIENS

	INSURER'S LIABILITY	LIABILITY BASED ON SOME DEGREE OF CARE ^c	MAXIMUM LIMITATION ON LIABILITY	LIEN ON GOODS OF GUEST	LIEN ON GOODS OF THIRD PARTY	ENFORCEMENT BY SALE	EXTENSION OF LIEN BEYOND HOTELS
N Y		X	X	X	X ^e	X	X
N C		X	X	X		X	X
N D		X	X	X	X	X	X
OHIO		X	X	X	X	X	
OKLA	X		X	X	X	X	X
ORE		X	X	X	X	X	
PENN		X	X	X	X	X	
R I		X		X		X	
S C		X	X	X	X	X	X
S D		X	X	X		X	X
TENN		X	X	X	X ^e	X	X
TEX		X	X	X		X	X
UTAH		X	X	X	X	X	X
VT		X	X	X	X	X	
VA		X	X	X	X	X	X
WASH		X	X	X	X	X	X
W VA		X	X	X	X	X	X
WIS		X	X	X	X	X ⁱ	X
WYO		X ^d		X		X	X

- a. Innkeeper can require guest to waive innkeeper's strict liability
b. By agreement only
c. Unless notice of title in person other than guest.
d. As to goods deposited. No provision for goods in room.
e. Innkeeper may not sell goods of third party
f. Liability absolved if guest has key.
g. If loss caused by fire or accident.
h. Only if specific charges against goods.
i. Unless value greater than a specified amount.
j. If innkeeper discovers title in third party before sale, he must obtain judgment and execution.