

Keeping Goods at the Inn

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As one of the most popular tourist destinations in the world, Thailand hosted over 26 million visitors in 2013 according to the Department of Tourism. Each of those travelers required a place to sleep at night, be it a 5-star hotel or a bungalow on the beach. Hotel owners undertake certain legal responsibilities when providing their guests with a room in which to leave their belongings. On occasion a guest's property is either damaged or lost (stolen) when left in their room, in which case it becomes a question of liability. Who is responsible for those lost or damaged goods and to what extent?



This question is addressed within Thailand's Civil and Commercial Code in a chapter on "Special Rules for Innkeepers." Section 674 begins with the general principle that: "the proprietor of an inn, hotel, or other such place is liable for any loss or damage to the property which the traveler or guest lodging may have brought with him." The next section goes on to state that even if the loss or damage occurred as a result of a "stranger," i.e. not a guest, coming into the inn, hotel, or other such place, the proprietor is still liable. These sections are reinforced by Supreme Court case 5005/2540 from 1997, in which a proprietor was held liable even though there was an exclusionary clause waiving liability for damaged or lost property in a registration form.

If you are reading this article in your hotel room you might see on the back of the door a sign stating that the hotel cannot be held liable for lost or stolen goods, which then leads you to wonder if a proprietor can still be held liable despite a sign stating the contrary? According to Section 677 of the Civil and Commercial Code, "A notice posted in the inn, hotel, or other such place excluding or limiting the liability of the proprietor is void unless the traveller or guest expressly agreed to such exclusion or limitation of liability." Savvy readers of this section will then rightfully inquire as to the meaning of "expressly." Do you expressly agree just by staying in the room? The answer is no. This is a common

misperception of hotel guests in Thailand. Just because a sign is posted, does not mean it is the law. There must be adequate evidence that the traveller expressly agreed to the waiver of liability, and the waiver must not be considered an “unfair contract term” under the Unfair Contract Terms Act. An unfair contract term includes one in a standard form contract (such as a hotel registration form) giving the party presenting the contract an unreasonable advantage over the other party, and is only enforceable to the extent that it is fair and reasonable in the circumstances. The Unfair Contract Terms Act lists exclusions or limitations on liability resulting from breach of contract as an example of a contract term that can be unfair, and adds that if there is any doubt, a standard form contract is to be interpreted against the party presenting the contract.

In the case we mentioned above, the exclusionary language in the registration form was insufficient; that result was however fact specific, and it may be possible that the right language, in the right format, font and color, in a signed registration form could be sufficient to evidence the traveller’s assent to a fair and reasonable waiver of liability. A separate signed waiver of liability form, or a registration form in which the traveller expressly initials the waiver of liability section, may be even more likely to be upheld.

Upon discovery of the loss or damage to the property of a guest not deposited with the proprietor for safekeeping, the guest must inform the proprietor upon becoming aware of the loss or damage. Failing to do so absolves the proprietor from any liability. The proprietor is also not responsible for loss or damage caused by a force majeure (e.g. an earthquake). Further, neither the guest nor any person invited into the hotel room by the guest, must have been at “fault” in respect of the loss or damage. Query, for instance, whether the guest would be considered at fault if he or she left the hotel room door unlocked. If a guest does want to claim that the proprietor is liable for the loss or damage of his property, he must do so within six months from the departure of the guest from the lodging place.

The proprietor is liable for the entire value of any property that is lost or damaged except in the case of gold, currency, bonds, shares, warrants, jewels, or other “valuables” in which case his liability is limited to an aggregate of 5,000 baht. Prior to 1999 that limit was a low 500 baht. These days personal electronics are likely to be the most valuable items in any traveller’s luggage, but based on a Supreme Court case in 1999 a mobile phone did not constitute “valuables”. Rather, the court held that for these purposes valuables are things in the nature of gold and currency, so the hotelier was fully liable for the replacement cost of the mobile phone. Further, if any of the above listed valuables were deposited with the proprietor and the value of the item was clearly stated, and the property then goes missing or is damaged, the proprietor is liable for the full value of the property.

What is the moral of this story? It’s a beach destination. Bring a bathing suit and flip flops and leave the valuables at home.

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