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## Hotel Liability: Who Is at Fault on the Property? Part I

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*This is the first of two articles on hotel liability and why such cases are difficult to adjudicate.*

Suppose you come home late from work tomorrow around midnight. You find a stranger in your home. Startled, you demand that he tell you who he is and why he is in your house uninvited. He responds that he doesn't need your permission to be there.

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This scenario may sound absurd in the context of your private home, but for hoteliers this is an everyday reality. License to be on premises in places of public accommodation is implied. Invitation is also implied for the purpose of doing business. All visitors have the implicit approval of business to be on the property unless and until told otherwise.

When these implied permissions are revoked, the visitor becomes a trespasser. But hotels are unique among businesses because there are no constraints on their hours of operation. Hotels are literally open 24/7/365. So absent any policies to the contrary, licensees and invitees are just as welcome on hotel properties at 2 a.m. as they are at 2 p.m. And this creates unique opportunities for hotel liability.

## **Hotel Liability and the Differences between Hotel Invitees, Licensees and Trespassers**

All persons on the property of a hotel can be legally classified as belonging to one of three categories: invitees, licensees or trespassers.

Examples of hotel invitees would be paying guests who rent rooms; eat in the restaurants; partake of spa services, golf and other sports amenities; or patronize any one of a hotel's various businesses. Is the individual paying the hotel any money for services or products of any kind during the visit? If so, then he or she is probably an invitee.

Examples of hotel licensees would include visitors of paying guests, passersby, contractors paid for work performed on the property, delivery and mail persons, and others not staying at the hotel. Are these individuals on the premises for purposes other than to spend money as patrons of the hotel? If so, then they are most likely licensees.

The basic difference between invitees and licensees is that with invitees there is an expectation that the property owner will benefit from their presence; with licensees there is no such anticipated benefit. An invitee or licensee can instantly become a trespasser if — and only if — the hotel informs that person that he or she is no longer welcome on the premises.

When a hotel decides it no longer wants someone on its property, that person becomes a trespasser and the hotel can insist that he or she leave. As long as trespass decisions are made without discrimination against protected classes, private property owners do not need to cite a reason to remove someone; the owner might simply decide it is no longer in his interest for that person to remain on the property.

The decision doesn't even have to be fair or rational. However, with hotels naturally relying heavily on their customer service to generate business, they typically reserve trespass decrees for the most extreme circumstances, such as violent or intoxicated persons who are a danger to themselves or others.

## **Duty of Care for Invitees and Licensees in Regard to Hotel Liability**

What difference does it make to hotel liability whether an individual is an invitee or a licensee? The reason this distinction is so important is that the duty incumbent upon a hotel is different for each of the three categories of individual.

Generally, a hotel is responsible for notifying invitees and licensees of any latent safety hazards of which the hotel has knowledge and which would not normally be obvious to those individuals. In simpler terms, if the hotel knows about something dangerous on the property that could harm a visitor who is not likely to discover it on her own beforehand, then the hotel must warn her about it.

For example, suppose a hotel employee discovers a water spill on the marble lobby floor. Given that the hotel knows about it (i.e. the moment the employee discovers the spill, the hotel has what the law refers to as “actual notice”), and that a visitor is not likely to see it (i.e. the hazard is not obvious), the hotel has a legal duty to warn invitees and licensees of the hazard’s existence. This duty could be satisfied by way of a “wet floor” sign or, better yet, the hotel could just clean up the spill and remove the danger altogether.

The distinction between invitees and licensees lies in an additional requirement for invitees. The hotel not only must warn invitees of known hazards, but it must also inspect the premises for such hazards in a reasonable manner and at reasonable intervals.

The hotel is only required to tell licensees about dangers of which it is aware. But for invitees, the hotel carries the added burden of having to look for such dangers and warn about them when they are found.

The justification for this additional onus is this: If hotels are benefiting from the presence of their guests, they ought to be making proactive efforts to ensure that their properties are reasonably safe places for them.

Going back to our spilled water example, let us suppose that no hotel employees found the water on the floor, and the hotel is genuinely unaware of the spill. A young woman, who is there for the sole purpose of visiting a paying guest, slips on the spill and falls.

In this case, as long as the hotel neither caused the water to be on the floor nor knew about it, it is probably not liable for negligence. This is because the young woman — based on the facts provided — is probably a licensee. So the hotel only has the duty to tell her about any dangers of which it is aware; it is not obligated to look for dangers it has no knowledge of.

Now, let us change the facts in one simple way. Instead of being in the hotel solely to visit a friend, the young woman is also there to dine in the hotel restaurant. On her way out after dinner, she slips on the water. Here, the hotel may be liable for damages because the woman fits the definition of an invitee, and hotels have a duty to invitees to inspect their premises for hazards.

But why isn’t the hotel definitely liable? The answer is there are several key missing pieces of information we don’t have from what we know so far. In the second part of this article, we will break down what those missing pieces are and why these kinds of hotel liability cases can be so complex.

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## About the Author

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