

Hotel-Keeper's Responsibility as a *Bonus Pater Familias*

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This article by **Emma Minerva Brambilla** was previously submitted as part of PBL2000 and is being published with the author's permission. The role of the hotel-keeper embodies a profound responsibility akin to the Roman Law concept of *bonus pater familias*, ensuring the well-being and comfort of both guests and visitors within the accommodation. This responsibility is regulated through the 1962 Council of Europe Convention on the Liability of Hotel-Keepers. This article undertakes a comprehensive overview of the legal responsibilities imposed on hotel-keepers concerning guests and visitors in both the United Kingdom and Italy. Through an examination of relevant case-law, the study delves into the intricate legal landscape governing hotel-keepers' liability for (1) damage, loss, or theft of guests' property and (2) personal injuries sustained within the accommodation premises. It is highlighted how liability is avoided in two main instances: *force majeure* situations and where the blame is attributable solely and exclusively to the guests' negligent conduct whereby the hotel-keeper has taken reasonable steps to avoid the unpleasant event. In other situations, due to the deep duty of care owned by the hotel keeper to the guests, liability arises.

TAGS: Tort Law, Liability, Obligations, *Bonus Pater Familias*, Tourism

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Introduction

The role of the hotel-keeper transcends mere hospitality: it embodies a profound responsibility akin to the Roman Law concept of the *bonus pater familias*. As the custodian of an accommodation establishment, the hotel-keeper assumes a duty of care, ensuring the well-being and comfort of both guests and visitors. The duty of care, as articulated in *Heaven v Pender*, emanates from the principle of foreseeability, which holds that a responsibility to exercise reasonable care arises when one is in a situation where it is essential to prevent harm to others.¹ Therefore, like the patriarchal figure in a family, hotel-keepers orchestrate a seamless and secure environment, cultivating an atmosphere of warmth and efficiency. From hospitality to security, they shoulder diverse responsibilities, embodying the essence of a benevolent leader committed to the satisfaction and safety of those under their roof. In fact, even as early as 1367, any loss or damage to the visitors' personal property or injuries sustained within the accommodation was ascribed to be the 'failure of the innkeeper and their staff to provide proper protection.'²

Initial attempts to harmonise the legal framework governing the interactions between hotel-keepers and their guests were initiated in 1932 with the 'Convention on the Liability of Hotel-keepers concerning the Property of their Guests' which focused on the 'liability of innkeepers for the loss of, or damage to, goods brought to inns by guests.'³ Currently, the sole unified legal instrument pertaining to this topic is the 1962 Convention on the Liability of Hotel-Keepers concerning the Property of their Guests.⁴ Articles 2 and 4 of the Annex of this Convention expressly stipulate the scenarios in which a hotel-keeper could be held unlimitedly liable,⁵ such as when there is a failure in returning the items deposited by the guests or such items are so returned in a damaged or destroyed condition. However, Article 3 of the Annex provides instances where the hotel-keeper is exonerated from such liability. This includes damage, destruction or loss attributable to the guest or due to an unforeseeable and irresistible act of nature or of war.⁶ Notably, in the United Kingdom, the 1962 Convention entered into force in

¹ *Heaven v Pender* [1883] 11 QBD 503, 509.

² John EH Sherry, *The Laws of Innkeepers: For Hotels, Motels, Restaurants, and Clubs* (3rd edn, Cornell University Press 1993), 415.

³ Malcolm Evans, *Some Reflections on the Draft UNIDROIT Convention on the Hotelkeeper's Contract* (Universidad Nacional Autónoma de México 1981) 462 <<http://biblio.juridicas.unam.mx/libros/2/644/21.pdf>> accessed 14 December 2023; Convention on the Liability of Hotel-keepers concerning the Property of their Guests (opened for signature 17 December 1962, entered into force 15 February 1967), ETS 41 <<http://conventions.coe.int/Treaty/en/Treaties/Html/041.htm>> accessed 14 December 2023.

⁴ Oliver Radolovic, 'Hotel-keepers' Liability for Guests' Property under the European Convention (Paris, 1962) and Comparative Law' (2010) 3(4) *International Journal of Private Law* 376, 376.

⁵ Convention on the Liability of Hotel-keepers concerning the Property of their Guests (n 3), Annex.

⁶ *ibid.* Article 3.

1967 and its provisions were given effect through the 1956 Hotel Proprietors Act whilst in Italy, it entered into force in 1979 and was implemented within the Italian Civil Code.

In light of this background, this research will analyse, through case-law, the responsibility of the hotel-keeper for the guests and visitors on the hotel premises in the United Kingdom and in Italy, focusing especially on two scenarios: damage, loss or theft of guests' property and personal injuries that occur within the said accommodation.

Hotel-Keeper Responsibility in the United Kingdom

In the United Kingdom, following *Williams v Linnitt*, the hotel-keeper is considered as an insurer of the property found within the hospitium of the hotel, which comprises all areas designed and fitting for use by the guests.⁷

Regarding any damage, loss, or theft of guests' property, the 1939 case of *Shacklock v EThorpe Ltd* was the first hotel-keeper liability case to reach the House of Lords. It concerned the theft of jewels from an unlocked and unattended hotel room. The Court held that the guest was not negligent in failing to lock the room, as the hotel was located in a very small and safe town.⁸ Thus, it was ruled that it is the hotel-keeper's duty to notify the guests that valuables should be deposited in a safe place instead of being stored in an unwatched bag in the room.⁹ However, it can be argued that this case stretched liability in an unreasonable manner, potentially fostering a lax attitude amongst guests whilst also establishing a precedent that might be exploited in less secure settings. In *Olley v Marlborough Court Hotel*, where the key of the guest's room was taken and several items were stolen from the room, the United Kingdom Court of Appeal clarified that the hotel-keeper was liable as he had failed to adequately safeguard the key, bestowing him with the responsibility of paying damages to the claimant.¹⁰ This is because, even though the defendant had placed an 'exclusion clause' in the guest's room, thereby exempting the hotel-keeper from liability in case of any lost or stolen items, the hospitality contract was concluded at the reception, at which point there was no reference to an 'exclusion clause'.¹¹ Moreover, just like a *bonus pater familias* is responsible for the actions of his children, the hotel-keeper is responsible for the actions of his employees. In *Kott and Kott v Gordon Hotels Ltd*, it was established that even if the guests' property was stolen through the wilful act of a Gordon Hotels employee, the hotel-keeper

⁷ *Williams v Linnitt* [1951] 1 All ER 278; Charlene Zammit, 'The Nature of the Liability of the Hotelkeeper for the Property of the Guest in Malta and other European States' (LL.D Thesis, University of Malta 2014), 58.

⁸ *Shacklock v EThorpe Ltd* [1939] 3 All ER 372 (HL); KLG, 'Personal Property – Innkeeper – Liability for Loss of Guest's Property by Theft – Question of Guest's Negligence' (1941) 7(2) The Cambridge Law Journal 271, 272.

⁹ *ibid.*

¹⁰ *Olley v Marlborough Court Hotel* [1949] 1 KB 532; Legum, 'Legum Case Brief: Olley v Marlborough Court Hotel' (*Legum App*, 2022) <<https://www.legum.app/courses/law-of-contract/cases/case-briefs/en65ZrvbVkv5W3zO765V>> accessed 15 December 2023.

¹¹ *ibid.*

was still liable to the plaintiffs.¹² Additionally, the Court stated that a hotel-keeper is also considered negligent if they fail to prevent theft or apprehend thieves, even if the thieves are other guests.¹³ For instance, in *Drake v Dow*, Mr Drake's computer was stolen from his room during his stay at Castlehill Bed and Breakfast and the owners were held liable for the loss as they had negligently failed to install locks on the accommodation's doors.¹⁴ Similarly in *Donaldsons v Blanc Restaurants Ltd*, the Court ruled that the hotel-keeper had failed to exercise reasonable care in preventing burglaries and in providing a safe environment for his hotel guests and visitors.¹⁵

Regarding personal injuries that occur within the accommodation, in the 2015 landmark case of *Al-Najar v The Cumberland Hotel*, the United Kingdom Court of Appeal had to rule on the standard of care to be expected of a hotel-keeper.¹⁶ The claim originated from a violent assault and robbery targeting a group of hotel guests.¹⁷ The assault was perpetrated by an intruder who had gained entry to the victims' hotel room which had been deliberately left unlocked and open for the return of another family member.¹⁸ The victims contended that the hotel's duty of care to safeguard guests from harm was breached.¹⁹ Departing from the previously established jurisprudence, the Court mandated that the hotel-keeper's duty of care towards hotel guests is not absolute.²⁰ In fact, the Court found that the hotel-keeper had taken reasonable steps to protect guests, with the doors having locks and security checks being performed, thereby absolving the hotel-keeper from any liability which could otherwise be attributed to him.²¹ In contrast, in *The White Lion Hotel v Deborah Jayne James*, the Court held that even in situations where an individual has consciously and willingly decided to take an obvious risk, the hotel-keeper may still bear legal responsibility.²²

¹² *Kott and Kott v Gordon Hotels Ltd* [1968] 2 Lloyd's Rep 228 (QB); Robert Merkin and Johanna Hjalmarsson, 'Lloyd's Law Reports' (I-Law database) <<https://www.i-law.com/ilaw/doc/view.htm?id=146412>> accessed 15 December 2023.

¹³ *ibid.*

¹⁴ *Drake v Dow* 2005, Sheriffdom of Grampian, Highland and Islands at Tain SC37/04; Paul Du Plessis, 'Innkeeper's Liability for Loss Suffered by Guests: Drake v Dow' (2007) 11(1) Edinburgh Law Review 89, 89-94.

¹⁵ David Sapsted, 'Guests criticise Raymond Blanc after \$100,000 burglary at hotel' *The Telegraph* (London, 1 August 2006) <<http://www.telegraph.co.uk/news/1525286/Guests-criticise-Raymond-Blanc-after-100000-burglary-at-hotel.html>> accessed 15 December 2023.

¹⁶ *Al-Najar and others v The Cumberland Hotel (London) Ltd* [2020] EWCA Civ 171; Victoria Hobbs, 'Al-Najar v The Cumberland Hotel: Court of Appeal rules on a hotel's duty of care to protect guests from injury' (*Bird&Bird*, 1 February 2021) <<https://www.twobirds.com/en/insights/2021/uk/al-najar-v-the-cumberland-hotel>> accessed 15 December 2023.

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ *ibid.*

²² *The White Lion Hotel v Deborah Jayne James* [2021] EWCA Civ 3; Victoria Hobbs and Louise Lanzkron, 'Court of Appeal rules on hotel's liability under section 2 of the Occupiers' Liability Act 1957 in circumstances where the guest had run an obvious risk' (*Bird&Bird*, 8 June 2021) <<https://www.twobirds.com/en/insights/2021/uk/court-of-appeal-rules-on-hotels-liability-under-section-2>> accessed 15 December 2023.

Hotel-Keeper Responsibility in Italy

In Italy, the rules governing a hotel-keeper's responsibility towards their guests find their roots in the realm of contract law, specifically under Section IV of the Italian Civil Code. Importantly, as held in *Judgment 19769/2003*, the hospitality contact is a *sui generis* one, whereby the hotel-keeper undertakes to provide various and heterogenous services.²³

Notably, concerning any damage, loss or theft of guests' property, the Supreme Court of Cassation in *Judgment 2730/1977* made a crucial distinction with regards to the extent of a hotel-keeper's liability based on whether the items were merely brought into the hotel (*cose portate in albergo*) and/or specifically deposited with the hotel-keeper (*cose consegnate all'albergatore*).²⁴ However, the responsibility of the hotel-keeper arises simply from the act of bringing items into the hotel, regardless of any deposit.²⁵ Regarding *cose portate in albergo*, in *Judgment 18651/2003*, the Supreme Court of Cassation established that in the event that the theft of valuables from a safe-deposit box is carried out through robbery accompanied by violence or threat, such robbery constitutes a case of *force majeure*.²⁶ As such, the hotel-keeper is exempted from responsibility towards the guests only when the robbery itself occurs under absolutely unpredictable and inevitable circumstances.²⁷ In contrast, as reaffirmed by the Tribunal of Lucca in *Judgment 839/2018*, the hotel-keeper, like the *bonus pater familias*, is liable when the deterioration, destruction, or loss of items brought by the guest to the hotel is due to his fault or that of his employees.²⁸ This does not necessarily imply an action or negligent omission but may pre-exist and be inherent in the very organisation of the business.²⁹ In *Judgment 10493/2009*, it was held that to avoid liability, the hotel-keeper must prove that preventative measures would have implied a disproportionate and unreasonable cost compared to the nature of the services provided to the guests.³⁰

²³ *Sentenza No 19769*, Suprema Corte di Cassazione, Sez III (23 December 2003); Studio Legale Luongo, 'L'Albergatore Deve Risarcire Il Danno Per Il Furto Delle Cose Lasciate In Albergo!' (*Studio Legale Luongo*) <<https://www.studiolegaleluongo.it/lalbergatore-deve-risarcire-il-danno-per-il-furto-delle-cose-lasciate-in-albergo/>> accessed 16 December 2023.

²⁴ *Sentenza No 2730*, Suprema Corte di Cassazione, Sez III, *Archivio Civile* 1977 (25 June 1977); Zammit (n 7), 68.

²⁵ *ibid.* 1114.

²⁶ *Sentenza No 18651*, Suprema Corte di Cassazione, Sez III (5 December 2003); 'Sezione III Civile; Sentenza 5 dicembre 2003, No 18651' (2005) 128(4) *Il Foro Italiano* 1205, 1206 <<https://www.jstor.org/stable/23200711>> accessed 16 December 2023.

²⁷ *ibid.*

²⁸ *Sentenza No 839*, Tribunale di Lucca (25 May 2018); Angelo Greco, 'Responsabilità albergatore: ultime sentenze' (*La Legge per Tutti*, 13 October 2022) <https://www.laleggepertutti.it/428860_responsabilita-albergatore-ultime-sentenze> accessed 16 December 2023.

²⁹ *ibid.*

³⁰ *Sentenza No 10493*, Suprema Corte di Cassazione, Sez III (7 May 2009) para 2.2.

Pertaining to *cose consegnate all'albergatore*, the Supreme Court of Cassation decreed that the guest is not obliged by law to deposit his property with the hotel-keeper.³¹ Nevertheless, in *Judgement 4930/2021*, it was held that if the guest does not exercise this option and their belongings are subsequently stolen, deteriorated or destroyed, they can claim full restitution for such objects.³² However, this claim is limited to the maximum limit established in Article 1783(3) of the Italian Civil Code unless they prove that either the hotel-keeper or other individuals associated with him were at fault as per Article 1785bis of the Italian Civil Code.³³

With respect to personal injuries that occur within the accommodation, the Tribunal of Catanzaro in *Judgment 190/2023*, where a guest stumbled on a slightly elevated step at the entrance, which was neither visible nor marked, and fell to the ground, sustaining fractures and contusions, reaffirmed that the hotel-keeper is considered the custodian of the property and is consequently obligated to compensate the harmed guest if they have not taken the necessary precautions to protect their guests' and integrity.³⁴ Additionally, the Supreme Court of Cassation, in *Judgement 7125/2013*, has emphasised that the injured party only needs to provide evidence of the causal link between the harmful event and the object that caused it, without delving into the actual or potential danger of the objects or the hotel-keeper's conduct.³⁵ Moreover, in *Judgement 24739/2007*, where a guest suffered serious injuries in a hotel room due to a fall in a bathtub lacking anti-slip measures, the Supreme Court of Cassation confirmed that to absolve themselves from liability, the hotel-keeper bears the burden of proving *force majeure*.³⁶

Conclusion and Recommendations

In conclusion, in examining the responsibility of hotel-keepers in relation to their guests and visitors in the United Kingdom and Italy, it is evident that in both legal frameworks governing such liabilities, there exists a shared imperative for hotel-keepers to prioritise guests' safety and security within the *hospitium*, like a *bonus pater familias*. In fact, in both countries, the hotel-keeper can be held responsible for both damages, losses or theft of guests' property, as well as personal injuries occurring on the hotel-keeper's premises. Whilst the United Kingdom places a strong emphasis on the duty

³¹ *Sentenza No 28812*, Suprema Corte di Cassazione, Sez III (5 December 2008), para 'motivi della decisione.'

³² *Sentenza No 4930*, Tribunale di Milano, Sez X (9 June 2021); Angelo Greco (n 28).

³³ *ibid*; Civil Code of Italy, Articles 1783 and 1785bis.

³⁴ *Sentenza No 190*, Tribunale di Catanzaro (15 August 2023); Selene Pascasi, 'Albergo responsabile se la turista inciampa su un gradino non visibile' *Il Sole 24 Ore* (Milan, 16 August 2023) <<https://www.ilsole24ore.com/art/albergo-responsabile-se-turista-inciampa-un-gradino-non-visibile-AFOdbVU>> accessed 16 December 2023.

³⁵ *Sentenza No 7125*, Suprema Corte di Cassazione, Sez III (21 March 2013), para 2.

³⁶ *Sentenza No 24739*, Suprema Corte di Cassazione, Sez III (28 November 2007), para 'motivi della decisione.'

of care owed by hotel-keepers towards their guests, occasionally resulting in the excessive stretching of this concept, Italy adopts a more nuanced approach by distinguishing between *cose portate in albergo* and *cose consegnate all'albergatore*. This distinction underscores the importance of clear communication and documentation between guests and hotel-keepers regarding the status of items, which can significantly influence the degree of responsibility assumed by the establishment in relation to those items. Similarly, in both jurisdictions, the hotel-keeper's duty of care towards hotel guests is not absolute. In fact, liability is avoided in two main instances: force majeure situations and in situations where the blame lies solely and exclusively with the guests due to their negligent conduct, provided that the hotel-keeper has taken reasonable steps to prevent the occurrence of the harmful event.

For future developments in hospitality law regarding the responsibility of hotel-keepers in the United Kingdom and Italy, the author considers it essential to establish standardised guidelines that address both property and personal injury liabilities. Firstly, a uniform approach to guest property should be implemented, ensuring clear communication and documentation between both guests and hotel-keepers. This can be achieved by encouraging the use of detailed inventories upon check-in and clearly defined procedures for items brought into the hotel or specifically entrusted to the establishment. Secondly, in addressing personal injuries, a collaborative effort is needed to establish industry-wide safety protocols. Both States should advocate for comprehensive staff training programs that prioritise guest well-being and emphasise the prompt resolution of safety concerns. Additionally, regulatory bodies should work in tandem with the hospitality sector to create universally accepted safety standards, fostering a secure environment for guests and visitors.



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