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MINIMUM LENGTH-OF-STAY REQUIREMENTS AS PART OF HOTEL REVENUE MANAGEMENT SYSTEMS: ARE THEY LEGAL?

Robert Wilson

ABSTRACT

Many hotels have instituted revenue management systems that incorporate minimum length of stay requirements. The hotel will refuse to book the room unless the traveler agrees to book for two, three, or more nights. The English common law, case law in the United States, and many state statutes provide that a hotel has an obligation to provide a room to an acceptable guest if the hotel has a room available. This article attempts to answer the question: Are minimum length-of-stay controls legal or illegal? The author also provides a method for hotels to continue to use length-of-stay controls, maximize revenue, and comply with existing laws.

Introduction

A person who, either on his own account or as agent or officer of a corporation, carries on business as innkeeper, or as common carrier of passengers, and refuses, without just cause or excuse, to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor. (New York State Code, Article 4, Chapter 40-e)

Hotels have a long history of serving the public by providing travelers with hotel rooms. People who have studied the hospitality industry know that much of this tradition comes from the practices of the early English innkeepers who provided rooms to persons traveling on the country highways. Many of the laws and statutes that regulate hotels today are derived from the English common law that was established in England during the period from 1500–1700. One of the basic tenets of the English common law that has become part of the common law in the United States and was later codified into our current legal system is that hotels have a duty or obligation to admit all guests seeking a room. Most hotel law textbooks have sections dealing with the duty to admit all guests who desire a room. Over the years, several exceptions have developed that permit hoteliers, in certain circumstances, to refuse a room to a potential guest.

This article reviews the English and American common law that requires a hotel to sell a room to a guest in most situations if a room is available. The criminal and civil statutes of several representative states are reviewed to determine exactly what is required with respect to the duty to admit guests. Within the past 20 years, hotels have developed systems of revenue management or yield management that are based upon similar systems developed by the airline industry. The purpose of the revenue management systems for hotels is to maximize revenues and, ultimately, profits by using a variety of tools and strategies to manage space, time, and revenue. A major component of many revenue management systems is the minimum length-of-stay requirements that are the second focal point of this article. Revenue management systems with minimum length-of-stay requirements will be examined to determine whether some hotels may be inadvertently

violating state criminal or civil statutes when they refuse to book a room for a potential guest who desires to stay only one night. Most minimum length-of-stay controls require guests to stay two or more nights, even if they really desire to stay only one night. A solution is also proposed that will allow hotels to comply with most state laws relating to the duty to admit without interfering with existing revenue management systems.

Revenue Management and Yield Management

One may think of yield management as a relatively recent practice, but the lodging industry has applied yield-management principles for many years. In one early instance, Marriott Corporation used yield-management principles long before it installed its current sophisticated system. Back when young J. W. "Bill" Marriott was working at the family's first hotel, the Twin Bridges in Washington, D.C., the property sold rooms from a drive-up window. As Bill tells the story, the property had a flat single rate, and made an extra charge for each additional person staying in the room. When availability for rooms got tight on some nights, Bill recalls leaning out the drive-up window to assess the cars waiting in line. If some of the cars were filled with passengers, Bill would turn away the vehicles with just a single passenger to sell his last rooms to those farther back in line who would be paying the charges for additional guests. That technique demonstrates the core concept of yield management. (Quain, Sansbury, and Quinn, 1999)

Yield management is "the practice of maximizing profits from the sale of perishable assets, such as hotel rooms, by controlling price and inventory and improving service to selected customer segments" (Lieberman, 1993). Many hotels and restaurants have adopted revenue management systems with very positive results. Many different types of systems exist, some fairly simple and some quite complex. At the heart of most systems is the need to predict expected demand. Once demand is predicted, the systems allow the managers to overbook (to compensate for those people who make reservations and then later cancel out with the hope that if predicted demand is correct, few if any guests will need to be "walked" to other hotels), to set different rates for the same date based upon when the reservation is made, to charge different rates for different dates, and to block out room sales for different dates. The basic concept is to take steps to maximize the revenue and profit of the organization by the effective use of the predicted expected demand. Quain et al. (1999, p. 76) state, "The goal of yield management is to select which business to accept and which business to turn away." While overbooking and rate controls are fairly common and quite widespread, the use of minimum length-of-stay controls in the hospitality industry is somewhat new.

Minimum Length-of-Stay Controls

One goal is to "use length-of-stay controls to shift demand from sold-out periods to slack periods" (Quain et al., 1999, p. 76). Another way to describe length-of-stay controls is to make someone stay at your hotel for a longer period of time (more nights) than he or she really wants to stay. A person might attempt to book a room for a Saturday night and be told that there is a two-night minimum, and in order to book a room for Saturday night, she must also book the room for Friday night or for Sunday night. Most major and many small hotel operators use length-of-stay controls.

As part of the effort to increase occupancy during the first week of January, the revenue-management department at Disney began studying ways to use minimum-stay controls in conjunction with New Year's Eve to preserve rooms for guests who wanted to stay beyond New Year's Day. Disney accepted only reservations for four nights or longer. "The essence of length-of-stay controls ... is having one room left to sell at \$150, and deciding whether to sell it for one night or to wait, with the prospect of selling it to another guest for four nights" (Quain et al., 1999, p. 77). Or the guest who wants to stay for just one night must extend the stay for two nights just to be able to book the room. When a person walks into a hotel and attempts to book a room for one night or calls on the phone or emails in an attempt to reserve a room for a future stay, length-of-stay controls are used to determine whether the guest should be denied the room or allowed to book the room. Length-of-stay controls are used to determine if the hotel should book the room or refuse to book the room, even if the hotel does, in fact, have rooms available for the desired night.

The benefits to the hotel industry from revenue management systems are enormous. Hanks, Cross, and Noland (1992) said that hotels should be able to obtain a benefit of approximately 4.7% of revenues by the use of revenue management systems. These estimates were made before length-of-stay controls were part of revenue management systems. Weatherford (1995) states that new, sophisticated length-of-stay heuristic controls can allow hotels to reap benefits as high as 2.94% of revenues, depending on the characteristics of the property.

The hotel industry has recognized the benefits of revenue management systems and length-of-stay controls, as they are now prevalent in the industry from the very largest hotel chains to the very smallest mom-and-pop motels. Although the practice is annoying to some consumers, it seems somewhat innocuous to many others as they have become accustomed to this type of activity. This author has attempted to make reservations at motels or inns on Cape Cod, Massachusetts during the summer and in Vermont ski country during the winter, and has been told that a person must book for a minimum number of nights or the reservation will not be made. The author usually chooses to make the reservation and extend the stay or arrive a day earlier than desired.

The airline industry has attempted to shift demand for flights for many years by offering lower rates if you fly on certain days or stay over in a city for a period of time before returning home. What the airline does is not at all what the hotel industry does, however. This article looks at whether the hotel minimum length-of-stay controls are, in fact, legal, and whether they violate the common law, case law, and the statutory laws of most states.¹

¹ While many authors have not discussed the legality of revenue management systems, including overbooking and the failure to honor contracts for guaranteed room reservations, interested readers may want to review Wilson and Enghagen (1994) and Wilson (1992).

English Common Law and American Case Law: A Duty to Provide a Room

Sherry (1993) details the development of the English law as it relates to innkeepers and their duty to the public: "They undertake as a business to furnish food, protection, and shelter to the wayfaring guest. Having undertaken such a public business, and the public need being concerned, the innkeeper must supply his service to all." The innkeeper is in the business of providing a public service and is considered to be in the public employment and subject to rules and regulations. Sherry quotes Wyman (1903):

The innkeeper is in a common calling under severe penalty if he does not serve all that apply, while the ordinary shopkeeper is in a private calling free to refuse to sell if he is so minded. The surrounding circumstances must again explain the origin of this unusual law. When the weary traveler reaches the wayside inn in the gathering dusk, if the host turn him away what shall he do? Go on to the next inn? It is miles away, and the roads are infested with robbers. The traveler would be at the mercy of the innkeeper, who might practise upon him any extortion, for the guest would submit to anything almost, rather than be put out into the night. Truly a special law is required to meet this situation, for the traveler is so in the hands of the innkeeper that only an affirmative law can protect him.

It is interesting to note that the underlying theme in many of the cases dealing with the hotelier's duty to admit guests is that hotel business is considered to be a public calling which has the obligation and duty to serve the public. And many of the cases that discuss the obligations of hotels to admit all guests are cases dealing with a variety of issues that sometimes do not directly involve hotels.

A very important United States Supreme Court case, *Munn v. Illinois* (1876), discusses hotels and innkeepers (and other businesses) in the context of the regulation of businesses dealing with the public interest: "In their exercise, it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, ... and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold." The court added, "When therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

In another case, the New Jersey Appeals Court states, "At common law, a person engaged in a public calling, such as innkeeper or common carrier, was held to be under a duty to the general public and was obliged to serve, without discrimination, all who sought service" (*Madden v. Queens County Jockey Club, Inc.*, 1947, p. 253).

In *Greisman v. The Newcomb Hospital* (1963), the New Jersey Supreme Court states: "During the course of history, judges have often applied the common law so as to regulate private businesses and professions for the common good; perhaps the most notable illustration is the duty of serving all comers on reasonable terms which was imposed by the common law on innkeepers, carriers, ferriers and the like."

Another more recent case looking at the obligations of public businesses is *Doe and Doe v. Bridgeton Hospital Association, Newcomb Hospital, and Salem County Memorial Hospital* (1976), decided by the Supreme Court of New Jersey. In this case, the plaintiffs were suing the hospitals to require them to conduct elective abortions. In comparing hospitals to hotels, the court stated at p. 486 (quoting an old English case: *Lane v Cotton*, 12 Mod. 472, 484, 88 Eng. Rep. 1458, 1464-1465 (K.B. 1701)):

Where ever any subject takes upon himself a public trust for the benefit of the rest of his fellow subjects, he is eo ipso bound to serve the subject in all the things that are within the reach and comprehension of such an office, under pain of an action against him; If on the road a shoe fall from my horse, and I come to a smith to have one put on, and the smith refuse to do it, an action will lie against him, because he has made profession of a trade which is for the public good, and has thereby exposed and vested an interest of himself in all the King's subjects that will employ him in the way of his trade. If an innkeeper refuses to entertain a guest where his house is not full, an action will lie against him, and so against a carrier, if his horses be not loaded, and he refuses to take a packet proper to be sent a carrier ...

...

Proprietors of privately owned quasi-public businesses may operate within a wide discretionary range, subject to limitations called for by the commonweal. The nature, scope, and limitations of the innkeeper's discretion are illustrative. He was bound by common law to receive and lodge all comers in the absence of a reasonable ground of refusal. 21 *Halsbury's Laws of England* 445-446 (3d ed. 1957). A valid refusal had to be related to the inn's operations as an inn. *White's Case*, 2 *Dyer* 158b, 73 *Eng. Rep.* 343 (K.B. 1558). Full occupancy or the traveler's condition, such as drunkenness, which might affect other guests constituted good cause for exclusion. On the other hand, arrival at a later hour or on a Sunday was held to be insufficient to deny lodging. *Rex v. Ivens*, 7 *Car. & P.* 213, 173 *Eng. Rep.* 94 (K.B. 1835). There had to be a rational relationship, a causal nexus, between the reason for the refusal and the function of the inn.

It should be noted that the *Doe and Doe v. Bridgeton Hospital Association* case was heard in the Supreme Court of New Jersey, decided in 1976, and based upon the theory of the U.S. Supreme Court case of *Munn v. Illinois*, as well as other New Jersey cases. Even though the cases cited relating to hotels go to the Common Law of England dating back to the 16th century, the courts have adopted the language and theory of a hotel being a business entered into for the public benefit and requiring the hotel owner to furnish a room to all who demand a room, subject to some reasonable limitations and exceptions.

In a 1973 case, the Court of Appeals of New York, stated, "At common law a person engaged in a public calling, such as innkeeper or common carrier, was under a duty to serve without discrimination all who sought service" (*Jacobson v. New York Racing Association, Inc.*, 1973).

In an early Massachusetts Supreme Court case, the court states that an innkeeper is one who "holds himself out to the public by advertisement, sign or practice, as one who is ready to furnish strangers and travelers, and their horses and cattle, with lodging and food, and in fact furnishes such food and lodging, when applied for" (*Commonwealth v. Wetherbee*, 1869, p. 215).

The Right to Deny a Room

While the common law and American case law clearly impose an obligation to provide a room to all guests who request one, an innkeeper does have certain rights to deny a room to a person in some situations. The same is true in statutory law in the United States. In their hotel law text, Cournoyer, Marshall, and Morris (1999, p. 100) state:

If a hotel has no vacancies it may refuse a would-be guest. No vacancies can exist even though some rooms are not occupied provided those rooms are legitimately out of service, as where they are being painted, refurbished or repaired, or the unoccupied rooms are being held for reservations.... The hotelkeeper can also refuse persons who are criminals, intoxicated, disorderly, unclean, or suffering from a contagious disease. Likewise, the innkeeper can deny a room to a prospective guest who is not able or willing to pay in advance a reasonable price for a room for the duration of the intended stay.

While Pennsylvania does have a statute that requires a hotel to admit guests, the statute also allows innkeepers to refuse accommodations in very limited situations. The statute (37 P.S. § 103) provides:

An innkeeper shall have the right to refuse or deny any accommodations, facilities or privileges of a lodging establishment to:

- (1) Any person who is unwilling or unable to pay for accommodations and services of the lodging establishment.
- (2) Any person who is disorderly.
- (3) Any person who the innkeeper reasonably believes is seeking accommodations for any unlawful purpose, including the unlawful possession or use of a controlled substance by such person or the use of the premises for the consumption of alcoholic beverages by any person under 21 years of age.
- (4) Any person who the innkeeper reasonably believes is bringing into the lodging establishment property which may be dangerous to other persons, such as explosives or illegal firearms.
- (5) Any person who exceeds the maximum number of persons allowed to occupy any particular guest room in the lodging establishment, as posted by the lodging establishment.

State Statutes Requiring the Duty to Provide a Room

The U.S. Supreme Court in *Munn v. Illinois* indicates that the common law and the U.S. case law decisions can be regulated by statute. "When private property is devoted to public use, it is subject to public regulation" (p. 86). The court also makes an interesting point when it states that "a mere common-law regulation of trade or business may be changed by statute" (p. 134). The ability to regulate the obligation to admit guests to hotels by statute has been endorsed by many states. An examination of the statutes of three states, New York, Massachusetts, and Pennsylvania, will be made. The statutes are representative of the types of statutes that exist across the country that impose an obligation upon hotels to admit guests. The failure to admit, except where permitted, is a violation of either a criminal or civil statute in these states as well as many others.

The New York statute Article 4 Equal Rights in Places of Public Accommodation and Amusement Chapter 40-e, while appearing at first glance to be a typical anti-discrimination law that outlaws discrimination based upon race, creed, color, national origin, ancestry, age, marital status, sexual orientation, etc., is actually a very broad statute in many respects. The statute on innkeepers, for example, does not mention race, sex, national origin, etc, but closely follows the common law and the American case law, and codifies both. The refusal to admit is a criminal violation, although a misdemeanor. The language of the statute appears at the beginning of the Introduction to this article.

The Massachusetts statute, Chapter 140: Section 7, is very similar to the New York statute: "An innholder who, upon request, refuses to receive and make suitable provision for a stranger or traveler shall be punished by a fine of not more than fifty dollars." Again, it is a clear obligation to provide a person a room, and the hotel is subject to a fine for the refusal. And again, the violation is criminal in nature, although a misdemeanor with a small fine.

The Pennsylvania statute discussed earlier allows an innkeeper to refuse a room under the list of exceptions noted above. If none of the exceptions is present, however, the innkeeper has an obligation to provide a room as follows:

[P.S.] § 192. Violations; punishment. Any person violating the provisions of this act shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than ten dollars (\$10) or more than twenty-five dollars (\$25), or undergo imprisonment for a term of not more than thirty (30) days, or both, in the discretion of the court.

A reading of the statutes from the various states makes their similarities become obvious. The statutes do not alter the court decisions found in the common law or in American case law. In fact, the statutes basically codify the common law and case law. They recognize a hotel as a public business, subject to state and federal regulation, and basically all require that a hotel provide accommodations to those seeking accommodations, except under certain limited circumstances. Some states codify the situations under which a hotelier can refuse accommodations (as Pennsylvania does), while some statutes provide that the hotelier must provide accommodations to all guests who request a room—leaving the situations in which accommodations can be rightfully denied up to common law and case law.

Are Advance Reservations Different from Walk-Ins?

One may question whether the hotelier may treat differently a guest who calls in or emails wishing to make a reservation for some future date from the guest who walks into the hotel lobby at 8 p.m. looking for a room after a long day on the road. May the hotelier rightfully refuse to make a reservation for a person who wishes to reserve a room for a date some time in the future because of existing length-of-stay controls in place? Do the statutes and case law treat that person differently from a person who walks into the hotel on the night of stay and requests a room? The answer is not clear. The court cases and the statutes do not make any distinction. While one could argue that the case law and the

statutes apply equally to both, one could also make a legitimate argument that there is a difference. Unfortunately, that answer will have to wait until a court is faced with a suit against a hotel company for the refusal to admit where a room was available, but where the hotel refused to book the room because of length-of-stay controls.

The Airline Industry Does It, so It Must Be Legal

One argument that is frequently used when defending the legality and the use of revenue management systems is that the airline industry does it, so it must be legal. The airline industry is certainly a public or common carrier and subject to case law and statutory laws. One major difference, however, is that the airline industry is subject to federal legislation that allows it to use revenue management systems and overbooking. The Airline Deregulation Act of 1978 states:

No state or political subdivision thereof and no interstate agency or other political agency of two or more states shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to rates, routes, or services of any air carrier.

Federal law also allows airlines to overbook, but requires airlines that bump passengers to compensate the passenger according to the statute. At the same time, airlines do not deny a passenger the ability to book a flight or to reserve a flight. Airlines do not require, for example, round trip flights. They will book a one-way flight on the busiest day of the year with little advance notice so long as they have a seat. They will not withhold an available seat or refuse to sell a seat that is available. Airlines do not require that you book two flights even though you only want to book one flight. And airlines will always make a reservation for a flight if they have a seat, even if it is on a day that is the busiest of the year, if you are willing to pay the sometimes very high price. The airline industry will not deny the seat to the customer, although they may charge a very high price for that seat.

Avoiding Litigation and Keeping It Legal in the Hotel Industry

A simple solution exists to the potential problem that now exists where a hotel may be violating common law, state case law, and state statutes requiring hotels to furnish a room or a reservation if the hotel has a room available. By setting very high daily rack rates for days of the year where expected demand is high and where the hotel may wish to discourage one night stays, the hotel will still be able to offer a room to all who desire to stay for just one night. The hotel would be able to set a rate high enough to offset the revenue generated by a longer stay and would not have to turn away a guest when there is a room available. The hotel would always then have the ability to discount the room or to sell the room at a price lower than the rack rate. But the hotel would not be putting itself into a situation where it is refusing a person a room when it has rooms available. And the guest would always have the opportunity to book the available room, even though the cost might be quite high. The hotel would still be attempting to shift demand or to cause the guest to book for more than one night, but the major distinction is that it would not be denying the guest a room when it has rooms available.

Conclusion

The hospitality industry is subject to common law, state case law, and state statutes that require a hotel to furnish a room to a person desiring a room if the hotel has a room available. No obligation exists to furnish a room if certain exceptions are present: the person is drunk, engaging in illegal activities, or unable to pay for the room. Revenue management systems in the hospitality industry today are increasingly using minimum length-of-stay controls in order to boost revenue and profits. These systems control the inventory of rooms such that a person who desires to make a reservation for a particular night will be denied the room if the hotel has determined that more revenue might be generated by waiting to sell the room to someone else who might stay for a longer stay. The minimum length-of-stay controls appear to violate state case law and state statutes that require a hotel to provide a room when rooms are available. Setting high one- or two-day rack rates for certain time periods would be an easy and legal way for hotels to maximize revenue while complying with their legal duty to provide rooms to guests.

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