

**Hospitality law** is a legal and social practice related to the treatment of a person's guests or those who patronize a place of business. Related to the concept of legal liability, hospitality laws are intended to protect both hosts and guests against injury, whether accidental or intentional.

Hospitality laws relate to food service, travel, and lodging industries. It governs the various nuances of the hotel, restaurant, bar, spa, country club, meeting, and convention industries,

A hotel is a commercial establishment offering lodging to travelers and sometimes to permanent residents, and often having restaurants, meeting rooms, stores, etc., which may be used by the general public. Most states require restaurant and inn owners to apply for and receive a license to operate such facilities.

The owner is under a duty to furnish proper accommodations, and to exercise proper care for the safety and peaceful stay of the guest, while the guest must exercise due care to refrain from any disruptive or offensive conduct.

An innkeeper is under an additional duty to offer service and lodging to all persons unless he or she has some reasonable grounds for refusal. An innkeeper may not refuse service to any person on ground that would violate civil rights laws. Owners are prohibited from refusing to accommodate or entertain persons on account of their race, color, religion, or national origin.

**GENERAL INDUSTRY BACKGROUND:** The hotel industry forms an integral part of the hospitality industry. The major fields within the hospitality industry include lodging, restaurants, event planning, theme parks, cruise line, etc. The hospitality industry is a multi-billion dollar industry that mostly depends on the availability of leisure time and disposable income. A hospitality unit such as a restaurant, hotel, or even an amusement park consists of various groups within it, including facility maintenance, direct operations (servers, housekeepers, porters, kitchen workers, bartenders, etc.), management, marketing, and human resources.

The global hotel industry is a prosperous industry and according to a report published by New Industry Report by Global Industry Analysts, Inc. in 2012, the Global Hotel Industry is expected to reach USD 479 billion by 2015.

As per the Economic Impact Report issued by the World Travel and Tourism Council, the direct contribution of travel and tourism to GDP worldwide in 2013 was USD 2,155.4 billion (2.9 % of GDP). Travel and tourism industry is expected to add more than 70 million jobs over the next decade, with two-thirds of those jobs to be created in Asia.

In India alone, the total market size of the tourism and hospitality industry stood at USD 117.7 billion in 2011 and is anticipated to touch USD 418.9 billion by 2022. The success of the hotel industry in India is second only to China in the entire Asia Pacific. Further, India is a developing global business hub which offers attractive investment propositions for both luxury and moderate-tier hotels.

India is projected to be number one for growth globally in the wellness tourism sector in the next five years, clocking over 20 % gains annually through 2017. With opportunities aplenty, the future of the hotel industry in India looks very promising.

## IMPORTANT TRENDS IN THE INDUSTRY

- The Indian hospitality sector falls within the spectrum of travel and tourism. The sector's contribution to GDP is expected to grow at 7.8 % per annum during the period 2013-2023.<sup>7</sup>
- 100 % FDI is permitted on the Indian hotel industry under the automatic route.<sup>8</sup> Foreign Direct Investment in this sector has also seen a surge with the inflow during the period of April 2000–March 2014 being estimated at USD 7,348.09 million.
- Over the last few years, the hotel industry has observed a shift towards the budget and mid- market hotels. Renowned hotel companies have launched brands [eg. Ginger by Indian Hotels (IHCL)] catering to the budget and mid-market customers, who were thus far being served by the unorganized sector.
- Investment Information and Credit Rating Agency (ICRA) estimates 8-13 % growth in revenues for the industry over the next three years, with growth picking up in line with the macro-economic outlook for the country leading to mobilization of travellers and pick up in FTAs.
- The Hotel Industry is intricately associated to the tourism industry and the growth in the Indian tourism industry has in turn resulted in development in the Indian Hotels Industry. The Government of India increased resources on advertising campaigns like “Incredible India” and “Athithi Devo Bhava” to emphasize the rich variety of tourism in India.
- The ministry even granted *Tourist Visa on Arrival* for the citizens of a number of countries including, Finland, Japan, Luxembourg, New Zealand and Singapore. The tourism ministry has envisaged a budgetary allocation of INR 200 billion in the Twelfth Five Year Plan.
- According to market analysis, the number of tourists availing the tourist Visa on Arrival (VOA) scheme during January- June 2014 has recorded a growth of 28.1 %.
- According to World Economic Forum Travel & Tourism Competitiveness Report 2013, India ranked 65th out of 144 countries in terms of Foreign Tourist Arrivals (FTAs) The WTO (World Travel Organization) predicts that India will receive 25 million tourists by the year 2015. By 2015, China and India will have absolute year on year growth equal to or greater than the UK, France or Japan.
- The hospitality sector in India expects 52,000 new hotel rooms to be added in five years (2013-17). This will lead to a rise of over 65 % in total hotel inventory in India.
- The demand-supply gap in India is very material and there is need for more hotels in all major cities. The shortage is especially acute within the budget and the mid- market segment.
- Talent management is a major challenge for the sector. Inadequate supply of quality talent and increased competition for talent within the sector and from competing service sectors has made attrition a significant issue for the industry.
- In the near term, despite an anticipated revival in room demand, hotels will not be able to hike ARR's significantly as the expected additions to room inventory will intensify competition.

## MAJOR PLAYERS IN INDIA

### Leading Indian Players

- In the large/ luxury hotels segment there are about 11 long-standing players such as ITC Hotels, Asian Hotels, the Oberoi Group of Hotels, Hotel Leela Ventures, ITCD, Indian Hotels, the Park Hotels, Taj Group, Inter Continental, Welcome Heritage Group of Hotels, etc.
- In addition there are about 90 listed hotels and resorts in the small/mid-sized segment including Country Club, EIH Associate Hotels, Kamat Hotels and Mahindra Holidays and Resorts.

## **Leading International Players in India**

- Major International Players are: Hilton Hotels, Marriot International, Le Meridien Group of Hotels and Resorts, Radisson Hotels and Resorts, Hyatt Hotels Corporation, Starwood Hotels, Accor Group, Best Western Group, etc.

## **Important Industry Associations**

The major industry associations are:

- The Federation of Hotel & Restaurant Associations of India (FHRA);
- The Hotel & Restaurant Association of Eastern India (HRAEI);
- The Hotel & Restaurant Association of Northern India (HRANI);
- The Southern India Hotel & Restaurant Association (SIHRA);
- The Hotel & Restaurant Association (Western India) (HRAWI); and
- Hotels Association of India (HAI);

## **IMPORTANT LAWS APPLICABLE TO THE INDUSTRY**

The majority of the legislations governing the hospitality and hotels industry can be divided into three main sectors.

- The first head is the legislation for the construction and commissioning of hotels, restaurants, guest houses and other establishments, and includes the Foreign Exchange Management Act, the industrial licensing policies, land laws and various development control orders issued by the central and state governments.
- The second head has legislation for the operation, maintenance and management of establishments, food and hygiene standards. It also includes insurance laws, fire safety and weights and measures regulation. Further, various licenses, such as a liquor license, dance license, lodging house license, eating house license, police permissions, a license under the Shops and Establishment Act, or a license under the Food and Drug Administration Act, granted on an annual basis.
- The third head has rules regarding taxation, employment and other contractual relationships. This includes laws on income tax, service tax, expenditure tax, excise duty, luxury tax, entertainment tax, as well as laws on employment matters like Apprentice Act, ESI Act, etc.

## **SOME OF THE IMPORTANT LICENSES REQUIRED BY HOTELS UNDER VARIOUS ACTS**

- Police License / Registration.
- License under Shops & Establishments Act.
- License under Prevention of Food Adulteration Act.
- Registration under the Luxury Tax Act.
- Registration under the Sales Tax Act.
- Registration under the Contract Labour Act.
- Registration under the Pollution Control Act.
- Registration under the Apprentices Act.
- Registration under the Provident Fund Act.
- Registration under the ESI Act.
- Entertainment License on Festival Occasions.
- License for Chimney under the Smoke Nuisance Act.

- Registration under the Weights & Measures Act.
- Factory License for Laundry.
- Central Excise License for Bakery Products.
- Registration & Permits under the Motor Vehicle Act for Tourist Coaches / Taxies.
- Eating House License.
- Municipal Beer Bar License.
- License for storage of Diesel Oil.
- License for storage of Kerosene & Compressed Gas (LPG).
- Sign Board Directions, Neon Signs.
- License to deal in Foreign Exchange under FEMA.
- Cold Storage License, (if over 25 cubic ft.).
- License for Boiler & Generators and Mixers and Grinders.
- Bar License (Foreign Liquor).
- Mild Liquor License.
- Temporary License for Awnings & covering of Terrace during monsoon.
- Building Completion Certificate.
- Copy Right License for Playing of Music.
- Lodging House License
- Approval from the Department of Tourism, Government of India.
- Registration from GTDC for new projects under the Package Scheme of Incentives.

## **SOME IMPORTANT LEGISLATION**

### **Prevention of Food Adulteration Act**

- It is a Central Government Act.
- This Act has been enacted to

1. protect the public from poisonous and harmful foods.
2. prevent the sale of substandard foods.
3. protect the interests of the consumers by eliminating fraudulent practices.

### **Food Safety and Standards Act**

The Act deals with the following:

- Establishment of the Food Safety and Standards Authority of India, which lays down scientific standards relating to articles of food; and
- Regulates the manufacture, storage, distribution, sale and import of food articles, and
- Ensuring the availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.

### **The Legal Metrology Act**

- This Act was enacted to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed on weight, measure or number.
- It is a Central Government Legislation.

### **Copyrights Act**

- It is a Central Legislation to protect rights relating to literary, dramatic, musical, artistic, architectural works, etc.
- Hotels have to take license under this Act to organize plays, musical shows or any other event.

### **The Foreign Exchange Management Act (FEMA)**

- It is an Act passed in the winter session of Parliament in 1999
- It replaced Foreign Exchange Regulation Act.
- This act seeks to make offenses related to foreign exchange civil offenses.
- It extends to the whole of India.

### **The State specific Shops and Establishments statutes**

- These legislations have been enacted to provide statutory obligation and rights to employees and employers in the unorganized sector of employment, i.e. shops and establishments. It is applicable to all persons employed in an establishment with or without wages, except the members of the employer's family.
- It is a State legislation and each State has framed its own rules for the Act. The State Government can exempt, either permanently or for a specified period, any establishments from all or any provisions of this Act.
- The Act provides for compulsory registration of shop/ establishment within 30 days of commencement of work and all communications of closure of an establishment within 15 days from its closing.
- It also lays down the hours of work per day and week as well as the guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work, etc.

### **The Employees State Insurance Act**

- It is a Central Government legislation
- The promulgation of Employees' State Insurance Act, 1948 envisaged an integrated need based social insurance scheme that would protect the interest of workers in contingencies such as sickness, maternity, temporary or permanent physical disablement, death due to employment injury resulting in the loss of wages or earning capacity.
- The Act also guarantees reasonably good medical care to workers and their immediate dependents.
- Following the promulgation of the ESI Act the Central Government set up the ESI Corporation to administer the Scheme.

### **The Provident Funds Act**

- It is a Central Government Legislation.
- It is regulated by the Government of India under the Ministry of Labour and Employment.
- It administers a compulsory contributory Provident Fund Scheme.

### **The Apprentices Act**

- This Act has been enacted to provide for the regulation and control of training of apprentices and for matters connected therewith.
- It is a Central Government Legislation

### **The Air (Prevention and Control of Pollution) Act, 1981**

- This Act has been enacted to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards, the powers and functions relating thereto and for matters connected therewith.
- It is a Central Government Legislation

### **The Water (Prevention and Control of Pollution) Act, 1974**

- This Act has been enacted to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards, the powers and functions relating thereto and for matters connected therewith.
- It is a Central Government legislation

### **Hotel Insurance Policies**

- Hotel insurance is specifically designed to meet the growing requirements of the hotel industry.
- Customized hotel insurance can be arranged to cover all types of establishments. Be it spas, ranches, guest houses, bed and breakfasts (B and Bs) or apartments, hotel insurance caters to every kind of establishment.
- A standard hotel insurance policy includes protection against perils, such as builder's risk, fire and accidental damage, and natural calamities. Other types of coverage, such as liquor liability, are a part of the policy's casualty portion.

### **Other important Legislations**

- Laws related to local land norms
- Other local laws

## **TAX LAWS**

### **Income Tax Act, 1961**

- It is tax on income imposed by Central Government
- Residents in India are taxed on their worldwide income
- Non-residents are taxed on Indian source of income
- The Indian tax rates applicable to non-residents could be up to a maximum of 40 % i.e. in case of foreign companies (excluding applicable surcharge and education cess)
- If the tax payable by any company, including a foreign company taxable in India, is less than 18.5 % of its book profits, it will be required to pay Minimum Alternate Tax
- Interest received by a non-resident from Indian on foreign currency denominated loans may be taxable.
- Payments towards royalty and fees for technical services are taxable.

## **Value Added Tax (VAT)**

- Sales tax / VAT is levied by states on sale of goods within its territory.
- VAT is levied on value added at each stage in the production and distribution process of goods and services.
- All hotels that exceed the annual registration threshold have to be registered for VAT.
- VAT is levied on hotel bills pertaining to lodging, food, telephone, tours, etc.
- After the implementation of VAT, hotel tax is abolished and therefore hotels do not have to be registered for hotel tax.
- The rates of VAT differ from state to state. The general rate of VAT applicable on food and beverages in a restaurant is 14.5 %.

## **CENVAT**

- Duty imposed by Central Government on manufacture of goods
- CENVAT is imposed at 12 % with lower rates applicable in certain cases
- Food preparations containing fruits and vegetables falling under Chapter 20, which are prepared and served in a hotel, restaurant or retail outlet whether or not such food is consumed in such hotel, restaurant or retail outlet is being fully exempted from basic excise duty with exception of Bakery and Confectionery items.

## **Service Tax**

- Under the current service tax regime, all services are taxable unless exempt.
- General rate of service tax is 12.36 % (Including EC and SHEC)
- Service tax on hotel accommodation is payable at 7.42 %. Service tax on food and beverages is chargeable at 4.94 % in restaurants with air-conditioning.
- Food served in hotel rooms from their air-conditioned restaurants with liquor license will not attract service tax.
- CENVAT Credit is available for the provider of taxable output services.

## **Luxury Tax**

- Under the current tax regime, every state has their individual Luxury Tax Acts.
- Though previously it covered more categories of assessee, at present it covers only the hotels as a taxable assessee.
- The tax is levied on luxuries provided in hotels, lodging house, clubs and inns etc. including residential accommodation but does not include the supply of food, drinks or other services which is separately charged for under Service Tax or other taxes.

## **Entertainment/Amusement Tax**

- In India, entertainment tax is levied on every financial transaction that is related to entertainment such as movie tickets, major commercial shows and big private festivals. Entertainment means any exhibition, performance, amusement, game, sport or race, (including horse race) and cinematographic exhibitions.
- As per the Indian Constitution, entertainment is included in List 2. This revenue is reserved primarily for the state governments.

- Following are some other forms of entertainment that are included in the purview of entertainment taxes: amusement parks, video games, arcades, exhibitions, celebrity stage shows, sports activities, bowling alleys and billiards/pool joints.
- In India, state governments are primarily responsible for collecting the entertainment taxes. However, the union government can also collect these taxes on the basis of the type of transaction.
- The basic financial principle, which separates the entertainment taxes to be collected by the union government and ones under the jurisdiction of the state government, is mentioned in the Article 246 of the Indian constitution.

## **Expenditure Tax**

- Expenditure tax in India is regulated by the Expenditure Tax Act, 1987.
- This Act shall apply in relation to any chargeable expenditure incurred in a hotel wherein the room charges for any unit of residential accommodation at the time of incurring of such expenditure or incurred in a restaurant are one thousand two hundred rupees or more per day per individual and where,-- (a) a composite charge is payable in respect of such unit and food, the room charges included therein shall be determined in the prescribed manner; (b) (i) a composite charge is payable in respect of such unit, food, drinks and other services, or any of them, and the case is not covered by the provisions of sub-clause (a), or (ii) it appears to the Assessing Officer that the charges for such unit, food, drinks or other services are so arranged that the room charges are understated and the other charges are overstated; and (2) incurred in a restaurant.
- Rate of tax is 20 %
- It is a tax collected by the Central Government.

## **REGULATORY AGENCIES**

### The Hotel and Restaurant Approval and Classification Committee (HRACC)

- It inspects and assesses establishments based on the facilities and services offered.
- The Department of Tourism grants star status based on how well the establishment scores in the HRACC report: 90 % = five-star deluxe; 80 % = five star; 75 % = four star; 65 % = three star; 55 % = two star; and 50 % = one star.
- Food Authority assesses matters relating to the Food Safety and Standards Act, 2006: To regulate and monitor the manufacture, processing distribution, sale and import of food so as to ensure safe and wholesome food.
- The Federation of Hotel & Restaurant Associations of India – FHRAI is also a regulating authority.
- The Ministry of Tourism is the nodal authority and, along with the Department of Tourism, it is responsible for policies, promotion & regulation of hospitality industry, particularly hotels.

The following are the some of the important guidelines issued by the Department of Tourism.

- Approval of Hotels at Project Stage and Classification & Reclassification of Hotels.
- Guidelines for Classification of Heritage Hotels.
- Time Share Resorts (TSR).
- Stand Alone Restaurants
- Guidelines for apartment hotels.
- Guidelines for approval of Guest Houses.
- Hospitality Development and Promotion Board
- Implementing a transparent system for the effective monitoring of hotel projects.



- Ensure timely accrual of approvals / clearances / NOCs by the multiple agencies and facilitate the implementation of hotel projects.
- Expeditious clearances will enable completion of hotel projects in time leading to enhancement of room availability for the tourists.

## CONCLUSION

The future for the hospitality sector looks very promising. With the growth of the economic scenario gathering momentum and companies increase spending on travel, demand for the industry is very likely to improve. With salary increases within the corporate world, leisure travel and disposable income are likely to be on the rise.

Further, the number of foreign tourists coming to India is expected to reach USD 11.1 m by 2021. The demand-supply gap in India is very acute and there is need for more hotels in all major cities. The shortage is especially palpable within the budget and the mid- market segment. There is an urgent need for budget and mid- market hotels in the country as travelers look for safe and affordable accommodation.

The Indian hotel industry is expanding at a massive rate, with several companies envisaging investment plans. Investment in Travel & Tourism is estimated at INR. 2.8 trillion by 2021 (implying a CAGR of 8.7 %), according to World Travel and Tourism Committee (WTCC) estimates.

Demand continues to rise in the hospitality sector due to growing business and commercial activities; escalation of disposable income; the improved portfolio of the international tourism sector; increased leisure time; improved transport facilities; and technological advancements facilitating remote tour management from overseas.

However, due to the cash crunch and high interest rates and the sector being highly dependent on external factors, the investors and hotel groups are approaching fresh expansion projects with caution.

To solve these issues and to do away with the constraints being faced by the hotel industry in addition to limited availability of land like procurement of multiple clearances / approvals which are required from the Central and State Government agencies for hotel projects which may be as many as 65 or more clearances/approvals are required by hotel projects which varying from State to State, the Government has approved the setting up of a 'Hospitality Development and Promotion Board (HDPB)' for hotel projects.<sup>25</sup> Further, the government has extended its full support to the hospitality industry by introducing friendly legislation, a liberal policy framework, and support infrastructure and open-sky policies.

All in all, great progress can be hoped for the Hotel Industry in India in the recent future with both the Government and Private sector working towards the massive expansion of the industry.

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### UNIT-3

An inn differs from a hotel in that the inn not only offers accommodations to persons, but stabling and feed for their horses and safe keeping for their baggage and impedimenta[i]. In process of time inn and hotel became synonymous.

Generally, an innkeeper is under a duty to receive all persons who offer themselves as guests. The relation of innkeeper and guest is a mutual contractual one, and the existence of intention by both parties is an essential element. A guest is a transient person who resorts to and is received at an inn for the purpose of obtaining the accommodation which it proposes to afford. But it is essential that a party must be a transient and if s/he is transient s/he may become a guest. It is laid down as one of the distinctive features of the relation that a guest is received under an implied contract.

The relation of innkeeper and guest is a mutual contractual one, and the existence of intention by both parties is an essential element. It is an exceptional case where that requisite is not clearly established, usually by implication. Generally, if one holds himself/herself out to the public as an innkeeper, and is accustomed to receive all who apply and a transient goes to the house to procure accommodation and receives entertainment, the relationship is created. But it is not necessarily the result. It may require circumstances of more evidentiary value where the matter of mutual rights and obligations concerns the occupancy of a room and personal injuries are sustained.

A guest may be accepted at a hotel, without registration, by the mere delivery to him/her of the key to a room by the clerk. It is not mandatory that a guest must sign a hotel register as the evidence of the contract between the parties. Such contracts are mere matters of oral consent, and are legal without further formality.

It is to be noted that, if a person is wrongfully ejected from a restaurant, then s/he is entitled to recover damages for injury to his/her feelings as a result of the humiliation. However, an innkeeper is not under obligation to receive as a guest everyone who applies. S/he has the right to reject to expel persons whom s/he reasonably deems objectionable. A person becomes a guest only if s/he is received to be treated as a guest and the intention to become such must be communicated to the innkeeper or his/her agent.

However, a mere guest of the registered occupant of a room at a hotel, who shares such room with its occupant without the knowledge or consent of the hotel management, will not be treated as a guest of the hotel. It is to be noted that the rights of hotel guests are not assignable or transferable. Therefore, if a registered guest, without permission from anyone representing the hotel, transferred a room to another person, that person will not have any right to its possession.

However, it is to be noted that a person who is not a guest and has no intention of becoming a guest will not have the legal right to enter or remain in a hotel against the will of the innkeeper. Such a person has a duty to leave peacefully when requested.

The duties of an innkeeper at common law are to:

- deal safely with the guests' property;
- provide refreshment;
- provide accommodation; and
- ensure the safety of the guests' transport.

The rights of an innkeeper include:

- the right to set rules
- the right of lien; and
- the right to act as a bailee.

### **Right to set rules**

An innkeeper has a right to set reasonable 'Rules of the House' for guests. Notice of the Rules must be drawn to the attention of the guests, preferably on arrival but certainly before a loss occurs, and once they have been drawn to a guest's attention they are bound to follow them.

### **Right of lien**

An innkeeper only has certain rights over a guest's luggage or goods, not those of a lodger. This is to compensate the innkeeper for their strict duties. For example, the innkeeper can exercise a lien over the guest's luggage or goods when the guest does not pay their account. At common law, a lien or right of lien is a legal right giving passive possession and control over the guest's luggage or goods until such time as the guest pays the account.

### **Bailment**

Bailment impacts on many areas of tourism, travel and hospitality. It determines, for example, the liability of private carriers for a passenger's luggage, accommodation providers for the property of lodgers, establishments that have cloakrooms or store the goods of their guests, or even guests who may hire goods. A bailment arises when goods are delivered to a person on condition that the recipient will ultimately return them to the person depositing them. Goods under a bailment can be hired, rent, pledged or deposited for safe custody. Bailment is a transaction in its own right.

Three conditions have to be satisfied for a bailment to come into existence:

- The bailor must retain title and ownership
- The bailee must only have temporary possession and control of the goods
- The ultimate possession of the property must revert back to the bailor in identical form, unless the goods are ordered to be transferred to a third party.

### **A bailment situation generally arises in one of two ways:**

•by the owner surrendering goods to another for the purpose of having some services performed on them, e.g. leaving clothes with a drycleaner or leaving a car at a garage for a service. The person receiving the goods is expected to be skilled in their profession and to return the goods upon completion of the service; or

•when a person borrows or rents goods from the owner, in order to use them for their own purpose, e.g. renting a TV or hiring a car.

## **Refusing accommodation or service**

It should not be assumed that an innkeeper can never refuse accommodation or service.

An innkeeper can refuse accommodation when:

- all the bedrooms are full; or can refuse accommodation or service when:
- the guest is not in a fit state, e.g. insane or drunk; or
- the guest is unable to pay.

## **Accommodation**

The hotel can also refuse accommodation or refreshment if the guest is drunk or under the influence of drugs, arrives with pets which he or she wants accommodated, or if the hotel believes the guest's presence would cause annoyance to other guests.

While there is a fundamental principle called freedom of contract, i.e. the right of any person to contract, or refuse to contract, with any other person, a hotel's duty to a guest is an exception to this rule because hotels are under a legal duty to contract with guests seeking refreshment or accommodation. However a hotel has some discretion because it can refuse to provide service in the following cases:

- where guests who are not in a fit state, e.g. drunk or under the influence of drugs; or
- to guests who are not able to pay. A person who is in a fit state when s/he arrives at an hotel may cease to be in a fit state subsequently. They might get drunk or take drugs and harass the other guests. What is a 'fit state' will also vary with the type of hotel. Wellington boots, no jacket and open necked shirt might be a reasonable standard in a small country hotel but would not be reasonable in a 5 star city hotel. Restrictions on the right to refuse service

An innkeeper needs to be aware that restrictions on the right to refuse service can arise from anti-discrimination legislation such as the Commonwealth's Sex Discrimination Act 1984, Disability Discrimination Act 1992 and the Racial Discrimination Act 1975. For example, under the Sex Discrimination Act it is unlawful to discriminate against a person. This means that you cannot treat a person less favourably than others because of:

- their sex;
- marital status; and
- characteristics imagined to be associated with a particular sex (stereotyped images that women are emotional, weak or illogical) In particular, it is unlawful to discriminate in the areas of:
  - employment;
  - education;
  - provision of goods, services and facilities; and
  - provision of accommodation.

## Can We Refuse a Guest Lodging?

- **General Rule**
  - Hotel cannot refuse accommodations to anyone seeking them
- When can an innkeeper refuse accommodations?
  1. If the hotel has legitimate no vacancies
  2. Can refuse persons who are criminals, intoxicated, disorderly, unclean, or suffering from a contagious disease
  3. Can refuse known persons of bad reputation
  4. Not able or willing to pay a reasonable price for a room in advance
  5. Guests with firearms, explosives, or pets

Hotels cannot refuse minors unless one of the above exceptions apply (note: restaurants generally can)

## Selecting and Changing Accommodations

- Assignment of rooms is at the prerogative of the innkeeper
- Once a room had been assigned the innkeeper may change the room assignment
- The innkeeper does not need guest's permission to change room and transfer belongings
- Innkeeper may only enter a guest's room under the following 5 instances
  1. When imminent danger exists
  2. To transfer guest to another room
  3. Normal maintenance and repair
  4. Nonpayment
  5. When requested by the guest

## Evicting a Guest

- We can evict guests for the following 9 reasons:
  1. Failure to pay the bill
  2. Occupying a room beyond the agreed upon time
  3. Persons of ill repute
  4. Intoxication and disorderly conduct
  5. Disorderly conduct
  6. Contagiously ill guests but must use extreme care to avoid aggravating the condition
  7. Breaking house rules; rules should be posted in a conspicuous place
  8. Person who is not registered
  9. A business competitor who comes to the hotel solicit customers
- Eviction should be carried out considerately.
- Excessive force may not be used.