

Innkeepers - Opinion

The following information and advice was received from attorneys acting for BnB SURE (Pty) Ltd. The legal position in regard to innkeepers (and this includes B&B and guesthouse owners) is relatively clear. In short, the innkeeper is to be liable to the guest for any loss and /or damage sustained to items upon and stolen from the premises of the innkeeper, notwithstanding a lack of negligence on the part of the innkeeper and in the absence of the successful raising of the defenses referred to below.

The South African courts having held on various occasions that "innkeepers" are responsible in the absence of gross negligence (on the part of the guest) or "vis major", for loss of or damage to goods/movable items received by them without proof that they were negligent in any manner.

This view was clearly discussed in the Appellate Division Case of Davis vs Lockstone 1921 AD at 153 and which judgment was endorsed in the recent case of Gabriel and Another vs Enchanted Bed & Breakfast CC2002(6) SA 597 (C).

The strict liability of an innkeeper for the theft of guest items from the premises of the innkeeper may be attacked and/or defended on the basis of gross negligence on the part of the guest contributing to the loss, or of course "vis major".

Alternatively, the innkeeper may be able to show that an agreement was concluded with the guest in terms whereof the innkeeper contracted out of liability for any such loss or damage, whether this be occasioned by the innkeepers negligence or otherwise (the proverbial ticket case).

In order to be absolved from the strict liability of the general rule on the strength of the said ticket case, the innkeeper would have the onus of proving on the balance of probability to an appropriate court, that a contract excluding such liability was in fact so concluded with the guest and that essentially the guest had agreed to the terms of such exclusion either expressly, for example, by way of a written contract or by implication by accepting the provisions of an appropriate visible notice, the terms of which were clear and unambiguous.

Whilst every endeavour is made in terms of the above recommendation to provide for the exclusion of an innkeeper's liability, such liability or exclusion thereof is never absolute and is always subject to a matter of degree and the application of an appropriate court's discretion.

It should also be borne in mind that court's discretion is applied judicially but subject to the credibility and worthiness of appropriate evidence.

SUGGESTED DISCLAIMER NOTICE/INDEMNITY

Guest/s attend this establishment at their own risk.

The Proprietor, its agent/s and/or its employee/s ("the Proprietor") shall not be liable for, and the guest/s hereby waive/s and abandon/s any claims of whatever nature including but not limited to that for theft, injury, loss or damage of whatever nature, against the Proprietor, whether arising from the Proprietor's default, negligence or otherwise.

The guest/s, in addition to the aforesaid, hereby indemnify the Proprietor against any claims which may arise from whatever nature, whether arising from the Proprietor's default, negligence or otherwise.