

INNKEEPERS BILL

EXPLANATORY NOTE

THE main purpose of this Bill is to replace the rules of the common law, and certain sections of the Licensing Act 1908, relating to the liability of an innkeeper (as such) for the loss of or damage to property brought to his inn by guests. The Bill also re-enacts in a drafted form and with some modifications the provisions of the Licensing Act 1908 relating to the protection against distraint of the goods of guests and others coming to an inn, and to the powers of an innkeeper to sell goods left at his inn in certain circumstances.

At common law an innkeeper is a person who holds himself out as providing refreshment or accommodation for travellers who are willing to pay a reasonable price and are in a fit state to be received. By case law the term "traveller" has been extended to include a casual visitor, even if he only visits the inn for a drink. Under s. 172 of the Licensing Act 1908 all holders of publicans', accommodation, and tourist-house licences are deemed to be innkeepers.

An innkeeper is under an absolute liability at common law for the loss of a guest's property brought to the inn, and is in effect an insurer of such property. This liability is based on the custom of the realm, not on contract or the law of negligence. The innkeeper cannot contract out of his liability. He may escape liability where he can show that the loss of the property was due to an act of God or of the Queen's enemies, or to the wilful act or negligence of the guest or his servant or companion.

Since the passing of the Innkeepers' Liability Act 1866 in New Zealand (following the Innkeepers' Liability Act 1863 (U.K.), and now embodied in s. 174 of the Licensing Act 1908), an innkeeper has not been liable as an innkeeper to a greater amount than £30 to any one guest, unless the loss or damage was caused by the wilful act, default, or neglect of the innkeeper or his servant, or unless the goods have been expressly deposited for safe custody with the innkeeper. This limit of liability does not apply to horses or other live animals or to any carriage (which now includes a motorcar).

The law of innkeepers' liability was reported on by the Law Reform Committee of the United Kingdom in 1954 (Second Report of the Law Reform Committee; Cmd. 9161). That report led to the enactment in the United Kingdom of the Hotel Proprietors Act 1956. That Act, generally speaking, restored the original conception of a guest as being one who stays the night, abolished the liability of an innkeeper in relation to animals and vehicles, extended his liability to include damage as well as loss, and increased to £50 (or an aggregate of £100 for more articles than one) the maximum liability to any one guest.

So far as innkeepers' liability is concerned this Bill makes the following changes in the law of New Zealand:

- (a) It replaces the common law rules by defining an "innkeeper" and a "guest", and by stating the liability of an innkeeper (as such) and the circumstances in which he is liable;
- (b) In particular, the proprietor of an establishment which offers only sleeping accommodation to travellers (such as a motel) will come within the definition of an "innkeeper";
- (c) It abolishes the liability of an innkeeper (as such) in respect of vehicles and animals;
- (d) It extends the liability of an innkeeper to include liability for damage to his guest's property as well as actual loss;
- (e) It increases to £40 (with an aggregate of £150) the maximum liability to any one guest.

These changes are referred to in more detail in the following notes.

Clause 1 relates to the Short Title and commencement of the Bill. It will come into force on 1 June 1963 (the same date as the commencement of the Sale of Liquor Bill).

Clause 2: The effect of the definition of an "inn" will be to include motels and other establishments which offer sleeping accommodation only. No place is an inn unless it offers accommodation to travellers generally, without special contract. This preserves the existing common law distinction between an inn and such places as boardinghouses and so-called "residential hotels".

The definition of "innkeeper", so far as it relates to licensed hotels and tourist-houses, is brought into line with the Sale of Liquor Bill.

Innkeepers' Liability

Clause 3 provides that the new Act is to replace the common law and any previous enactment so as to define an innkeeper, to regulate his liability as an innkeeper, and to define the persons to whom he is liable.

Subclause (2) makes it clear that s. 86 of the Fires Prevention (Metropolis) Act 1774 does not prevent a claim against an innkeeper under the Bill. The relevant part of that section provides that "no action, suit or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire shall accidentally begin, nor shall any recompense be made by such person for any damage suffered thereby, any law, usage or custom to the contrary notwithstanding". It was held in *Williams v. Owen* [1955] 1 W.L.R. 1293; [1956] 1 All E.R. 104 that the section would relieve an innkeeper of his liability (as an innkeeper) where damage to a guest's property was caused by an accidental fire.

Clause 4 provides that, subject to the provisions of the new Act, an innkeeper is liable, as an innkeeper, for the loss of or damage to property brought to the inn by a guest. This does not change the common law rule, except as to damage as distinct from loss. The legislation limiting the monetary liability of an innkeeper has always been so worded as to assume that an innkeeper is liable for damage as well as for loss, but there are decisions of the Courts to the contrary (see *Williams v. Owen* [1955] 1 W.L.R. 1293; [1956] 1 All E.R. 104). It was recommended by the United Kingdom Law Reform Committee that an innkeeper's liability in respect of damage should be the same as his liability in respect of loss; and this recommendation was given effect in s. 1 (2) of the Hotel Proprietors Act 1956 (U.K.).

This clause, and *clauses 5 to 9*, all relate to the innkeeper's strict liability "as an innkeeper". They are not intended to affect any liability he may have under a contract or under the ordinary law of negligence.

Clause 5 in effect defines a "guest" for the purposes of the Bill. It provides that an innkeeper is not liable (as such) to any person for the loss of or damage to property brought to the inn except where (a) at the time of the loss or damage, sleeping accommodation at the inn had been engaged for that person, and (b) the loss or damage occurred during the period commencing with the midnight preceding, and ending with the midnight following, a period for which that person was a guest.

This brings the law back to its original conception of a traveller as one who stays the night, with an extension to include a person by or for whom a bedroom has been engaged. In so doing, the clause follows the recommendation of the United Kingdom Law Reform Committee and the United Kingdom Act.

Clause 6 states the common law defences of an innkeeper, namely that the loss or damage was caused by the default, neglect, or wilful act of the guest or his servant or companion or by an act of God or of the Queen's enemies, or that the guest had assumed exclusive charge and custody of the property or of the room in which the property was at the time.

Clause 7 abolishes the liability of an innkeeper for the loss of or damage to a vehicle or any property left in it, or a horse or other live animal or its harness or equipment. The clause follows a provision of the United Kingdom Act which was based on the Law Reform Committee's recommendation.

Clause 8 replaces s. 175 of the Licensing Act 1908. It provides, in effect, that the innkeeper's liability to any one guest is not to exceed £40 in respect of any one article, or £150 in the aggregate, unless the guest proves that (a) the property was stolen, lost, or damaged through the default, neglect, or wilful act of the innkeeper, or (b) the property was deposited expressly for safe custody with the innkeeper, or (c) either the property was offered for deposit and the innkeeper refused to receive it, or the guest wished to so offer it but, through the default of the innkeeper, was unable to do so.

Under the present law, the innkeeper's maximum liability to any one guest is £30. The present monetary limit on liability does not apply to horses or other live animals or carriages, but by reason of *clause 7* (above) there will be no liability for these.

Clause 9 states the common law rule that an innkeeper cannot contract out of his liability as an innkeeper.

Distraint and Seizure

Clause 10 re-enacts, in a redrafted form, ss. 172 and 173 of the Licensing Act 1908. The effect is that the property of a guest, traveller, or visitor which is in the inn or its appurtenances may not be distrained or seized for any claim (whether for rent or otherwise) against the inn or the innkeeper.

Innkeepers' Powers of Sale

Clause 11 re-enacts, in a redrafted form, s. 175 of the Licensing Act 1908. Where a person has deposited property with an innkeeper, or left property at the inn, the innkeeper may sell the property by public auction in satisfaction of any debt owed to him by that person for the supply of food, accommodation, or services. The property may not be sold until it has been left for two months without the debt having been paid. Advertisements of the intended sale must be published, and the person who left the property is entitled on demand to receive the surplus proceeds of the sale.

The present law includes carriages and horses among the property that may be so sold; but this clause excludes vehicles, horses, and other live animals.

Clause 12 re-enacts section 176 of the Licensing Act 1908, under which an innkeeper may sell by public auction (after advertisement) any property left in his charge, if the person who left it does not reclaim it within six months.

Subclause (3) is new. It provides for the surplus proceeds of any such sale to be paid on demand to the person who left the property.

Clause 13 is new. It provides that where within three months after any sale under *clause 11* or *clause 12* the surplus proceeds are not claimed, the innkeeper is to pay those proceeds into the Public Account as unclaimed money. They may then be claimed by the owner under the Unclaimed Moneys Act 1908.

Repeals

Clause 14 consequentially repeals ss. 172 to 176 of the Licensing Act 1908.

Hon. Mr Hanan

INNKEEPERS

ANALYSIS

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A BILL INTITULED

An Act to amend the law relating to inns and innkeepers

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Innkeepers Act 1962.

(2) This Act shall come into force on the first day of June, nineteen hundred and sixty-three.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Guest” means any person to whom an innkeeper is liable as an innkeeper in accordance with section 5 of this Act: 5

“Inn” means any house or place whose proprietor or licensee holds out that, to the extent of his available accommodation, he will provide, without special contract, sleeping accommodation for any traveller presenting himself who appears able and willing to pay a reasonable sum for the services and facilities provided and is in a fit state to be received; and includes any licensed hotel: 10

“Innkeeper”, in respect of a licensed hotel, means the holder of a hotelkeeper’s, special hotelkeeper’s, extended hotelkeeper’s, or tourist-house keeper’s licence under the Sale of Liquor Act 1962; and in respect of any other inn means the proprietor thereof: 15

“Licensed hotel” means any premises in respect of which a hotel, special hotel, extended hotel, provisional hotel, or tourist-house premises licence is for the time being in force under the Sale of Liquor Act 1962; but does not include the bar premises under a special hotel premises licence or the extended hotel premises under an extended premises licence. 20 25

(2) While any publican’s, accommodation, hotel, or tourist-house licence continues in force under the Sale of Liquor Act 1962, the licensed premises shall be deemed to be an inn, and the holder of the licence shall be deemed to be an innkeeper.

Cf. 1908, No. 104, ss. 4, 172; 1948, No. 74, s. 67 (6); 1961, No. 135, s. 74 (6) (a); Hotel Proprietors Act 1956, s. 1 (3) (U.K.) 30

Innkeepers’ Liability

3. Replacement of existing law—(1) The provisions of sections 2 and 4 to 9 of this Act shall have effect, in place of the rules of the common law and of the provisions of any previous enactment, to define an innkeeper and to regulate his liability as an innkeeper for the loss of or damage to property brought to the inn by guests, and to define the persons to whom he is so liable. 35 40

(2) Without limiting the generality of subsection (1) of this section, it is hereby declared that nothing in section 86 of the Fires Prevention (Metropolis) Act 1774 of the Parliament of Great Britain shall be construed to affect in any way
5 the liability of an innkeeper as an innkeeper, or to prevent any action being taken against him in respect of such liability.

4. Liability of innkeeper—(1) Subject to the provisions of this Act, every innkeeper shall be liable as an innkeeper for the loss of or damage to property brought to the inn by any
10 guest, whether or not the loss or damage was caused by the default or negligence of another guest or of the innkeeper or his servant or agent.

(2) The provisions of this Act shall not limit or affect any other liability incurred by an innkeeper in respect of any
15 property brought to the inn.

Cf. Hotel Proprietors Act 1956, s. 1 (1), (2) (U.K.)

5. Persons to whom innkeeper liable—An innkeeper shall not, as an innkeeper, be liable to any person for the loss of or damage to property brought to the inn except where—

20 (a) At the time of the loss or damage, sleeping accommodation at the inn had been engaged for that person; and

(b) The loss or damage occurred during the period commencing with the midnight immediately preceding, and ending with the midnight immediately following, a period for which that person was a guest at
25 the inn and entitled to use the accommodation so engaged.

Cf. Hotel Proprietors Act 1956, s. 2 (1) (U.K.)

30 **6. General defences**—An innkeeper shall not be liable as an innkeeper for the loss of or damage to the property of a guest if the innkeeper proves that—

(a) The loss or damage was caused by the default, neglect, or wilful act of the guest or a servant of or person
35 accompanying the guest, or by an act of God or of the Queen's enemies; or

(b) The guest had assumed exclusive charge and custody of the property or the room in which the property was at the time of the loss or damage.

7. No liability in respect of vehicles or animals—An innkeeper shall not be liable as an innkeeper for the loss of or damage to—

- (a) Any vehicle, or any property left therein; or
- (b) Any horse or other live animal, or its harness or equipment. 5

Cf. Hotel Proprietors Act 1956, s. 2 (2) (U.K.)

8. Monetary limit of liability—Where an innkeeper is liable as an innkeeper for the loss of or damage to any property brought to the inn, his liability to any one guest shall not exceed forty pounds in respect of any one article, or one hundred and fifty pounds in the aggregate, unless the guest proves that—

- (a) The property was stolen, lost, or damaged through the default, neglect, or wilful act of the innkeeper or his servant; or 15
- (b) The property was deposited by or on behalf of the guest expressly for safe custody with the innkeeper or with a servant of his authorised or appearing to be authorised for the purpose, and was, if so required by the innkeeper or that servant, in a container fastened or sealed by the depositor; or 20
- (c) At a time after the guest had arrived at the inn, either the property was offered for deposit as aforesaid and the innkeeper or his servant refused to receive it, or the guest or another guest acting on his behalf wished so to offer the property but, through the default of the innkeeper or his servant, was unable to do so. 25

Cf. 1908, No. 104, s. 174; Hotel Proprietors Act 1956, s. 2 (3) (U.K.) 30

9. Liability not affected by agreement—No agreement between an innkeeper and a guest shall have any force or effect to exempt the innkeeper in whole or in part from his liability as an innkeeper. 35

Distraint and Seizure

10. Property of guests and other persons not to be distrained—(1) No property of any guest, traveller, or visitor which is in any inn or any of its appurtenances, or in any place used or occupied therewith in the ordinary course of 40

resort, shall be distrained or seized for or in respect of any claim for the rent of the inn or any other claim whatsoever against the inn or its appurtenances or against the innkeeper.

5 (2) If any property is distrained or seized contrary to the provisions of subsection (1) of this section, the distraint or seizure shall be void, and any Magistrate may, on application, order the property to be restored to its owner and award such costs as he thinks fit.

Cf. 1908, No. 104, ss. 172, 173

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Innkeepers' Powers of Sale

11. Power of sale to recover debt—(1) Where any person deposits with any innkeeper any property, other than a vehicle or property left in a vehicle or a horse or other live animal or its harness or equipment, or leaves any such
15 property in the inn or any of its appurtenances, and the person is or becomes indebted to the innkeeper for the supply of any food, accommodation, or services, the innkeeper may, in satisfaction of the debt, sell and dispose of the property by public auction in accordance with this section.

20 (2) The property shall not be sold until it has been in the charge or custody of the innkeeper, or in or upon the premises, for two months without the debt having been paid or satisfied.

(3) Notice of the sale shall be given by advertisement published three times in a newspaper circulating in the locality in which the inn is situated, with an interval of not less than three nor more than seven days between each publication. The advertisement shall state that the sale will be held on or after a specified date, not being sooner than twenty-eight
30 days after the date of the first publication of the advertisement, and shall give a brief description of the property intended to be sold, together with the name of the owner or person who deposited or left it, where the name is known.

(4) The innkeeper may apply the proceeds of the sale in
35 or towards payment of the debt and of the costs and expenses of the advertising and sale, and shall, on demand by the person who so deposited or left the property, pay to that person the surplus proceeds (if any).

Cf. 1908, No. 104, s. 175

12. Power to sell unclaimed goods—(1) Any innkeeper may sell and dispose of, by public auction, any property left in his charge, if the person who left it does not reclaim it within six months.

(2) The provisions of subsection (3) of section 11 of this Act shall apply to every such sale. 5

(3) The innkeeper shall, on demand made by the person who left the property, pay to that person any surplus proceeds of the sale remaining after payment of the costs and expenses of the advertising and sale. 10

Cf. 1908, No. 104, s. 176

13. Disposal of unclaimed surplus proceeds of sale—

(1) Where within three months after any sale under section 11 or section 12 of this Act the surplus proceeds of the sale are not claimed by the owner of the property, the innkeeper shall pay the amount of those proceeds into the Public Account, and shall thereafter be relieved from all liability in respect of the money so paid. 15

(2) All money payable to the Public Account under subsection (1) of this section shall be recoverable as a debt due to the Crown. 20

(3) Any money paid into the Public Account under this section shall be deemed to have been so paid as unclaimed money, and the provisions of sections 8, 8A and 9 of the Unclaimed Moneys Act 1908 shall apply thereto. 25

Repeals

14. Repeals—Sections 172 to 176 of the Licensing Act 1908 are hereby repealed.