by Michael Gentile, J.D.

The Law of the hotel parking lot

In just about every business there is both a need for and an expectation that parking will be provided. The hospitality industry is no exception. The availability of parking is often a question that potential guests look to have answered prior to check-in.

While the answer to that question may be YES, that does little to tell the guest anything about the quality of that service the property provides; nor does it say anything about the responsibility of the hotel to the guest when it provides that service.

The truth is that hotel parking can take many forms, from open, unmarked and unpaved lots ten blocks away, to an adjacent paved parking lot that can accommodate buses and tractor-trailers to a multi-story parking garage attached to the hotel. In some cases the guest parks their own car and in others the hotel provides valet service. Depending upon any and all of these variables as well as the legal jurisdiction in which the property is located, the liability of the hotel for guests' vehicles may be vastly different.

There are three legal theories that may apply when trying to understand the law of the parking lot and the liability a hotel may incur for damage to or the theft of a guest's vehicle. Each of these theories has been discussed in other contexts in previous TRC articles, but depending upon the state or legal jurisdiction in which the hotel property is located, any of these theories may apply. Therefore, as we advise on many legal issues, be sure to consult with legal counsel to determine the applicable law in your area. The legal theories for potential liability are as follows:

Bailment

Bailment theory should be all too familiar to hotel managers. Much the same as when a guest places valuables in the hotel safe or places a garment in the coat check room, a guest who places their vehicle at the disposal of the hotel staff for parking has a right to expect that it will be returned in the condition in which it was given.

The elements of a bailment are that the rightful possessor of property, in this case a vehicle, transfers the property to another (the hotel), and the hotel accepts the transfer according to some sort of agreement and also agrees to return or deliver the vehicle as directed. This definition implies that the guest must affirmatively turn the vehicle to someone representing the hotel, usually a valet. Therefore, when bailment law is applied, it is usually in cases where the keys to the vehicle are surrendered in the parking procedure.

In cases where the keys are not surrendered, such as in adjacent open lots where a guest self-parks, courts have generally found that a bailment has not been created but instead, the guest has a license or permission to park in that space. Essentially, a transfer of possession (and ultimately responsibility) has not been made and no control has been established on the part of the hotel. Under these circumstances, no liability rests with the hotel for the theft or damage to the vehicle, unless such theft or damage was directly caused by an employee or authorized agent of the hotel.

It would seem from this discussion that the fundamental question of liability under the bailment theory is whether the keys have been surrendered. But it is not that simple. Consider the hybrid parking scenario if you will where the guest self parks in a gated parking structure and may only remove the vehicle once he or she pays a parking fee. These are commonly referred to as park-and-lock structures.

The keys have not been surrendered but the guest is also not free to remove the vehicle without meeting the condition of payment. Has a bailment been created? The answer, unfortunately, depends upon where you are. Case law in Pennsylvania indicates that this is a license and not a bailment, while Massachusetts law has found that the operator of such a parking structure is a bailee of the guest's vehicle. Once again, it is best to verify the law in your state.

That leads to the next theory that, in essence, combines bailment with license.

Implied contract

Under the theory of *implied contract*, if the owner of the vehicle does not receive the vehicle back or cannot remove it in a park-and-lock situation, the parking lot owner, or in these cases hotel Management, could be found in breach of contract. The theory here is that while a strict bailment may not have been established, the owner did agree to use some care in keeping the vehicle for the guest.

Some states have used this contract notion to either extend the concept of bailment in parking situations or to turn a license to park into a temporary lease of the parking space, finding a contractual duty of care on the part of the parking or hotel management.

This then leads to the third theory of legal liability, that being what duty of care does the hotel owe to the guest when the vehicle is parked with them?

Duty of care

Unlike bailment or contract law, *duty of care* relates to negligence law, and in these cases, damage to property due to the lack of care by the entity that has control over the parking arrangement. When courts have applied negligence law they have found that the use of a parking ticket merely sets a fee and the parking relationship is a license. As with any license situation where one has permission to be somewhere or use property for some purpose, there is a standard of care that is expected from the bailee in control to assure the safety and security of a vehicle parked with them. That duty may include:

- Adequate security control such as gates and doors
- Adequate lighting, alarms and cameras, if necessary
- Attendant, guard or police surveillance when necessary
- Proper care when hiring and training parking personnel
- Adequate signage to warn guests of rights, responsibilities and dangers

It is important to remember that when a property offers parking as a service, paid or unpaid, on-or off-site and valet or self-park, there remains a level of responsibility on the part of the hotel for the safety, security and return of the vehicle to its rightful owner. The extent of exposure can only be determined after an analysis of the parking arrangements of a particular property and the applicable law in that jurisdiction.

The foregoing discussion focused on the potential responsibility of management for the theft of or damage to a parked vehicle. But what about the theft of a laptop, video equipment, pharmaceutical samples or other personal property from inside the vehicle parked according to hotel parking procedures? That will be discussed in the next issue of *The Rooms Chronicle*. ✧

(Michael Gentile, J.D. is an attorney and associate professor in the College of Hospitality and Tourism Management at Niagara University. Previously, he was the corporate counsel for the city of Sandusky, OH. E-mail: mgentile@niagara.edu.)