

# Gen. Bus. Law § 200: Court of Appeals Held that Whether an Innkeeper Has Complied with the Safe Requirement of Section 200 Is a Question of Fact for the Jury

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hoped, therefore, that the *Riefberg* decision will not frustrate the legislature's intention to clarify this area of the law.

*Lisa Schreibersdorf*

### GENERAL BUSINESS LAW

*Gen. Bus. Law § 200: Court of Appeals held that whether an innkeeper has complied with the safe requirement of section 200 is a question of fact for the jury*

Section 200 of the General Business Law<sup>178</sup> operates in derogation of the common-law rule that innkeepers are absolutely liable

ment, stock bonus, profit sharing, and insurance arrangements as well as inter vivos gifts, irrevocable trusts, deeds of real property and gifts of U.S. Savings Bonds. *Kleinerman*, 66 Misc. 2d at 570, 319 N.Y.S.2d at 906. The Surrogate found significant the fact that the legislature set the effective date of the statute 14 months from the date of enactment, presumably to allow testators an opportunity to arrange their affairs so as to avoid the statute's operation. *Id.* at 571, 319 N.Y.S.2d at 906. The court also emphasized that the act of disinheriting one's spouse is indicative of a deteriorated marital relationship. *Id.* at 570, 219 N.Y.S.2d at 906. Hence, the court concluded that accounts created before August 31, 1966, retain their character as exempt gifts unless the amount and/or beneficiary changed. *Id.* at 571, 319 N.Y.S.2d at 906-07.

<sup>178</sup> N.Y. GEN. BUS. LAW § 200 (McKinney 1968). Section 200 of the General Business Law provides, in pertinent part:

Whenever the proprietor or manager of any hotel . . . shall provide a safe in the office of such hotel, . . . or other convenient place for the safe keeping of any money, jewels, ornaments, bank notes, bonds, negotiable securities or precious stones, belonging to the guests . . . and shall notify the guests or travelers thereof by posting a notice stating the fact that such safe is provided, . . . in a public and conspicuous place and manner in the office and public rooms . . . of such hotel, . . . if such guest or traveler shall neglect to deliver such property, to the person in charge of such office for deposit in such safe, the proprietor . . . shall not be liable for any loss . . . and if such guest or traveler shall deliver such property, to the person in charge of such office for deposit in such safe, said proprietor, . . . shall not be liable for any loss thereof, sustained . . . by theft or otherwise, in any sum exceeding the sum of five hundred dollars unless by special agreement in writing . . . .

*Id.* Section 200 is designed to protect the innkeeper from "undisclosed excessive liability." *Millhiser v. Beau Site Co.*, 251 N.Y. 290, 294, 167 N.E. 447, 448 (1929); see *infra* note 205 and accompanying text. It should be noted, however, that the statute does not establish new innkeeper liability, but rather assumes the existence of absolute common-law liability. *Navagh, A New Look at the Liability of Inn Keepers for Guest Property Under New York Law*, 25 FORDHAM L. REV. 62, 64 (1956). Thus, where strict compliance with the statutory requirement has not been observed, the common-law rule will control. *Davidson v. Madison Corp.*, 231 App. Div. 421, 426, 247 N.Y.S. 789, 796 (1st Dep't), *aff'd*, 257 N.Y. 120, 177 N.E. 393 (1931); *Shaine v. Jacobson, Inc.*, 121 Misc. 590, 591, 201 N.Y.S. 781, 781 (Sup. Ct. Spec. T. N.Y. County 1923).

for the property of their guests.<sup>179</sup> It does so by limiting such liability to \$500<sup>180</sup> for innkeepers who comply with the statutory requirements that a "safe" be provided for storage of patrons' valuables and that notice be posted indicating the availability of the safe.<sup>181</sup> New York courts rarely have had occasion to evaluate the

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<sup>179</sup> See *Zaldin v. Concord Hotel*, 48 N.Y.2d 107, 111-12, 397 N.E.2d 370, 371-72, 421 N.Y.S.2d 858, 860-61 (1979); *Epp v. Bowman-Biltmore Hotels Corp.*, 171 Misc. 338, 339, 12 N.Y.S.2d 384, 385 (N.Y.C. Mun. Ct. N.Y. County 1939); see also *Navagh*, *supra* note 178, at 62-63; Taylor, *Innkeeper, Guest and Outlaw: A Very Old Triangle*, 21 S. TEX. L.J. 355, 356-60 (1980). The common-law rule provides that innkeepers are absolutely liable, as insurers, for the property of their guests, *Zaldin*, 48 N.Y.2d at 112, 397 N.E.2d at 372, 421 N.Y.S.2d at 861, and that an innkeeper can absolve himself from liability only by showing that the loss or damage was attributable to the guest's negligence or fraud, an act of God, or the public enemy, see *Davidson v. Madison Corp.*, 231 App. Div. 421, 425-26, 247 N.Y.S. 789, 795 (1st Dep't), *aff'd*, 257 N.Y. 120, 177 N.E. 393 (1931). While the common-law rule apparently was severe, it was not considered unjust, see *Wilkins v. Earle*, 44 N.Y. 172, 178 (1870), since the traveler was relying on the protection of an "unknown host who sometimes proved unworthy of the trust," *Navagh*, *supra* note 178, at 63. Moreover, innkeepers compensated for the risk of loss by adjusting their fees in accordance with the severity of the risks encountered. *Wilkins*, 44 N.Y. at 178.

Although the common-law rule persisted for some time, changing societal conditions hastened a judicial reevaluation of the rule of absolute innkeeper liability. *Zaldin*, 48 N.Y.2d at 112, 397 N.E.2d at 372, 421 N.Y.S.2d at 861. For example, as a result of the development of more advanced transportation systems, travel became more frequent, better patrolled and, hence, less dangerous. *Navagh*, *supra* note 178, at 62. Accordingly, the need for innkeeper protection lessened. See *Zaldin*, 48 N.Y.2d at 112, 397 N.E.2d at 372, 421 N.Y.S.2d at 861; *Navagh*, *supra* note 178, at 63-64. When it became increasingly unfair to impose absolute liability upon an innkeeper, New York and many other states that previously had adhered to the common-law rule enacted legislation to limit the innkeeper's liability for lost, damaged or stolen goods. *Navagh*, *supra* note 178, at 63-64; see, e.g., N.Y. GEN. BUS. LAW § 200 (McKinney 1968); N.J. STAT. ANN. § 29:2-2 (West 1981); 37 PA. CONS. STAT. ANN. § 61 (Purdon 1954).

<sup>180</sup> N.Y. GEN. BUS. LAW § 200 (McKinney 1968). The statutory limitation is contingent upon compliance with the safe and notice requirements. See *Zaldin*, 48 N.Y.2d at 111, 397 N.E.2d at 371, 421 N.Y.S.2d at 860. Thus, the maximum liability is \$500, regardless of how the loss is sustained. *Id.* Such liability may be changed, however, by express agreement between the guest and the hotel. *Id.* The innkeeper will only be liable for the loss, theft, or destruction of those goods enumerated in the statute. See *id.*; *Navagh*, *supra* note 178, at 65. Section 200 lists seven items for which an innkeeper will be liable: "money, jewels, ornaments, bank notes, bonds, negotiable securities or precious stones, belonging to the guests . . ." N.Y. GEN. BUS. LAW § 200 (McKinney 1968). The statutory specification of items warranting innkeeper protection contrasts sharply with the responsibility imposed upon innkeepers at common law. Compare N.Y. GEN. BUS. LAW § 200 (McKinney 1968) with J. SCHOUER, *THE LAW OF BAILMENTS* § 237 (1905). At common law, the innkeeper's liability extended "to wearing apparel, jewelry, money, and even to the horses, wheat, butter and other articles of bulk belonging to the guest . . ." *Davidson v. Madison Corp.*, 231 App. Div. 421, 426, 247 N.Y.S. 789, 795 (1st Dep't) (quoting *Wilkins v. Earle*, 44 N.Y. 172, 178 (1870)), *aff'd*, 257 N.Y. 120, 177 N.E. 393 (1931).

<sup>181</sup> See N.Y. GEN. BUS. LAW § 200 (McKinney 1968). Where a safe is unavailable for the guest's use, an innkeeper will not be entitled to statutory protection. See *Zaldin*, 48 N.Y.2d

scope of the statutory terminology, and have labeled section 200 "free from ambiguity."<sup>182</sup> Recently, however, in *Goncalves v. Regent International Hotels, Ltd.*,<sup>183</sup> the Court of Appeals established a standard by which a jury could factually determine whether a particular safe satisfied the requirements of section 200.<sup>184</sup>

In *Goncalves*, two guests of the defendant, the Mayfair Regent Hotel, delivered jewelry valued at approximately two million dollars to the hotel management for storage in a safe.<sup>185</sup> Thieves subsequently broke into the hotel's safe-deposit room and removed all the valuables stored therein.<sup>186</sup> The plaintiffs brought separate actions, alleging that the safe-deposit room was inadequately secured and hence, that it was not a "safe" within the meaning of section 200.<sup>187</sup> The defendant offered its compliance with section 200 as an

at 113-14, 397 N.E.2d at 373, 421 N.Y.S.2d at 862. Even if a safe is provided, the innkeeper will not be entitled to limited liability if he fails to give sufficient notice that the safe is available for the storage of guests' valuables. See, e.g., *DePaemelaere v. Davis*, 77 Misc. 2d 1, 4-5, 351 N.Y.S.2d 808, 811-12 (N.Y.C. Civ. Ct. N.Y. County 1973) (not only must the notice be conspicuous, it must set forth the innkeeper's limited liability), *aff'd*, 79 Misc. 2d 800, 363 N.Y.S.2d 323 (Sup. Ct. App. T. 1st Dep't 1974). Thus, notice must be posted in a "public and conspicuous place and manner." N.Y. GEN. BUS. LAW § 200 (McKinney 1968). Indeed, it has been held insufficient to post notice only in the hotel's bedrooms, see *Insurance Co. of N. Am., Inc. v. Holiday Inns of Am., Inc.*, 40 App. Div. 2d 885, 885, 337 N.Y.S.2d 68, 69-70 (3d Dep't 1972), or at the head of every registration card signed by a guest, see *Epp v. Bowman-Biltmore Hotels Corp.*, 171 Misc. 338, 338-39, 12 N.Y.S.2d 384, 385 (N.Y.C. Mun. Ct. N.Y. County 1939). In addition to the "public and conspicuous" requirement, the statute requires that the text of the notice state the terms of the innkeeper's liability. See *Millhiser v. Beau Site Co.*, 251 N.Y. 290, 296, 167 N.E. 447, 449 (1929).

<sup>182</sup> *Zaldin*, 48 N.Y.2d at 113, 397 N.E.2d at 372-73, 421 N.Y.S.2d at 862.

<sup>183</sup> 58 N.Y.2d 206, 447 N.E.2d 693, 460 N.Y.S.2d 750 (1983).

<sup>184</sup> *Id.* at 217, 447 N.E.2d at 698-99, 460 N.Y.S.2d at 755-56; see *infra* notes 196-97 and accompanying text.

<sup>185</sup> 58 N.Y.2d at 211, 447 N.E.2d at 695, 460 N.Y.S.2d at 752. Upon delivering their jewelry to the hotel management, both plaintiffs signed a "Safe Deposit Receipt." *Id.* The receipt set forth the hotel's disclaimer of liability for any damage or loss exceeding \$500, *id.* at 211 & n.1, 447 N.E.2d at 695 & n.1, 460 N.Y.S.2d at 752 & n.1, and limited each plaintiff's allowable deposit value to \$500, *id.* Thereafter, each plaintiff was given a key to the deposit box. *Id.*

<sup>186</sup> *Id.* at 212, 447 N.E.2d at 696, 460 N.Y.S.2d at 753. The "safe" provided by the hotel consisted of rows of safe-deposit boxes located in a room constructed of plasterboard. *Id.*, 447 N.E.2d at 695, 460 N.Y.S.2d at 752. The room had two entrance doors made of hollow-core wood, only one of which was locked. *Id.*, 447 N.E.2d at 696, 460 N.Y.S.2d at 753. Access to the individual boxes could be obtained only with the use of two keys. *Id.*, 447 N.E.2d at 695-96, 460 N.Y.S.2d at 752-53. Each guest received one key to the safe-deposit box and the hotel retained possession of the other. *Id.*, 447 N.E.2d at 695, 460 N.Y.S.2d at 752.

<sup>187</sup> *Id.*, 447 N.E.2d at 696, 460 N.Y.S.2d at 753. Both plaintiffs alleged that the safe-deposit room was unlocked and unattended at the time of the theft, but advanced different theories of liability. *Goncalves* advanced four theories of relief: "gross negligence in provid-

affirmative defense limiting its liability to the plaintiffs.<sup>188</sup> In a consolidated action, the Supreme Court, Special Term, determined as a matter of law that the defendant had complied with the statute and therefore was entitled to the protection of the liability-limiting provision of section 200.<sup>189</sup> Consequently, each plaintiff's recovery was limited to \$500.<sup>190</sup> The Appellate Division, First Department, unanimously affirmed.<sup>191</sup>

On appeal, the Court of Appeals modified the lower court's decision,<sup>192</sup> holding that Special Term had erred in failing to submit to the jury the question of whether the defendant's safe satisfied the statutory criteria.<sup>193</sup> Writing for a divided Court,<sup>194</sup> Chief Judge Cooke observed that since section 200 operates in derogation of the common law, strict construction of the statute is mandated.<sup>195</sup> Accordingly, the Court determined that a hotel must provide a security system that would "adequately" protect stored items "against fire, theft, and other reasonably foreseeable risks."<sup>196</sup> Reasoning that it would be improper to specify one type

ing security"; "breach of contract by the defendants' failure to fulfill an earlier promise to install a secure area for their safe-deposit boxes"; "breach of duty as a bailee"; and "breach of section 200 of the General Business Law by the defendants' failure to provide a safe as required by that statute." *Id.* The other plaintiff, Cecconi, sought relief under two theories: "(1) breach of duty as a bailee; and (2) negligence in providing security." *Id.*

<sup>188</sup> *Id.* The defendant raised three affirmative defenses: first, that section 200 of the General Business Law limited the plaintiffs' recovery to \$500; second, that the plaintiffs breached the safe-deposit agreements by depositing goods worth more than \$500; and third, that the agreement, even without the statutory limitation, limited the hotel's liability to \$500. *Id.*

<sup>189</sup> *Id.* at 213, 447 N.E.2d at 696, 460 N.Y.S.2d at 753.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.* at 217-20, 447 N.E.2d at 701, 460 N.Y.S.2d at 758. The Court granted the plaintiff's cross-motions to dismiss the defendant's second and third affirmative defenses, denied the defendant's motion for summary judgment, and remanded the matter for further proceedings consistent with the opinion. *Id.*

<sup>193</sup> *Id.* at 219-21, 447 N.E.2d at 699-700, 460 N.Y.S.2d at 756-57.

<sup>194</sup> Chief Judge Cooke authored the majority opinion, in which Judges Wachtler, Fuchsberg, and Meyer concurred. Judge Jasen, joined by Judges Jones and Simons, dissented.

<sup>195</sup> 58 N.Y.2d at 215, 447 N.E.2d at 697, 460 N.Y.S.2d at 754; see 2B WARREN'S NEGLIGENCE IN THE NEW YORK COURTS § 6.02[3], at 603 (4th ed. 1980); Pound, *Common Law and Legislation*, 21 HARV. L. REV. 383, 386 (1908). While several justifications have been proffered for adhering to the rule requiring strict construction of statutes in derogation of the common law, perhaps the most persuasive reason is that the common law represents the "consummation of man's experiences" and thus is not to be readily discounted. E. CRAWFORD, *THE CONSTRUCTION OF STATUTES* 490-91 (1940). Overly strict construction of a statute, however, may operate to contravene legislative intent. See Pound, *supra*, at 385-86.

<sup>196</sup> 58 N.Y.2d at 217, 447 N.E.2d at 698-99, 460 N.Y.S.2d at 755-56. Focusing on the common-law need for public compensation, the Court rejected the defendant's assertion

of safe that would satisfy this standard, Chief Judge Cooke concluded that such a determination is more appropriately left to the trier of fact.<sup>197</sup>

Dissenting, Judge Jasen maintained that the definition of the word "safe" is a matter of statutory construction that should be left to the discretion of a court.<sup>198</sup> Judge Jasen asserted that the legislature intended that any safe capable of protecting \$500 worth of property would be sufficient to satisfy the requirements of section 200.<sup>199</sup> Accordingly, the dissent concluded that the defendant's

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that section 200 authorizes a hotel to provide either a "safe" or another convenient place for the storage of valuables. *Id.* at 219, 447 N.E.2d at 700, 460 N.Y.S.2d at 757. Such an interpretation, the majority stressed, "would allow a box or a bag kept behind the counter or a common coat closet to be interchangeable with a state-of-the-art steel vault" and would be in complete contravention of the policy underlying the statute. *Id.*

<sup>197</sup> *Id.* at 217-18, 447 N.E.2d at 698-99, 460 N.Y.S.2d at 755-56. The Court stated that it merely was "providing a standard where the Legislature ha[d] not, [and] leaving application of that standard to the fact finder." *Id.* at 218, 447 N.E.2d at 699, 460 N.Y.S.2d at 756. Since the security needs of different hotels vary, such an approach was warranted. *Id.* at 217, 447 N.E.2d at 698, 460 N.Y.S.2d at 755. More specifically, Chief Judge Cooke maintained that "[a] large, luxury hotel has far different security needs than a small, low-priced motel catering to a different clientele." *Id.* Accordingly, the Court noted that "all aspects of the hotel's security system may be considered" in determining whether a receptacle is a "safe" under section 200. *Id.*, 447 N.E.2d at 699, 460 N.Y.S.2d at 756.

With respect to the defendant's affirmative defenses, the Court determined that the enforceability of the agreements contained in the safe-deposit receipt could be decided without addressing the defendant's compliance with section 200. *Id.* at 219-20, 447 N.E.2d at 700, 460 N.Y.S.2d at 757. The Court concluded that, regardless of the defendant's compliance with section 200, the contracts were unenforceable for lack of consideration, since the defendant merely was fulfilling a statutory obligation. *Id.* at 220, 447 N.E.2d at 700, 460 N.Y.S.2d at 757. Conversely, if the defendant did not otherwise satisfy the requirements of section 200, such agreements would be void as against public policy because they "would encourage hotels to provide lesser protection than is required by the statute." *Id.*

<sup>198</sup> *Id.* at 225-26, 447 N.E.2d at 703, 460 N.Y.S.2d at 760 (Jasen, J., dissenting). The construction or interpretation of the terms of a statute is always a question for the court. See N.Y. STATUTES § 75(a) (McKinney 1971); de Sloovere, *The Functions of Judge and Jury in the Interpretation of Statutes*, 46 HARV. L. REV. 1086, 1086-87 (1933). Judge Jasen asserted that if the meaning of the word "safe" was left "to be decided on an *ad hoc* basis by a jury rather than the courts, the availability to hotels of the statutory limitation of liability would be subject to the vagaries of a body of lay individuals possessing no training or expertise in the task of discerning and applying legislative intent . . ." 58 N.Y.2d at 223, 447 N.E.2d at 702, 460 N.Y.S.2d at 759 (Jasen, J., dissenting).

<sup>199</sup> 58 N.Y.2d at 226-27, 447 N.E.2d at 704, 460 N.Y.S.2d at 761 (Jasen, J., dissenting). Judge Jasen reasoned that since the legislature intended to insulate innkeepers from absolute liability by limiting the amount recoverable by an injured plaintiff to \$500, it would be illogical to require hotels to receive and secure goods worth more than that amount. *Id.* at 226-28, 447 N.E.2d at 704-05, 460 N.Y.S.2d at 761-62 (Jasen, J., dissenting). Further, the dissent asserted that the legislature could not have intended a hotel to "install the same type of safes and vaults used by banks and other institutions that are responsible for safeguarding valuables worth millions of dollars merely to safeguard \$500 worth of property."

"safe" should have been deemed adequate as a matter of law.<sup>200</sup>

It is submitted that the Court of Appeals' decision to leave the determination of statutory compliance with the safe requirement of section 200 to the discretion of the jury was improper in that the Court failed to heed the logic of prior judicial constructions as well as the legislature's intent in enacting the statute. Historically, New York courts have refrained from submitting the construction of section 200 to the jury.<sup>201</sup> Indeed, despite an initial pronouncement that compliance with the statute's corollary requirement of posting notice was a question of fact,<sup>202</sup> the courts consistently have declined to present the issue of compliance to the jury, determining as a matter of law whether notice actually was posted.<sup>203</sup> Moreover,

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*Id.* at 226-27, 447 N.E.2d at 704, 460 N.Y.S.2d at 761 (Jasen, J., dissenting).

<sup>200</sup> *Id.* at 228, 447 N.E.2d at 705, 460 N.Y.S.2d at 762 (Jasen, J., dissenting). The dissent conceded that the agreements limiting the hotel's liability were unenforceable. *Id.* at 229-30, 447 N.E.2d at 706, 460 N.Y.S.2d at 763 (Jasen, J., dissenting). Although concurring in the majority's conclusion regarding the agreements, Judge Jasen asserted that "[t]o suggest that the promise of the hotels could not serve as consideration because it merely restated their statutory obligation is incorrect." *Id.* at 230, 447 N.E.2d at 706, 460 N.Y.S.2d at 763 (Jasen, J., dissenting). Rather, the dissent posited that the promise of the hotel to provide a safe for the storage of guests' valuables was sufficient consideration to form a binding contract. *Id.* (Jasen, J., dissenting). However, Judge Jasen determined that the contract was one of "exoneration rather than of indemnity," and did not operate to relieve the hotel of liability for its own negligence in the absence of an explicit disclaimer. *Id.* (Jasen, J., dissenting).

<sup>201</sup> See, e.g., *Salisbury v. St. Regis-Sheraton Hotel Corp.*, 490 F. Supp. 449, 451 (S.D.N.Y. 1980) (as a matter of law plaintiff was a "guest"); *Ramaley v. Leland*, 43 N.Y. 539, 542 (1871) (whether a watch was a "jewel" or an "ornament" decided by the court); *Spiller v. Barclay Hotel*, 68 Misc. 2d 400, 401, 327 N.Y.S.2d 426, 428 (N.Y.C. Civ. Ct. N.Y. County 1972) (court found as a matter of law that patron was a "guest"); *Federal Ins. Co. v. Waldorf-Astoria Hotel*, 60 Misc. 2d 996, 999, 303 N.Y.S.2d 297, 301 (N.Y.C. Civ. Ct. N.Y. County 1969) (court determines whether cufflinks are "jewels"). For example, in an early attempt to define what would constitute "jewels or ornaments" under section 200, the Court of Appeals held that items worn as "ornaments" come under the statutory category, but that items "carried for use and convenience" do not. *Ramaley*, 43 N.Y. at 542; see, e.g., *Spiller*, 68 Misc. 2d at 401, 327 N.Y.S.2d at 428; *Federal Ins. Co.*, 60 Misc. 2d at 997-98, 303 N.Y.S.2d at 296-97; see also *Salisbury*, 490 F. Supp. at 451 (interpreting New York law and determining as a matter of law whether a plaintiff was a guest within the meaning of section 200).

<sup>202</sup> See *Peters v. Knott Corp.*, 191 Misc. 898, 899, 82 N.Y.S.2d 650, 651 (Sup. Ct. App. T. 2d Dep't 1948).

<sup>203</sup> See, e.g., *Insurance Co. of N. Am., Inc. v. Holiday Inns of Am., Inc.*, 40 App. Div. 2d 885, 885, 337 N.Y.S.2d 68, 70 (3d Dep't 1972); *DePaemelaere v. Davis*, 77 Misc. 2d 1, 3-5, 351 N.Y.S.2d 808, 810-12 (N.Y.C. Civ. Ct. N.Y. County 1973), *aff'd*, 79 Misc. 2d 800, 363 N.Y.S.2d 323 (Sup. Ct. App. T. 1st Dep't 1974); *Epp v. Bowman-Biltmore Hotels Corp.*, 171 Misc. 338, 342, 12 N.Y.S.2d 384, 388 (N.Y.C. Mun. Ct. N.Y. County 1939). In *Epp*, the defendant had "posted" notice of the availability of the hotel's safe on registration cards, which were to be signed by each guest upon registration. 171 Misc. at 338-39, 12 N.Y.S.2d at

irrespective of the conceptual soundness of considering the varied needs of different inns, the validity of such ad hoc determinations is questionable in light of the Court's express recognition that section 200 was not intended to have discriminatory application for large and small hotels.<sup>204</sup>

The intent of the legislature in enacting section 200 evidently was to safeguard against the undisclosed, excessive hotel liability

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385. The plaintiff, whose goods had been stolen from her room, claimed that such warning was an insufficient "posting" as required by section 200 and sued for the full value of her lost money and personal property. *Id.* Concluding that the term "post" as used in the statute means to "nail, attach, affix or otherwise fasten up physically and to display in a conspicuous manner," *id.* at 342, 12 N.Y.S.2d at 388, the Court held that "a posting is not made by printing or recording a notice in a book or on a card and keeping it on a desk," without submitting the issue to the jury, *id.*; *cf.* *Waitt Constr. Co. v. Chase*, 197 App. Div. 327, 331, 188 N.Y.S. 589, 592 (1st Dep't 1921) ("hotel" means a house held out to the public as a place where transient persons will be received as guests for compensation), *aff'd mem.*, 233 N.Y. 633, 135 N.E. 948 (1922).

In *DePaemelaere*, the plaintiff deposited \$26,000 in the defendant's safe, and upon withdrawal of the money found that \$10,000 was missing. 77 Misc. 2d at 2, 351 N.Y.S.2d at 809-10. As a result of the defendant's assertion that section 200 limited his liability, the court was forced to evaluate whether the "notices of limitation of liability [were] conspicuously posted . . . so as to effect notice to the plaintiff . . ." *Id.* at 3, 351 N.Y.S.2d at 810. The defendant had "posted" a notice of limited liability on a 7- by 9-inch card at the right-hand side of the registration desk. *Id.* at 4, 351 N.Y.S.2d at 811. Reasoning that "it was the intention of the Legislature to see to it that real and effective notice of the hotel's limitation of liability was given to its guests," and that the 7- by 9-inch card was not "conspicuous" enough, the court concluded as a matter of law that the hotel was not entitled to statutory protection. *Id.* at 4-5, 351 N.Y.S.2d at 812.

Similarly, in *Holiday Inns*, the Appellate Division, Third Department dismissed the hotel's contention that its compliance with the posting requirement presented questions of fact as being "without merit." 40 App. Div. 2d at 885, 337 N.Y.S.2d at 70. In that case, the hotel had posted notices in some but not all public rooms. *Id.*, 337 N.Y.S.2d at 69-70. This attempt at statutory compliance was deemed inadequate as a matter of law because the defendant hotel had not posted notice in "all public rooms." *Id.*

<sup>204</sup> See *Zaldin v. Concord Hotel*, 48 N.Y.2d 107, 114, 397 N.E.2d 370, 373, 421 N.Y.S.2d 858, 862 (1979). In *Zaldin*, two guests were denied access to a hotel's vault when they attempted to redeposit jewelry that had been removed earlier that evening. *Id.* at 113, 397 N.E.2d at 372, 421 N.Y.S.2d at 861. During the night, their room was burglarized and the jewelry was stolen. *Id.* In determining the extent of the hotel's liability to the guests, the Court evaluated whether a safe had been made available within the meaning of section 200. *Id.* at 113-15, 397 N.E.2d at 372-74, 421 N.Y.S.2d at 862-63. Reasoning that on its face the statute does not "distinguish between large and small inns, between those that cater to the large convention and those that cater to the individual patron, . . . between those that have wealthy clientele and those that do not," *id.* at 114, 397 N.E.2d at 373, 421 N.Y.S.2d at 862, the Court determined as a matter of law that the presence of unique or mitigating circumstances should not be a factor in a court's evaluation of statutory compliance, *id.* Accordingly, by refusing to accept the plaintiffs' redeposit, the hotel technically was not providing a "safe" to its guests and therefore could not avail itself of the statutory limitation of liability. *Id.* at 115, 397 N.E.2d at 374, 421 N.Y.S.2d at 863.



prevalent under the common-law rule that an innkeeper stood as an insurer of his patron's goods.<sup>205</sup> It is suggested that the *Goncalves* Court's grant of discretion to the jury to determine statutory compliance contravenes this legislative goal and inhibits the beneficial operation of section 200.<sup>206</sup> By submitting the question of statutory compliance to the jury rather than judicially engrafting a precise definition onto the statute, the Court has vitiated the predictability of statutory protection for an innkeeper who has attempted to provide a "safe" on his premises.<sup>207</sup> In light of these undesirable ramifications, it is hoped that the New York courts will reevaluate the decision to vest in the jury the determination of

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<sup>205</sup> See *Millhiser v. Beau Site Co.*, 251 N.Y. 290, 294, 167 N.E. 447, 447 (1929); *Dilkes v. Hotel Sheraton, Inc.*, 282 App. Div. 488, 489, 125 N.Y.S.2d 38, 39 (1st Dep't 1953); *Navagh*, *supra* note 178, at 63-64. The legislative intent in enacting section 200 was not to benefit patrons by ensuring absolute protection of their valuables, but rather to protect innkeepers from unlimited liability. See *Millhiser*, 251 N.Y. at 294, 167 N.E. at 447. Indeed, section 200 was enacted to remedy the disproportionate relationship that unlimited liability bears to the amount of compensation received from guests. *Navagh*, *supra* note 178, at 63-64.

<sup>206</sup> See *Goncalves*, 58 N.Y.2d at 224-25, 447 N.E.2d at 703, 460 N.Y.S.2d at 760 (Jasen, J., dissenting); *supra* note 198. In arriving at a standard for juries to apply when evaluating compliance with section 200, the majority distinguished *State v. Stoner*, 473 S.W.2d 363 (Mo. 1971), which was cited as support by the dissent. See 58 N.Y.2d at 218 n.3, 447 N.E.2d at 699 n.3, 460 N.Y.S.2d at 756 n.3. In *Stoner*, the Supreme Court of Missouri held as a matter of law that a coin receptacle in a pay telephone booth was a "safe" within the meaning of a statute prohibiting the forcible entrance into a "safe" for the purpose of obtaining money. 473 S.W.2d at 368. The *Goncalves* dissent relied on *Stoner* as support for its contention that the defendant's safe satisfied the statutory requisites. 58 N.Y.2d at 225, 447 N.E.2d at 703, 460 N.Y.S.2d at 760 (Jasen, J., dissenting). The *Goncalves* majority distinguished *Stoner* by reasoning that the Missouri court was not concerned with protecting the same interests as was the *Goncalves* Court. *Id.* at 218 n.3, 447 N.E.2d at 699 n.3, 460 N.Y.S.2d at 756 n.3. Hence, it is submitted, the *Goncalves* Court was premising its analysis solely on whether the safe provided was adequate to protect a guest's valuables without regard to the legislative goal of assuring limited liability to innkeepers. See *Federal Ins. Co. v. Waldorf-Astoria Hotel*, 60 Misc. 2d 996, 997, 303 N.Y.S.2d 297, 299 (N.Y.C. Civ. Ct. N.Y. County 1969) (purpose of section 200 is to protect hotel from undisclosed excessive liability).

<sup>207</sup> See *Goncalves*, 58 N.Y.2d at 223-24, 447 N.E.2d at 702, 460 N.Y.S.2d at 759 (Jasen, J., dissenting). Judge Jasen observed in *Goncalves*:

[U]nder the majority's view, a bank of safe-deposit boxes contained in a sheetrock room in a Buffalo hotel could be determined by a Buffalo jury to be a "safe" within the meaning of the statute, thus limiting the hotel's liability to \$500, while the identical facility installed by an Albany hotel might be found by an Albany jury not to be a "safe" within the meaning of the statute . . .

*Id.* (Jasen, J., dissenting).

The *Goncalves* decision, it is submitted, frustrates the intended practicality and predictability in complying with the terms of section 200 by removing the possibility that a uniform standard of statutory compliance will be enunciated for the purpose of providing guidance to innkeepers in their efforts to limit their liability for patrons' goods.

statutory compliance with the safe requirement and implement a judicial construction as a matter of law. Such an approach, it is submitted, would allow for the judicial establishment of definitive confines within which to construe the word "safe," and would enable innkeepers to provide safes with some degree of certainty that the statutory prescriptions are being satisfied.

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