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The Law and the Host of The Canterbury Tales

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THE LAW AND THE HOST OF THE CANTERBURY TALES

FREDERICK B. JONASSEN, J.D., PH.D.*

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ABSTRACT

Geoffrey Chaucer, the author of the medieval English poem *The Canterbury Tales*, was likely to have received legal training in order to perform his duties as an Ambassador sent to Spain, Italy, and France on the King's business, Controller of the Wool Custom, Clerk of the King's Works, and Member of various Commissions of the Peace. His life records evince many personal dealings in legal matters, his circle of friends included many lawyers, and the literary culture of his time made ample use of legal ideas and issues. Chaucer invested his poem with his legal knowledge, including his character Harry Bailly, the Innkeeper of the Tabard Inn where the pilgrims lodge, and their guide on the journey to Canterbury. The Tabard was located in Southwark, a suburb of London, which, because it lay outside the jurisdiction of the city, was notorious for its lack of commercial regulation and its lawlessness. Bailly's responsibility for the pilgrims reflects the law of innkeeper's liability, which the courts of England had developed just before Chaucer began work on *The Canterbury Tales*. The story-telling agreement that Bailly makes with the pilgrims is saturated with legal terms and rituals essential to the formation of a binding fourteenth-century contract. By means of the story-telling contract, Bailly extends his liability for the pilgrims from the Tabard Inn to the Canterbury road. Thus, Chaucer's tales are not only framed by the pilgrimage, but have a legal framework as well.

I. INTRODUCTION

About twenty lines into *The General Prologue* of the fourteenth-century English poem *The Canterbury Tales*, the poet Geoffrey Chaucer recounts that he was staying at the Tabard Inn, preparing to embark on a pilgrimage to the shrine of St. Thomas Becket in Canterbury, when:

At night, there arrived at that hotel,
A group of as many as twenty-nine people
From various walks of life, who by chance came together
In fellowship, and pilgrims they were all¹

In his persona as narrator, Chaucer relates how he joins the group and describes each pilgrim in turn,² ending with the Host, or Innkeeper, of the Tabard Inn where they were all staying. His name, we later learn, is Harry Bailly,³ and Chaucer describes him as:

A fine man . . .
To be a master of ceremonies in any hall,
He was a large man, with big, bright eyes –
There wasn't a better tradesman in all of Cheapside,
Bold in his speech, discreet and well-mannered,
In manliness, he lacked nothing at all.⁴

Chaucer, then, portrays Harry Bailly as the ideal Host. He is outgoing, courteous, and engaging; no one could better preside over festive events and entertain groups of people, all talents Bailly puts to good use in assuming leadership of the pilgrimage. Of course, he is also a member of the innkeeping trade, a profession that fourteenth-century English statutes and case law tightly regulated. In his study of innkeeper's liability, David S. Bogen makes the offhand suggestion that the contemporary English law concerning innkeeper's liability may have influenced

1. See GEOFFREY CHAUCER, *The Canterbury Tales*, in THE RIVERSIDE CHAUCER 23, frag. I, ll. 23-26 (Larry D. Benson et al. eds., 1987) [hereinafter CT] ("At nyght was come into that hostelrye / Wel nyne and twenty in a comapaignye / Of sondry folk, by aventure yfalle / In felawshipe, and pilgrims were they alle . . ."). I provide my own translations of the Middle English text into modern English and include the Middle English verse either in the text when there is a question of close reading or in the footnotes.

2. *Id.* at 24-35, frag. I, ll. 43-714.

3. The Cook addresses the Host by name because they are acquaintances. *Id.* at 85, frag. I, ll. 4358-60.

4. See *id.* at 35, frag. I, ll. 751-56 ("A semely man . . . / For to been a marchal in an halle. / A large man he was with eyen stepe -- / A fairer burgeys was ther noon in Chepe -- / Boold of his speche, and wys, and wel ytaught, / And of manhod hym lakkede right naught.").

Chaucer's portrayal of Bailly.⁵ The rule of innkeeper's liability holds the proprietor of an inn "strictly liable for loss or damage to a guest's property . . ."⁶ Such strict or absolute liability makes the innkeeper an insurer of such property.⁷ Chaucer's own expertise in law conspires with the historical fact that English courts established the rule of innkeeper's liability during Chaucer's lifetime to make Bogen's suggestion worth considering.

The following Article focuses on Chaucer's innkeeper and fourteenth-century English law and legal culture. In so doing, this Article undertakes to make a contribution to the many commentaries that have interpreted the role of Harry Bailly in *The Canterbury Tales*,⁸ but which have paid scant attention to the

5. David S. Bogen, *The Innkeeper's Tale: The Legal Development of a Public Calling*, 1996 UTAH L. REV. 51, 51 (1996). "Herry Bailly, Chaucer's ideal fourteenth-century host, would never turn away a pilgrim if a bed could be found. It is uncertain whether this hospitality was also compelled by law, because English law concerning innkeepers' obligations to their customers was just beginning to develop during Chaucer's lifetime." *Id.*

6. *Paraskevides v. Four Seasons Wash.*, 292 F.3d 886, 889 (D.C. Cir. 2002) (internal quotation marks omitted).

7. See JOHN E.H. SHERRY, *THE LAWS OF INNKEEPERS* 415 (3d ed. 1993) ("In the majority of American jurisdictions, the liability of an innkeeper for loss or damage to the property of a guest is governed by the rule of insurer's liability."). This is so even if the guest does not inform the innkeeper of what property he has in his possession or what it is worth. *Id.*

8. Tara Williams, *The Host, His Wife, and Their Communities in The Canterbury Tales*, 42 THE CHAUCER REV., Spring 2008, at 383; Tison Pugh, *Queering Harry Bailly: Gendered Carnival, Social Ideologies, and Masculinity Under Duress in The Canterbury Tales*, 41 THE CHAUCER REV., Summer 2006, at 39; Leo Carruthers, *Narrative Voice, Narrative Framework: The Host as "Author" of The Canterbury Tales*, in *DRAMA, NARRATIVE AND POETRY IN THE CANTERBURY TALES* 51 (Wendy Harding ed., 2003); John Plummer, *"Beth Fructuous and That in Litel Space": The Engendering of Harry Bailly*, in *NEW READINGS OF CHAUCER'S POETRY* 107 (Robert G. Benson & Susan J. Ridyard eds., 2003); Mark Allen, *Mirth and Bourgeois Masculinity in Chaucer's Host*, in *MASCULINITIES IN CHAUCER: APPROACHES TO MALENESS IN THE CANTERBURY TALES AND TROILUS AND CRISEYDE* 9 (P.G. Beidler ed., 1998); Thomas C. Richardson, *Harry Bailly: Chaucer's Innkeeper*, in *CHAUCER'S PILGRIMS: A HISTORICAL GUIDE TO THE PILGRIMS IN THE CANTERBURY TALES* 324 (Laura C. & Robert T. Lambdin eds., 1996); Jesus R. Serrano Reyes, *The Host's Idiolect*, 4 SELIM: J. OF THE SPANISH SOC'Y FOR MEDIEVAL ENG. LANGUAGE AND LITERATURE 20 (1994); S.S. Hussey, *Chaucer's Host*, in *MEDIEVAL ENGLISH STUDIES PRESENTED TO GEORGE KANE* 153 (J.S. Wittig ed., 1988); J.D. Burnley, *Chaucer's Host and Harry Bailly*, in *CHAUCER AND THE CRAFT OF FICTION* 195 (L.A. Arrathoon ed., 1986); L.M. Leitch, *Sentence and Solaas, The Function of the Hosts in The Canterbury Tales*, 17 THE CHAUCER REV., Summer 1982, at 5; Elton D. Higgs, *"What Man Artow?"*, 2 MID-HUDSON LANGUAGE STUD. 28 (1979); David R. Pichaske & Laura Sweetland, *Chaucer on the Medieval Monarchy: Harry Bailly in The Canterbury Tales*, 11 THE CHAUCER REV., Winter 1977, at 179; Walter Scheps, *"Up Roos Oure Hoost, and Was Oure Aller Cok": Harry Bailly's Tale-Telling Competition*, 10 THE CHAUCER REV., Fall 1975, at 113; Barbara Page, *Concerning the Host*, 4 THE CHAUCER REV., Summer 1969, at 1; C.C.

English law and legal practice of Chaucer's day that related to innkeeping. After a summary of the evidence from Chaucer's life records and poetry indicating that the poet had a professional expertise and interest in law, the Article will then examine the history of the court-made law of innkeeper's liability, the implications of locating the Tabard Inn, as Chaucer does, in the notorious district of Southwark, and the fourteenth-century law of contract formation by which Bailly extends his liability for the pilgrims and their property in exchange for another night of their business. By these means, Bailly assumes the role of judge and governor of the pilgrim group and the responsibility to see that the pilgrimage is a spiritual success for the pilgrims even as he makes it a financial success for himself.

II. CHAUCER'S LEGAL KNOWLEDGE⁹

A. *Did Chaucer Have a Legal Education?*

Chaucer was born about 1343.¹⁰ His father John was a prosperous vintner, or wine merchant.¹¹ By 1357, his family placed him as a page in the household of Elizabeth, Countess of Ulster and wife of Prince Lionel, the second surviving son of King Edward III.¹² Such positions allowed upwardly mobile youths like Chaucer to acquire the manners of polite society and obtain a patron, "which was the only secure avenue to a career in the public service in the Middle Ages."¹³

In 1359, Edward III led a military campaign in France.

Richardson, *The Function of the Host in The Canterbury Tales*, 12 TEX. STUD. IN LITERATURE AND LANGUAGE 325 (1970); William Keen, "To Doon Yow Ese": A Study of the Host in the General Prologue of The Canterbury Tales, 9 TOPIC, No.19, 1969, at 5; Alan T. Gaylord, *Sentence and Solaas in Fragment VII of The Canterbury Tales: Harry Bailly as Horseback Editor*, 82 PUBLICATIONS OF THE MOD. LANGUAGE ASS'N 226 (1967).

9. The following summary owes much to Joseph Allen Hornsby's review of Chaucer's legal career, supplemented with biographical information provided by Derek Pearsall and the CHAUCER LIFE-RECORDS. See generally JOSEPH ALLEN HORNSBY, CHAUCER AND THE LAW (1988); DEREK PEARSALL, THE LIFE OF GEOFFREY CHAUCER: A CRITICAL BIOGRAPHY (Claude Rawson ed., 1992); CHAUCER LIFE-RECORDS (Martin M. Crow & Clair C. Olson eds., 1966) [hereinafter CLR].

10. PEARSALL, *supra* note 9, at 9-11; CLR, *supra* note 9, at 370.

11. PEARSALL, *supra* note 9, at 11-12.

12. Two leaves from the account book of Elizabeth, Countess of Ulster, survive, which record payments for Chaucer beginning in 1357. CLR, *supra* note 9, at 13-18. See also PEARSALL, *supra* note 9, at 34-38 (discussing the documents from the home expense accounts of Elizabeth, Countess of Ulster, pertaining to Chaucer's services as a page). "A page was a boy or youth anywhere between 10 and 17 who was engaged as a servant and personal attendant in the household of a person of rank . . ." *Id.* at 38.

13. PEARSALL, *supra* note 9, at 38.

Prince Lionel brought a contingent of soldiers that included Chaucer, who by now possessed the rank of a *valettus*, or esquire of the royal household.¹⁴ During the siege of Rheims, Chaucer was captured by the French and subsequently ransomed for £16, apparently “the going rate for a *valettus*.”¹⁵

From 1360 to 1366, there occurs a void in the records concerning Chaucer. It is tempting to speculate that during these years Chaucer was pursuing a legal education, perhaps at the Inns of Court.¹⁶ In an Elizabethan edition of Chaucer’s works published in 1598, almost two hundred years after the poet’s death, Thomas Speght included a biography of the poet. Speaking of the friendship between Chaucer and his fellow poet John Gower, Speght wrote: “It seemeth that both these learned men were of the Inner Temple: for not many yeeres since, Master *Buckley* did see a Record in the same house, where *Geoffrey Chaucer* was fined two shillings for beating a Franciscane fryer in Fleetstreete.”¹⁷

The account is bolstered by the reference to a “Master Buckley,” who was probably William Buckley, the Chief Butler and Librarian of the Inner Temple when Speght wrote his account. Buckley was the official responsible for preserving the archives of the Inner Temple, and thus the person most likely to have seen any records concerning Chaucer.¹⁸

The account, however, is unreliable for several reasons.¹⁹ The Inner Temple did not come into existence until after 1381, when the mobs of Wat Tyler’s peasant rebellion destroyed the New Temple, occasioning its reconstruction and division into the Inner

14. *Id.* at 40-41. A *valettus*, like a page, would have some menial tasks but would also serve in a martial capacity during times of war and participate in the household’s activities of hunting, feasting, and entertainment. *Id.* at 41, 55.

15. *Id.* at 40.

16. Edith Rickert advanced the first serious argument that Chaucer had a legal education. Edith Rickert, *Was Chaucer a Student at the Inner Temple?*, in *THE MANLY ANNIVERSARY STUDIES IN LANGUAGE AND LITERATURE* 20-32 (Books for Libraries Press, Inc. 1968) (1923). John Matthews Manly then took up and expanded her argument. JOHN MATTHEWS MANLY, *SOME NEW LIGHT ON CHAUCER* 7-45 (1926).

17. PEARSCALL, *supra* note 9, at 29 (quoting Thomas Speght, *Chaucer’s Life*, in *THE WORKES OF OUR ANTIENT AND LERNED ENGLISH POET, GEFREY CHAUCER, NEWLY PRINTED*, sig. b. ii (Thomas Speght ed., 1598)).

18. PEARSCALL, *supra* note 9, at 29; RICKERT, *supra* note 16, at 21. However, Edith Rickert found several Buckleys who could have been the William Buckley who saw the Chaucer record. HORNSBY, *supra* 9, at 13-14.

19. Speght’s account drew criticism from the Elizabethan antiquarian, Francis Thynne, who argued in his *Animadversions* of 1598 that Chaucer would have been too old to have attended the Inns of Court as a student by the time lawyers were in the Temple, and such an older man would not have been guilty of such misbehavior. See RICKERT, *supra* note 16, at 20-21; HORNSBY, *supra* note 9, at 12-13 (quoting Thynne’s arguments).

and Middle Temples.²⁰ By 1381, Chaucer was Controller of the Customs for hides, skins, and wools for the port of London, and was, therefore, “engaged in business other than learning law at Inns of Court.”²¹ Furthermore, recent studies of the Inns of Court suggest that during the fourteenth century the Inns only served as living quarters for provincial lawyers who had business at the King’s Court at Westminster.²² The Inns of Court did not begin to offer legal training until the fifteenth century, and only in the sixteenth century did they provide a systematic legal education.²³ Finally, Speght’s account does not indicate that Chaucer was a student, but only that he committed a misdemeanor in his fracas with the friar.²⁴

In Chaucer’s day, law students most likely obtained legal training in the courts of law themselves by observing legal procedures from a place reserved for law students called “the crib.”²⁵ These students were known as “apprentices of the bench,” and were more probably attached to the court itself rather than to an established lawyer.²⁶ The only formal training was provided by the clerks of the courts of chancery.²⁷ Subsequent to Chaucer’s service in France, the royal court might have supplemented his education with the training then available in the courts of chancery.²⁸ This would provide a satisfying, though speculative,

20. HORNSBY, *supra* note 9, at 14-15.

21. *Id.* at 15.

22. *Id.* at 18 (citing E.W. Ives, *The Common Lawyers, in* PROFESSION, VOCATION AND CULTURE IN LATER MEDIEVAL ENG. 181 (C.H. Clough ed., 1982); E.W. IVES, *THE COMMON LAWYERS OF PRE-REFORMATION ENGLAND* (1983); JOHN P. DAWSON, *THE ORACLES OF THE LAW* (1968)); *see also* PEARSALL, *supra* note 9, at 29-30 (finding that while the Inns of Court provided a quasi-university education in the fifteenth century, Chaucer would not have received a similar education during the fourteenth century).

23. HORNSBY, *supra* note 9, at 17, 20; PEARSALL, *supra* note 9, at 29-30.

24. HORNSBY, *supra* note 9, at 14. Hornsby points out that the reliability of Speght’s account is also questionable because Chaucer’s beating of a Franciscan friar would have engaged the anti-Catholic sentiments prevalent in Elizabethan England. *Id.* at 10-11; *see also* PEARSALL, *supra* note 9, at 30 (suggesting that Buckley may have been willing to concoct the record in order to enhance the prestige of the Inner Temple by some association with Chaucer).

25. HORNSBY, *supra* note 9, at 19.

26. J.H. BAKER, *AN INTRODUCTION TO ENGLISH LEGAL HISTORY* 159 (4th ed. 2002).

27. HORNSBY, *supra* note 9, at 19.

28. Chaucer could have received an excellent education as a result of serving in the household of Prince Lionel. Thomas Frederick Tout states: “How far a court training could under Edward III give a thorough culture to men, originating in the middle class of townsmen, . . . can well be illustrated by the career of that eminent civil servant, Geoffrey Chaucer.” 3 CHAPTERS IN THE ADMINISTRATIVE HISTORY OF MEDIAEVAL ENGLAND 201-02 (1920-1933), *quoted in* PEARSALL, *supra* note 9, at 34. *See also* HORNSBY, *supra* note 9, 20-21; Thomas F. Tout, *Literature and Learning in the English Civil Service in*

explanation for his activities between 1360 and 1366. However, in the absence of documented evidence, experts are divided on whether there is any reason to believe Chaucer was a chancery clerk. Derek Pearsall flatly states, "Chaucer was not a chancery clerk, and his poetry reveals none of the specialized knowledge that might be expected if he had had such a training."²⁹ Mary Flowers Braswell disagrees and argues that Chaucer's professional career supports such a proposition.³⁰ In any event, Chaucer soon began his career of civil service in positions which required someone with a legal preparation or the ability to acquire one quickly on the job.

B. Chaucer's Professional Career

Early in his career, Chaucer received several commissions to represent the English government on diplomatic missions abroad. From February 22 to May 24, 1366, he and three companions were issued safe-conduct from the Kingdom of Navarre.³¹ In anticipation of an English military campaign against a French invasion of Castile, Chaucer may have been on a mission to persuade the King of Navarre not to side with the French.³² From December 1, 1372, to May 23, 1373, Chaucer traveled to Italy to assist in negotiating a trade agreement with Genoa and a loan from the Florentine bankers on behalf of King Edward III.³³

the Fourteenth Century, 4 SPECULUM 365, 382 (1929) (stating that the excellent education that Chaucer would have received was that of a junior member in the household of the King).

29. PEARSALL, *supra* note 9, at 29-30.

30. MARY FLOWERS BRASWELL, CHAUCER'S "LEGAL FICTION": READING THE RECORDS 27-28 (2001).

31. CLR, *supra* note 9, at 64-66; PEARSALL, *supra* note 9, at 51; DONALD R. HOWARD, CHAUCER AND THE MEDIEVAL WORLD 113-15 (1987).

32. PEARSALL, *supra* note 9, at 51-53; *see also* HOWARD, *supra* note 31, at 113-17 (examining the possibility that Chaucer went to Spain to persuade English mercenaries not to get involved on the side of France). Chaucer also had a passport to travel through Dover in 1368 and Letters of Protection to go abroad in the king's service in 1370. PEARSALL, *supra* note 9, at 53-55; CLR, *supra* note 9, at 29-31.

33. PEARSALL, *supra* note 9, at 102-05; CLR, *supra* note 9, at 32-40. In Chaucer's Enrolled Account of his Receipts and Expenses for the journey, he is stated to have been "in negociis regis versus partes Jannue et Florencie," "on the King's business with the parties of Genoa and Florence." CLR, *supra* note 9, at 35. In Genoa, the embassy's mission was to arrange the use of an English port for Genoese trade and to hire Genoese mercenaries. HOWARD, *supra* note 31, at 170. In Florence, King Edward III was probably seeking to secure a loan that would finance an invasion of France planned for 1373. About thirty years earlier, Edward III had defaulted on loans amounting to £230,000, a major cause for the bankruptcy of the great Florentine banks, the Bardi and the Peruzzi, in 1345. *Id.* The embassy must have been successful in restoring confidence in England's credit, as the war with France took place as planned. *Id.*

In 1376, Chaucer went to France “in secretis negociis domini Regis,” “on the Lord King’s secret business.”³⁴ Between 1377 and 1381, he traveled to Paris and Montreuil several times to negotiate a peace treaty between England and France and arrange a marriage between Richard II and one of the daughters of the French King.³⁵ Chaucer was ordered to Lombardy in 1380 to negotiate an alliance against the French with Bernabò Visconti, the lord of Milan, and Sir John Hawkwood, a British mercenary active in warfare among the Italian city-states.³⁶

Hornsby argues persuasively that a peace treaty or trade agreement is very much like a contract between nations obligating the parties to maintain peaceful relations and conditions favorable to trade.³⁷ Even if Chaucer was not the leader of these missions, they nevertheless would have afforded him the opportunity to learn or supplement his knowledge of the legal principles and language that would create binding contracts.³⁸

Chaucer’s performance in these missions no doubt helped him obtain domestic posts. From 1374 to 1386, Chaucer was the Controller of the Wool Custom.³⁹ In this position, his main duty was to keep records and accounts of the quantities of wool, wool-skins and leather-skins being exported through the port of London, so that the proper export duty was charged for them.⁴⁰ He dealt with wool merchants on a daily basis, interpreted contracts and tax regulations, and adjudicated agreements in accordance with the *lex mercatoria*, or law merchant, a set of customary rules

34. PEARSALL, *supra* note 9, at 105; CLR, *supra* note 9, at 42-43. See also HOWARD, *supra* note 31, at 222-23 (speculating that the trip may have concerned the treaty negotiations with France that were going on at Bruges at this time).

35. PEARSALL, *supra* note 9, at 105-06; HOWARD, *supra* note 31, at 223; CLR, *supra* note 9, at 44-53.

36. PEARSALL, *supra* note 9, at 106-08; HOWARD, *supra* note 31, at 224-31; CLR, *supra* note 9, at 53-61. The Lombardy embassy negotiated for a marriage between Richard II and Caterina, Bernabò’s daughter. HOWARD, *supra* note 31, at 257. Chaucer also had a letter of protection to journey to Calais “in obsequium, regis,” “in the king’s service,” in 1387, but nothing is known about this enterprise. PEARSALL, *supra* note 9, at 206-07.

37. HORNSBY, *supra* note 9, at 22.

38. *Id.*

39. CLR, *supra* note 9, at 148-270.

40. PEARSALL, *supra* note 9, at 94; see also HOWARD, *supra* note 31, at 210-11, and HORNSBY, *supra* note 9, at 22 (explaining Chaucer’s duties). Chaucer issued indentures, documents which recorded the merchant’s payment of the tax, and which were sealed with a “cocket,” the official seal of the controller and collector of the wool custom. See PEARSALL, *supra* note 9, at 99 (stating that Chaucer had to deal with over a thousand cockets each year on average). The merchant kept one copy of the indenture as a receipt, and another copy went to the Exchequer. HOWARD, *supra* note 31, at 212; HORNSBY, *supra* note 9, at 22.

governing business transactions among merchants.⁴¹ He probably saw much venality and corruption around him.⁴²

As Controller of the Wool Custom, Chaucer had extensive dealings with the Exchequer, the government department that managed the financial affairs of the nation and maintained a specialized court of law which heard cases involving money owed to the Crown.⁴³ Chaucer had to be familiar with the procedures of the Exchequer, its audits, hearings, and seizures of the property of merchants who had failed or refused to pay the duty on their merchandise.⁴⁴ He also had to know the procedures of the London courts, especially the Mayor's Court, where trade or contractual disputes were commonly litigated.⁴⁵

From 1389 to 1391, Chaucer served as Clerk of the King's Works.⁴⁶ In this office, Chaucer procured labor and materials necessary for the construction and repair of buildings owned by the Crown.⁴⁷ As he did when he was Controller, he kept accounts of expenditures and reported to the Exchequer.⁴⁸ As Clerk of the King's Works, Chaucer had the authority to enter into contracts, to discipline workers who abandoned a project or refused to work, and to make sworn inquests regarding stolen building materials and effect their return.⁴⁹ The position involved the exercise of various legal skills and judicial power.⁵⁰

Chaucer received various appointments to public offices in which he worked with the law. He was a Member of Parliament for Kent from October to November of 1386.⁵¹ From 1385 to 1389, Chaucer was a member of a commission of the peace for the county

41. HORNSBY, *supra* note 9, at 22; HOWARD, *supra* note 31, at 212; *see also* Harold J. Berman, *The Law of International Commercial Transactions (Lex Mercatoria)*, 2 EMORY J. INT'L DISP. RES. 235, 237 (1988) (discussing the *lex mercatoria*).

42. HOWARD, *supra* note 31, at 211-12; *see also* PEARSALL, *supra* note 9, at 100 (discussing the thievery of customs duties by royal merchants).

43. HORNSBY, *supra* note 9, at 22-23.

44. *Id.* at 23; CLR, *supra* note 9, at 267.

45. HORNSBY, *supra* note 9, at 23.

46. CLR, *supra* note 9, at 402-76.

47. PEARSALL, *supra* note 9, at 210; HOWARD, *supra* note 31, at 454; HORNSBY, *supra* note 9, at 23.

48. PEARSALL, *supra* note 9, at 211-14; HOWARD, *supra* note 31, at 456; HORNSBY, *supra* note 9, at 23-24. Chaucer had to petition the Exchequer for funds by issuing writs to that office. HORNSBY, *supra* note 9, at 23-24. Some of these writs authorized the issuance of a tally. *Id.* A tally was a document that served as legal proof that a person had a right to collect a debt from the king. *Id.* at 24. Chaucer's dealings were audited during his tenure in office.

49. HORNSBY, *supra* note 9, at 24.

50. *Id.*

51. PEARSALL, *supra* note 9, at 202; CLR, *supra* note 9, at 364-69. This session of Parliament is called the "Wonderful Parliament" because of its attempt to control the King's choice of advisers and curb the King's power in financial matters. PEARSALL, *supra* note 9, at 201-02.

of Kent.⁵² The main function of the commissioners or justices of the peace was to maintain the peace of the county, for example, by summoning and taking surety of good behavior from persons who threatened violence.⁵³ A quorum of commissioners adjudicated minor cases such as assault and breaches of various economic regulations.⁵⁴ They also conducted preliminary hearings for more serious crimes to present indictments to a higher court.⁵⁵ In 1387, Chaucer was appointed to a commission of inquiry.⁵⁶ Like the commissions of the peace, the commission of inquiry collected evidence of serious crimes, in this case one of abduction.⁵⁷ In 1390, Chaucer served on a judicial commission as commissioner of walls and ditches—a position that empowered him to convene a jury to inquire into the condition of walls, ditches, and other structures, to try persons who damaged these facilities, and to order repairs.⁵⁸

C. Chaucer's Personal Experience with the Law

Chaucer had many personal dealings with the law. On several occasions he stood as surety, or mainprenor, where he guaranteed that a person would fulfill a legal obligation to appear at court or make a payment.⁵⁹ He received wardships or guardianships in which he managed the property of heirs until they came of age.⁶⁰ In 1379, he was sued for contempt and trespass.⁶¹ In 1380, he was accused of rape, indicated by a document in which the alleged victim released Chaucer from all actions concerning her rape or any other claims she may have had against him.⁶² In a Court of Chivalry case from 1386, Chaucer

52. CLR, *supra* note 9, at 348-63; PEARSALL, *supra* note 9, at 205-07; HORNSBY, *supra* note 9, at 24-25.

53. CLR, *supra* note 9, at 349, 355-59; HORNSBY, *supra* note 9, at 25.

54. CLR, *supra* note 9, at 349, 358; PEARSALL, *supra* note 9, at 205-06; HORNSBY, *supra* note 9, at 25.

55. CLR, *supra* note 9, at 356-57; PEARSALL, *supra* note 9, at 206.

56. CLR, *supra* note 9, at 375-83.

57. *Id.* at 378; HORNSBY, *supra* note 9, at 25.

58. CLR, *supra* note 9, at 490-93; HORNSBY, *supra* note 9, at 25.

59. CLR, *supra* note 9, at 276-93. Chaucer served as mainprenor for John de Romsey (1375), Sir William Beauchamp (1378), John Hende (1381), Simon Manning (1386), and Matilda Nemeg (1388-89). *Id.*

60. CLR, *supra* note 9, at 294-302. Chaucer served as guardian for Edmund Staplegate (1375) and William Soles (1375). *Id.*; PEARSALL, *supra* note 9, at 101-02. It was customary for heirs of the King's tenants-in-chief to be made wards of the court until they were twenty-one years of age. PEARSALL, *supra* note 9, at 101-02. The King would sell or grant these wardships to favorites, and those who received them would then have control of the heir's properties and the opportunity to pocket profits from them. *Id.*

61. CLR, *supra* note 9, at 340-42. It is not clear what offenses this entailed, and it was presumably settled out of court. *Id.*

62. CLR, *supra* note 9, at 343-47. "Perhaps the one biographical fact everyone remembers about Chaucer, if one fact is going to be remembered, is that in 1380 Cecilia Chaumpaigne apparently threatened to accuse him of

gave a deposition regarding a controversy over a coat of arms.⁶³ Between 1388 and 1399, there were various actions against Chaucer to recover debts, one by an innkeeper.⁶⁴ In 1390, during his tenure as clerk of the King's works, he was robbed by highwaymen.⁶⁵ Criminal proceedings were brought against the assailants in the Court of the King's Bench in 1391.⁶⁶ Chaucer executed leases and personal loan agreements, witnessed deeds of land, and was appointed attorney to take seisin, or ownership of land, on behalf of the actual grantee.⁶⁷ In these legal documents, Chaucer is referred to as one of several attorneys, "attornatos."⁶⁸

raping her." CAROLYN DINSHAW, *CHAUCER'S SEXUAL POETICS* 10 (1989), quoted in PEARSELL, *supra* note 9, at 327 n.9. Though the term used to denote the offense, "raptus," could also refer to an abduction (sometimes perpetrated during this time for such purposes as making a favorable marriage), legal historical opinion favors a physical rape or perhaps a seduction. CLR, *supra* note 9, at 345-46. There is no other evidence or proof of the allegation. *Id.* However, Chaucer took steps to insure that the settlement was secure. The witnesses he obtained for the release were highly respectable citizens. It appears that Chaucer paid a settlement through intermediaries. *Id.* at 343-47. There is also circumstantial evidence that Chaucer fathered a child by Chaumpaigne, Lewis. PEARSELL, *supra* note 9, at 137-38.

63. CLR, *supra* note 9, at 370-74. The Court of Chivalry had jurisdiction over matters of a military nature and the right to bear a particular coat of arms. HORNSBY, *supra* note 9, at 27; see also PEARSELL, *supra* note 9, at 9-10 (noting that on October 13, 1386, Chaucer was called before the High Court of Chivalry to make a deposition as to the right to bear a certain coat of arms).

64. CLR, *supra* note 9, at 388-401. These were actions by John Churchman (1388), Henry Atwood, a Hosteler or Innkeeper of London (1388-90); William Venour (1393); John Layer (1394-95); and Isabella Buckholt (1398-99). *Id.*

65. See *id.* at 477-89 (noting that Chaucer's duties required him to travel with large sums of money). He was robbed on September 3, 1390, and again on September 6, twice in a single day. *Id.*

66. *Id.* The perpetrators of the latter two robberies were eventually caught, some hanged and others jailed for these and other offenses. PEARSELL, *supra* note 9, at 213.

67. CLR, *supra* note 9, at 504-13; HORNSBY, *supra* note 9, at 26. Chaucer received the appointment of Substitute Forrester of the Forrest of North Petherton in 1390-1391 and again in 1397-1398. CLR, *supra* note 9, at 494-99. The land belonged to Roger Mortimer, then a minor. *Id.* Sir Peter Courtenay was farming the land, that is, collecting its income for a fee. *Id.* Courtenay had a lawsuit pending against the Mortimers. Either the Mortimers or the Exchequer in the Mortimers' name appointed Chaucer to look after their interests. *Id.*; CLR, *supra* note 9, at 494-99; HOWARD, *supra* note 31, at 459.

68. CLR, *supra* note 9, at 510; see also BRASWELL, *supra* note 30, at 27 (noting that the definition for "attourne" provided in the MIDDLE ENGLISH DICTIONARY is vague: "a person formally designated or appointed to represent a litigant in court or to transact official business."). MIDDLE ENGLISH DICTIONARY (last visited Jan. 6, 2010), available at <http://quod.lib.umich.edu/m/med/> (follow the "Lookups", then type "attourne" in the blank word box, then click "search") [hereinafter MED]. Perhaps the principal had simply given Chaucer the power to perform the real estate transactions on his behalf, a "power of attorney."

D. Chaucer's Circle

Chaucer's professional and personal legal experiences placed him in the company of many attorneys. Of course, he worked with attorneys in the various judicial commissions on which he served.⁶⁹ But Chaucer also enjoyed friendships with lawyers who shared his literary interests.

For example, Chaucer dedicated his narrative poem, *Troilus and Criseyde*, to the "moral Gower" and the "philosophical Strode."⁷⁰ John Gower was a fellow poet and friend who was likely a lawyer.⁷¹ Ralph Strode was an Oxford logician and philosopher, and an eminent attorney.⁷² Other Chaucer friends and acquaintances who had legal training were Henry Scogan, to whom Chaucer addressed his occasional poem, *The Envoy to Scogan*;⁷³ Thomas Usk, who complimented Chaucer's *Troilus* in his prose work, *The Testament of Love*;⁷⁴ Thomas Hoccleve, a younger poet who expressed his affection and admiration for Chaucer in his *Regement of Princes* and had a portrait of Chaucer painted into the manuscript of that work soon after Chaucer's death;⁷⁵ Lewis Clifford, who brought from France a poem praising Chaucer by a

69. HORNSBY, *supra* note 9, at 24-25. All six attorneys who served with Chaucer on the commission of the peace were sergeants at law and later became justices in the royal courts. *Id.*; see also CLR, *supra* note 9, at 359-63 (outlining all the men who served with Chaucer as sergeants at law and naming six of them as lawyers).

70. GEOFFREY CHAUCER, *Troilus and Criseyde*, in THE RIVERSIDE CHAUCER, *supra* note 1, at 585, bk. V, ll. 1856-57.

71. See P. Strohm, *Chaucer's Fifteenth Century Audience and the Narrowing of the "Chaucer Tradition,"* 4 STUD. IN THE AGE OF CHAUCER 3, 6-14 (1982) (discussing the attorneys who were in the circle of Chaucer's friends and acquaintances); E.P. Kuhl, *Some Friends of Chaucer*, 29 PUBLICATIONS OF THE MODERN LANGUAGE ASS'N 270, 275-76 (1914) (discussing further the attorneys who were in the circle of Chaucer's friends and acquaintances); see also BRASWELL, *supra* note 30, at 122 (showing that Gower was an attorney). Chaucer appointed Gower as his attorney when he was abroad in 1378. CLR, *supra* note 9, at 54, 60.

72. See PEARSALL, *supra* note 9, at 133-34 (noting that Strode authored treatises on logic, debated the religious and social reformer John Wyclif, was a common sergeant at law, and from 1374 to 1386 lived near Chaucer's residence in London).

73. THE RIVERSIDE CHAUCER, *supra* note 1, at 655; PEARSALL, *supra* note 9, at 183. Scogan, who served as tutor to the sons of Henry IV, quoted from Chaucer's poem "Gentilesse" and *The Wife of Bath's Tale* in his own "Moral Balade," which was addressed to the royal sons. PEARSALL, *supra* note 9, at 167; see also THE RIVERSIDE CHAUCER, *supra* note 1, at 654 (showing that Scogan quoted from "Gentilesse"); CT, *supra* note 1, at 152, frag. III, ll. 1121, 1131-32 (demonstrating further that Scogan borrowed from Chaucer's work *The Wife of Bath's Tale*).

74. PEARSALL, *supra* note 9, at 131-32.

75. See *id.* at 184, 285-91 (noting that Hoccleve was clerk of the privy seal, and out of affection for Chaucer and gratitude for his interest in the younger poet, he wished to preserve Chaucer's real likeness).

contemporary French poet, Eustache Deschamps;⁷⁶ Philip de la Vache, to whom Chaucer gave some advice in his poem, *Truth*;⁷⁷ Richard Stury; John Clanvowe; John Montagu;⁷⁸ and Richard Forester.⁷⁹ It is likely that Chaucer knew William Langland, the poet of *Piers Plowman*, in which, as shown *infra*, Langland demonstrated an extensive knowledge and interest in legal matters.⁸⁰

Chaucer's association with so many attorneys substantiates his participation in the legal culture of his time. If lawyers formed a significant part of the poet's audience, it would be natural for him to include allusions to legal matters for their entertainment and amusement.

E. Links Between Medieval Literary and Legal Texts

More than thirty years ago, John Alford argued convincingly that "[t]he association between literature and law has never been more impressive . . . than in Medieval England."⁸¹ More recent years have witnessed the appearance of broadly based studies that explore the relationship between the law and literature in fourteenth-century England,⁸² as well as scholarship elucidating

76. *Id.* at 181. Clifford was a knight of the king's chamber, while Deschamps was a major French poet. *Id.* at 130-31. In his poem to Chaucer he wrote, "Mais pran en grêles euvres d'escolier / Que par Clifford de moy avoir pourras," "Kindly receive the works of a schoolboy / Which you will be able to have from me through Clifford." *Id.*

77. THE RIVERSIDE CHAUCER, *supra* note 1, at 653; PEARSALL, *supra* note 9, at 166-67, 183. Like Clifford, de la Vache was a knight of the king's chamber. *Id.* at 167.

78. Strohm, *supra* note 71, at 9; PEARSALL, *supra* note 9, at 181-83.

79. See HORNSBY, *supra* note 9, at 28 (noting that besides Gower, Chaucer also appointed Forester as his attorney). See also CLR, *supra* note 9, at 54-60 (identifying Forester, tentatively, as a professional lawyer).

80. BRASWELL, *supra* note 30, at 127; see generally Helen Cooper, *Langland's and Chaucer's Prologues*, 1 Y.B. OF LANGLAND STUD. 71 (1987); JILL MANN, CHAUCER AND MEDIEVAL ESTATES SATIRE 208 (1973). Scholars have suggested that Langland had a circle of readers who were for the most part attorneys, which raises the likelihood that Chaucer too counted many attorneys in his own audience who would understand allusions to legal matters in his poetry. BRASWELL, *supra* note 30, at 28; EMILY STEINER, DOCUMENTARY CULTURE AND THE MAKING OF MEDIEVAL ENGLISH LITERATURE 56 (2003); see also Andrew Galloway, *Piers Plowman and the Subject of Law*, 15 Y.B. OF LANGLAND STUD. 117 (2001); Kathryn Kerby-Fulton & Steven Justice, *Langlandian Reading Circles and the Civil Service in London and Dublin, 1380-1427*, in 1 NEW MEDIEVAL LITERATURES 59 (1999); John Alford, *Langland's Learning*, 9 Y.B. OF LANGLAND STUD. 1 (1995); and Andrew Galloway, *Piers Plowman and the Schools*, 6 Y.B. OF LANGLAND STUD. 89 (1992) (suggesting that Chaucer surrounded himself with attorneys who would understand and appreciate his work).

81. John Alford, *Literature and Law in Medieval England*, 92 PUBLICATIONS OF THE MODERN LANGUAGE ASS'N 941, 941 (1977).

82. See generally RICHARD FIRTH GREEN, A CRISIS OF TRUTH: LITERATURE

this connection in Chaucer's poetry.⁸³ Legal language and procedures are in fact essential elements in the work of Chaucer's two most prominent literary contemporaries, William Langland and the *Gawain*-poet.

Langland's *Piers Plowman* is a dream vision which uses allegorical characters and actions to discuss the religious, social, and economic conditions and controversies of England in the late fourteenth century.⁸⁴ Langland incorporates many legal texts and documents in his allegory: "Mede's Charter, Truth's Pardon, Piers's Testament, Hawkin's Quittance, Moses' Maundement, and Peace's Patent."⁸⁵ For Langland, the law and its documents were a means of understanding salvation history.⁸⁶

Virtually nothing is known about the anonymous author of *Sir Gawain and the Green Knight*.⁸⁷ However, the *Gawain*-poet, as he is often called, based the plot of his masterpiece on two contracts. During a New Year's Eve party at King Arthur's court, a huge Knight, whose clothes and skin are completely green, enters the hall and challenges any knight there to take a swing at his head with the ax he carries, so long as that person agrees to journey to the Green Knight's castle and to allow the Green Knight to return the favor one year later.⁸⁸ Gawain accepts, and after he cuts off the Knight's head, the headless Knight picks it up,

AND LAW IN RICARDIAN ENGLAND (1999); THE LETTER OF THE LAW: LEGAL PRACTICE AND LITERARY PRODUCTION IN MEDIEVAL ENGLAND (Emily Steiner & Candace Barrington eds., 2002); STEINER, *supra* note 80.

83. See generally HORNSBY, *supra* note 9; BRASWELL, *supra* note 30.

84. WILLIAM LANGLAND, THE VISION OF WILLIAM CONCERNING PIERS THE PLOWMAN (Walter W. Skeat ed., 1886), *reprinted in* THE VISION OF WILLIAM CONCERNING PIERS THE PLOWMAN (Early English Text Soc'y, Oxford 1979) [hereinafter PIERS THE PLOWMAN].

85. STEINER, *supra* note 80, at 93. See 1 PIERS THE PLOWMAN, *supra* note 84, at 45, C text, Passus III, ll. 63 ff. (explaining Mede's Charter); *id.* at 227, C text, Passus X, ll. 1 ff. (explaining Truth's Pardon); *id.* at 201, C text, Passus IX, ll. 91 ff. (explaining Piers's Testament); *id.* at 426, B text, Passus XIV, ll. 189 ff. (explaining Hawkin's Quittance or Pardon); STEINER, *supra* note 80, at 49 (defining a quittance as a "semi-official pardon or written release issued to someone who owed a financial debt"); 1 PIERS THE PLOWMAN, *supra* note 84, at 499, C text, Passus XX, ll. 1 ff. (explaining Moses' Commandment, or the Mosaic law). See also Alford, *supra* note 81, at 942 (*Piers Plowman* "contain[s] several charters, court scenes, and hundreds of legal terms and maxims from common, civil and canon law, so that in the whole history of English literature there is nothing even remotely to be compared with it.").

86. See STEINER, *supra* note 80, at 11 (stating, "the poem's most urgent concern, the immanence of the divine in the human condition, is imagined as a series of fictive documents of various kinds.").

87. The poet is known from a British Museum manuscript, Cotton, Nero A. x, Art. 3. See generally SIR GAWAIN AND THE GREEN KNIGHT (J.R.R. Tolkien & E.V. Gordon eds., Norman Davis ed., 2d ed. 1967) [hereinafter SGGK].

88. SGGK, *supra* note 87, at 8-9, ll. 279-300. The Green Knight calls this a "Crystemas gomen," or Christmas game. *Id.* at 9, l. 283.

and the head speaks, reminding Gawain of his agreement.⁸⁹ The rest of the poem concerns whether Gawain will live up to the agreement, or contract, he made with the strange visitor. A year later, he sets out to meet the Green Knight and stops at the castle of Sir Bertilak de Hautdesert. It was Bertilak who, by the transformative magic of Morgan la Faye, had masqueraded as none other than the Green Knight.⁹⁰ Bertilak tells Gawain the castle of the Green Knight is nearby and promises Gawain a guide to take him there on the appointed day.⁹¹ In the meantime, Bertilak proposes another contract to occupy the three days Gawain will be a guest at his castle. Bertilak will go out hunting three days and each night will share with Gawain whatever he kills in the hunt if Gawain shares whatever Gawain might receive at the castle.⁹² As it turns out, the extent to which Gawain adheres to this second contract determines his fate when he honors the terms of the first in his meeting with the Green Knight.⁹³

Chaucer, then, was conversant with the law by professional and personal experience as well as by training; he had friends who were attorneys, and attorneys were in his audience; and he worked in a literary culture in which it was commonplace to incorporate law into literary works. Recent scholars have shown that the law permeated Chaucer's poetry as well as his life. Braswell writes, "It is clear even to the most casual observer that Chaucer wrote about the law."⁹⁴ She explains:

A Sergeant of the Law is numbered among the Canterbury pilgrims, and the tale he tells includes, appropriately, judges and trials. The Doctor of Physic relates a story of a sham court case, involving a trumped-up charge; while the Wife of Bath describes a jury of women, who sentence a rapist knight. *The Parliament of Fowls*

89. *Id.* at 13, ll. 448-56.

90. *Id.* at 23-24, ll. 833-41. Gawain does not learn of the trick until after his ordeal, when the Green Knight reveals who he really is. *Id.* at 67, ll. 2445-46. In Arthurian romance, Morgan la Faye is King Arthur's half sister and sometime antagonist of the King.

91. *Id.* at 29-30, ll. 1050-78.

92. *Id.* at 31, ll. 1105-25.

93. *Id.* at 64-65, ll. 2334-68. Each day, early in the morning, Bertilak's lady visits Gawain's bedroom and tempts him. On the first two visits, he only accepts kisses and promptly returns these winnings by kissing Bertilak when the knight returns from hunting. But the third night, the lady offers Gawain a green girdle, or belt, which, she says, she says, has magical powers to protect the wearer from any cuts. Gawain accepts the gift, thinking it may save his life when he meets the Green Knight. He does not tell Bertilak about the girdle, so he does not have to give up the gift. When Gawain submits for the return ax blow, the Green Knight reflects the three tests when he twice feints a blow of the ax, and the third time nicks Gawain's neck to indicate that Gawain fell slightly short of his word the third night.

94. BRASWELL, *supra* note 30, at 13-14.

employs a legislative structure for birds who are choosing their mates; "An A B C" depicts a sinful plaintiff before the Virgin's court. Such works contain overt legal connections, structures foregrounded and borrowed intact.⁹⁵

A great deal more law threads its way more subtly through Chaucer's poetry. As Hornsby has shown, several of the *Tales*, including *The Knight's Tale*, *The Wife of Bath's Tale*, *The Franklin's Tale*, *The Friar's Tale*, *The Merchant's Tale*, and *The Shipman's Tale*, turn on the legal validity of agreements.⁹⁶ Other tales incorporate aspects of criminal law or legal procedure, such as *The Tale of Melibee*, *The Man of Law's Tale*, *The Nun's Priest's Tale*, *The Miller's Tale*, and *The Physician's Tale*.⁹⁷ It would be impossible, within the confines of this Article, to survey the many and various studies that have identified Chaucer's use of the law.⁹⁸

III. INNKEEPER'S LIABILITY⁹⁹

A. *The History of Innkeeper's Liability to Chaucer's Time*

The rule of innkeeper's liability dates back to ancient Roman law. The Digest of Justinian, under a section entitled, "Let sailors, innkeepers, and keepers of stables, restore those things they have received,"¹⁰⁰ provides, "Unless seamen, innkeepers, and keepers of stables restore what they have accepted for safekeeping, I will grant an action against them."¹⁰¹ The commentary makes it clear that this applies to any personal property that the guest brings into the inn, whether the innkeeper is aware of it or not.¹⁰² The

95. *Id.* at 14.

96. HORNSBY, *supra* note 9, at 44-56, 80-104.

97. *Id.* at 126-58.

98. Bibliographies in HORNSBY, *supra* note 9, at 161-71; BRASWELL, *supra* note 30, at 156-68.

99. The following summary owes much to the above-mentioned historical study of innkeeper's liability by Bogen, *supra* note 5.

100. 1 THE DIGEST OF JUSTINIAN 160, bk. 4, § 9, Ulpian, Edict, bk. 14 (Theodor Mommsen & Paul Krueger eds. of Latin text, Alan Watson ed. and trans., 1985) [hereinafter DIGEST] ("Nautae caupones stabularii ut recepta restituant."). I have provided my own translations for passages quoted from the DIGEST, although the editor provides a facing page translation of the Latin text. The DIGEST is a sixth-century compilation of late classical Roman law collected from the works of previous Roman jurists. See ANDREW BORKOWSKI, TEXTBOOK ON ROMAN LAW 56 (1997) (stating that the DIGEST "is regarded by far as the most important source of Roman law").

101. See DIGEST, *supra* note 100, 4.9.1 ("Ait praetor: 'Nautae caupones stabularii quod cuiusque saluum fore receperint nisi restituent, in eos iudicium dabo.'").

102. *Id.* at 161, 4.9.1.8. "But does the seaman [or shipmaster] accept property for safe-keeping only when the goods sent to the ship are entrusted to him, or are the goods held to have been received also when they are not entrusted to the seaman, but merely sent to the ship?" *Id.* "Recipit autem saluum fore utrum si in nauem res missae ei adsignatae sunt: an et si non sint

commentary also provides a complete explanation of the public policy for this rule of law.

This edict is of the greatest usefulness, because it is often necessary to trust seamen, innkeepers, and stable-keepers and to place property in their custody . . . and were it not for this law, the means would be given to them of cooperating with thieves against those whom they have accepted as guests, since even now they do not refrain from fraudulent activities of this kind.¹⁰³

The Romans conquered England and administered Britain as part of the empire. The earliest inns of Britain existed at that time.¹⁰⁴ With the fall of the Roman Empire in the fourth and fifth centuries, inns, along with roads and other products of Roman civilization, disappeared. It was not until the eleventh century that inns again appeared in England.¹⁰⁵ Roman law also disappeared from England but reappeared as an object of study. Bracton's thirteenth-century treatise on English law, for instance,

adsignatae, hoc tamen ipso, quod in nauem missae sunt, receptae uidentur?" "I think that the seaman receives custody of all things which have been transferred to the ship. And I also think the seaman ought to be liable not only for the deeds of the sailors, but also for the deeds of the passengers." "Et puto omnium eum recipere custodiam, quae in nauem illatae sunt, et factum non solum nautarum praestare debere, sed et uectorum." *Id.* The very next provision makes it clear that this applies to innkeepers as well, "Likewise an innkeeper is also liable for the deeds of travelers." "Sicut et caupo viatorum." *Id.* 4.9.2, Provincial Edict.

103. See *id.* at 160, 4.9.1.1 ("Maxima utilitas est huius edicti, quia necesse est plerumque eorum fidem sequi et res custodiae eorum committere. . . et nisi hoc esset statutum, material daretur cum furibus aduersus eos quos recipient coeundi, cum ne nunc quidem abstineant huiusmodi fraudibus."). See also *id.* vol. 4, 761, 47.5.1-2, Ulpian, Edict, bk. 38 ("Actions for Theft Against Seamen, Innkeepers, and Stable-Keepers" "Furti aduersus nautas caupones stabularios." "I will grant an action against those who operate ships, inns, or stables, if the theft is said to have been done by any of them or by those whom they have there on the premises, whether the theft be done with the complicity of the operator, or whether the theft be done with the complicity of those who are on board for the purpose of sailing the ship. . . And the action is for twice the damages." "In eos, qui naues cauponas stabula exercebunt, si quid a quoquo eorum quosue ibi habebunt furtum factum esse dicetur, iudicium datur, siue furtum ope consilio exercitoris factum sit, siue eorum cuius, qui in ea naui nauigandi causa esset . . . Et est in duplum actio.").

104. Bogen, *supra* note 5, at 53 n.11 (citing ANTHONY BIRLEY, *LIFE IN ROMAN BRITAIN* 50-51 (5th ed. 1976)); FREDERICK W. HACKWOOD, *INNS, ALES AND DRINKING CUSTOMS OF OLD ENGLAND* 31-32 (1909); I.A. RICHMOND, *ROMAN BRITAIN* 91-92 (2d ed. 1963). See also JOAN LIVERSIDGE, *BRITAIN IN THE ROMAN EMPIRE* 57-60 (1968) (providing a history of Britain during Roman rule and including descriptions of its inns and public houses).

105. Bogen, *supra* note 5, at 53 n.12 (citing W. Senior, *Roman Law in England Before Vacarius*, 45 *LAW Q. REV.* 191, 192 (1930)). See also COMPTON REEVES, *PLEASURES AND PASTIMES IN MEDIEVAL ENGLAND* 151 (1998) (noting that alehouses and inns reappeared in England in the twelfth and thirteenth centuries).

makes frequent use of Roman law to resolve legal problems and construe English law.¹⁰⁶

This scholarly interest in Roman law and the public policy supporting innkeeper's liability quite plausibly led to the emergence of innkeeper's liability in English law during Chaucer's lifetime.¹⁰⁷ As early as 1318, London innkeepers swore an oath that they would look after their guests and especially the property of their guests:

You shall swear that you shall well and honestly keep the stranger merchant to whom you are and shall be assigned host and overseer in all things that touch your said occupation, and that in person or by a deputy so sufficient that you will answer for at your peril you will mind and work as far as you well may to be privy and oversee all manner of merchandise that any alien merchant who is under your said innkeeping and oversight has and shall have coming hereafter into his possession.¹⁰⁸

Although this oath emphasizes the innkeeper's duty to protect guests and their property, it does not make it clear whether the innkeeper's liability extends beyond the actions of the innkeeper's servants to the deeds of outsiders.

Two cases established the rule of innkeeper's liability in English common law. The first was *Beaubek v. Waltham*.¹⁰⁹ On April 5, 1345, William Beaubek brought his complaint, or bill, to the Court of the Mayor and Sheriffs of the City of London.¹¹⁰

106. Bogen, *supra* note 5, at 53 nn.13-14 (citing Senior, *supra* note 105, at 191-206; PAUL VINOGRADOFF, ROMAN LAW IN MEDIEVAL EUROPE *passim* (1929); FRANCIS DE ZULETA & PETER STEIN, THE TEACHING OF ROMAN LAW IN ENGLISH AROUND 1200 *passim* (Selden Soc'y Suppl. Ser. 1990); Samuel E. Thorpe, Introduction, 1 BRACON ON THE LAWS AND CUSTOMS OF ENGLAND, at xxxii-xl (George E. Woodbine ed. & Samuel E. Thorne trans., 1968)); *see also* S.F.C. MILSOM, HISTORICAL FOUNDATIONS OF THE COMMON LAW 30-32 (1969) (describing the effect that Roman terms and legal concepts had on Bracton's treatise on English law).

107. ROBERT C. PALMER, ENGLISH LAWS IN THE AGE OF THE BLACK DEATH, 1348-1381: A TRANSFORMATION OF GOVERNANCE AND LAW 253 (1993).

108. *Id.* at 377 app. 18a (quoting the innkeeper's oath (modernized)). The oath appears in 4 CALENDAR OF LETTER-BOOKS AMONG THE ARCHIVES OF THE CORPORATION OF THE CITY OF LONDON AT THE GUILDHALL, LETTER BOOK D, CIRCA 1309-1314, 192, fol. lxxxv b (Reginald R. Sharpe ed., 1902), *available at* British History Online (BHO), <http://www.british-history.ac.uk/report.aspx?compid=33081#s18>.

109. PALMER, *supra* note 107, at 377 app. 18b (citing William Beaubek of Kent v. John de Waltham, Innkeeper, Corporation of London RO [Records Office], Plea and Memoranda Rolls, A5, m. 27). An extract which Palmer characterizes as insufficient is found in 1 CALENDAR OF PLEA AND MEMORANDA ROLLS OF THE CITY OF LONDON, 1323-1364, 220-21, membr. 27 (A.H. Thomas ed., 1926), *available at* BHO, <http://www.british-history.ac.uk/report.aspx?compid=36659&strquery=Beaubek#s>, *reprinted in* A.K. KIRALFY, THE ACTION ON THE CASE 236-37 (1951).

110. PALMER, *supra* note 107, at 377 app. 18b; *see also* 1 CALENDAR OF PLEA

Beaubek claimed that John of Waltham, a "common innkeeper," offered him lodging in a room where he "promised him that all the goods he brought within would well be safe."¹¹¹ After they agreed on a weekly rent, Waltham gave Beaubek a key, and Beaubek stored in the room "divers goods he had."¹¹² Later, Waltham witnessed Beaubek receive twenty pounds.¹¹³ Beaubek placed ten marks of this in a strongbox in his room, which already contained "gold rings . . . and other goods and chattels to the value of £10."¹¹⁴ Beaubek departed and locked his room. The next Tuesday, the doors had been opened with another key and his strongbox stolen.¹¹⁵ Beaubek showed Waltham the theft, and Waltham stated that he suspected Roger, the inn's brewer, "because this thing could not have been done without one of his servants."¹¹⁶ Waltham advised Beaubek to keep the theft a secret and assured him that he would get his money back.¹¹⁷ Beaubek alleged that Waltham, instead of attempting to catch Roger and return the money, conspired with the thief and thus injured Beaubek in the amount of twenty pounds.¹¹⁸ In his prayer for relief, Beaubek stated the grounds for his recovery: "that each innkeeper is held to respond to his guests of goods brought within their power and no one was apprised that he had the ab[ove] s[ai]d money except only the D[efendant]."¹¹⁹ The jury found that Beaubek's goods and chattels were taken from the room he rented from Waltham by persons known to Waltham. Beaubek therefore won a judgment against the innkeeper for ten marks together with other damages of forty shillings.¹²⁰

Beaubek's claim that the innkeeper is answerable for goods that a guest has brought under the innkeeper's control seems to reach back to the action recognized in the Digest of Justinian, suggesting the influence of Roman law. In English courts,

AND MEMORANDA ROLLS, *supra* note 109, at 220 (referring to a "Memorandum that . . . was delivered to John Hammond mayor, Thomas Leggy, and Geoffrey de Wychingham sheriffs . . ."); Bogen, *supra* note 5, at 56 n.37 (quoting J.H. BAKER, AN INTRODUCTION TO ENGLISH LEGAL HISTORY 37 (3d ed. 1990)) ("A bill is a petition addressed directly to a court in order to commence an action."). The Mayor's Court would have been more appropriate for local disputes of a commercial nature than the courts of the King's Bench, Chancellor, Exchequer, or Court of Common Pleas. Bogen, *supra* note 5, at 56.

111. PALMER, *supra* note 107, at 377 app. 18b.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.* at 377-78 app. 18b. The court ordered Waltham committed to prison, apparently to compel payment. *Id.* at 378.

however, the theory was precedent setting, which is why the clerks of the mayor's court probably recorded the case.¹²¹ On the other hand, finding an innkeeper liable for a theft committed by a servant of the innkeeper was consistent with well-established English law that masters were liable for the wrongdoing of their apprentices.¹²² The case was nevertheless significant because of its prayer's stated grounds for recovery.¹²³

One of the earliest form books for complaints or bills was the *Novae narrationes*.¹²⁴ Among its forms is one for use in the Mayor's Court in London against innkeepers. It demands compensation for goods stolen from guests.

To the mayor of London does John de W. etc. complain of G. de T., innkeeper, that whereas by [common] usage of the realm every innkeeper is bound to guard and keep safe without loss or damage the goods of those who leave their goods in their inns, there came the said John and lodged with the said G. such a day etc., and on the Tuesday next following a chest of the said John, being within the inn of the said G., was broken into and ten marks in gold was taken from the said chest and carried away; wherefore action accrued to the said John to demand the above-mentioned money from the said G.; wherefore the said John has often come to the said G. and asked him to make restitution to him, [but] he would not make restitution and still will not, wrongfully and to his damages etc.¹²⁵

The date of composition for this form is uncertain. However, it reflects the facts of *Beaubek v. Waltham* in the amount of damages, "ten marks," the day the theft was discovered, "Tuesday next," and the plaintiff's name, "John de W.," that is, John of Waltham, who was the defendant in *Beaubek's* original action. The form advances the theory of innkeeper's liability, which it describes as "the common usage of the realm." "The appearance of this phrase in a form book of pleadings suggests that innkeeper's liability had become established law shortly after *Beaubek*."¹²⁶ Moreover, there is nothing in the form suggesting that a servant or employee of the innkeeper had to be the one stealing the money or goods in order for liability to attach to the innkeeper.¹²⁷

The case which definitively established innkeeper's liability was *Navenby v. Lassels*.¹²⁸ Thomas Navenby, a deputy escheator

121. Bogen, *supra* note 5, at 57.

122. *Id.* at 58.

123. *Id.*

124. *NOVAE NARRATIONES* (Elsie Shanks ed., Selden Soc'y No. 80, 1963).

125. *Id.* at 332-33.

126. Bogen, *supra* note 5, at 59.

127. *Id.*

128. PALMER, *supra* note 107, at 378 app. 19c; Rex and Thomas de Navenby v. Walter Lassels of Huntingdon and William de Staunford Innkeeper of the said Walter (1367), K.B. 27/428, m. 73; K.B. 27/432, m. 25d; 6 SELECT CASES IN THE COURT OF THE KING'S BENCH, EDWARD III 252 (G.O. Sayles ed., Selden

of the King in Northamptonshire, stayed at the inn of Walter Lassels in Huntingdon.¹²⁹ William of Stanford was managing the inn while Lassels was out of town.¹³⁰ He provided Navenby with a room and a lock.¹³¹ Navenby claimed that "certain wrongdoers, with force and arms at night" broke into his room and

took and carried away Thomas's goods and chattels, found there, to the value of four marks as well as nine pounds of the king's money which were there in the said Thomas's keeping, and they inflicted other outrages upon him in contempt of the king and to his loss and to no slight expense and grievance of the said Thomas and in contravention of the peace etc.¹³²

Notably, the thieves "inflicted . . . outrages" upon Navenby, indicating there was physical danger or injury in the course of the theft. The pleading also made use of the "common law of the realm" formula, thus asserting that the rule of strict innkeeper's liability was the law.

According to the law and custom of the king's realm innkeepers who hold common inns to accommodate men traveling through the parts where such inns are held to guard their goods being within those inns day and night without waste or loss, such that by the default of the said innkeepers or their servants no damages of such kind should happen in any way . . .¹³³

The *Navenby* case was controversial.¹³⁴ The case was pleaded in

Soc'y, vol. 82, 1965); Bogen, *supra* note 5, at 66 n.91 (citing Coram Rege Roll, No. 428, m. 73 (1367)). In 1365, the Chancery issued the first writ that would impose liability on an innkeeper for guest property taken by outsiders. *Id.* at 67. In this case, however, the innkeeper had specifically undertaken to guard the property. *Id.* Thus, it was a case of bailment rather than innkeeper's liability, and it was brought under the contractual theory of "assumpsit," that the defendant had failed to perform what the defendant had undertaken to do. *Id.*; PALMER, *supra* note 107, at 254, 378 app. 19a; John Gylour by Thomas Ewell v. John Hosteler of Kentford, C.P. 40/419, m. 252, Suff.

129. See Bogen, *supra* note 5, at 66 n.90 (noting that the report specifies that the inn was in the town of "Cant.," which is most likely Canterbury). However, the writ says the innkeeper was of "Huntingdon," and the accounts in the Assize Yearbook also indicate that the inn was in "Huntingdon." Assize Yearbook, Y.B. 42 Ass., fol. 260b, pl. 17, in 6 SELECT CASES, *supra* note 128, at 152, 152-54. An escheator is an assessor of land that reverted to the crown upon the death of a land owner who did not have heirs. BLACK'S LAW DICTIONARY (7th ed. 1999), s.v. escheat, escheator.

130. PALMER, *supra* note 107, at 378 app. 19c.

131. *Id.*

132. *Id.*

133. *Id.*

134. PALMER, *supra* note 107, at 256. In rendering judgment, Chief Justice Knyvet remarked that "such a case had been decided some time before in the Council, and the reason for the judgment was that the innkeeper must answer for himself and his staff for the rooms and stables." Bogen, *supra* note 5, at 69 n.108 (citing Y.B. 42 Ass., fol. 260b, pl. 17 (1368), reprinted in J.H. BAKER & S.F.C. MILSOM, SOURCES OF ENGLISH LEGAL HISTORY: PRIVATE LAW TO 1750,

1367, then again in 1368, and judgment was rendered later that year.¹³⁵ Lassels answered that he was not liable because he was away when Navenby lodged in his inn.¹³⁶ Stanford claimed he had given Navenby a lock and sufficiently strong enclosure.¹³⁷ Both answers should have led to dismissal of the case if fault were the measure of liability. In the second pleading, however, Navenby objected that fault was irrelevant. Lassels had not denied that he was an innkeeper, that Stanford had received the goods onto the premises of the inn, and that they were lost. Navenby argued that since innkeepers were bound to protect guests' property from harm, he should be awarded judgment without going to a jury.¹³⁸ The Justices of the King's Bench agreed.¹³⁹

552, 553-54 (1986)). The King's Council was a body that could have heard an appeal from a traveler that was addressed to the King for extraordinary relief. Bogen, *supra* note 5, at 69 n.107 (citing BAKER, *supra* note 110, at 113-14). It is also possible that Chief Justice Knyvet was misquoted by the clerk who recorded the proceedings, so that he was actually referring to the *Beaubek* decision from the Mayor's Court. *Id.* at 69 n.108.

135. PALMER, *supra* note 107, at 256.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* Subsequent to the *Navenby* case, defendants developed three defenses to the claim of innkeeper's liability: (1) the plaintiff did not lose the goods; (2) the goods were lost due to the plaintiff's fault, or contributory negligence; and (3) the plaintiff had agreed the host would not be liable, or assumption of risk. *Id.* at 257; Bogen, *supra* note 5, at 72. Depending upon the jury's attitude towards the strict liability rule and the charge to the jury, actual fault could still play a role in the verdict. PALMER, *supra* note 107, at 257. The first defense created a question of fact that the jury had to decide. Palmer refers to John Morby Rogersservant Cheyne (as well as the king) by William de Hulton v. Thomas Angre of Fleet Street and John Deister Hostiler (1368), at 378-79 app. 19e, K.B. 27/431, m. 64; K.B. 27/432, m. 25d (K.B. 136/4/43/1/1) as an example of this strategy. See also Bogen, *supra* note 5, at 72 n.118 (citing Agnes Bolas v. John Peacock (1374), K.B. 27/453, m. 17; K.B. 27/454, m. 65, reprinted in 2 SELECT CASES OF TRESPASS FROM THE KING'S COURTS 1307-99, 441 (Morris S. Arnold ed., Selden Soc'y, vol. 103, 1987)).

Defendants based the contributory negligence defense on the argument that a guest's failure to lock the door, or the guest's insistence on lodging with the person who stole the goods, or theft by the guest's own servant were situations in which it would be unfair to hold the innkeeper liable. See PALMER, *supra* note 107, at 379 app.19l; Nicholas Pounce of Grantham v. John Floksworthe of Sawtry (1373), K.B. 27/451, m. 35d; K.B. 27/453, m. 90 (plaintiff failing to lock the door); see also Bogen, *supra* note 5, at 72 n.119 (referring to Thomas Tetsworth v. Nicholas Bailey (1385), C.P. 40/499, m. 345d, reprinted in 2 SELECT CASES OF TRESPASS, *supra*, at 444, 444-45, (goods stolen by plaintiff's own servants); Richard Waldegrave v. Thomas (1382), K.B. 27/486, m. 26d, reprinted in 2 SELECT CASES OF TRESPASS, *supra*, at 443, 443 (plaintiff insisting on staying with a third person contrary to the room assignment offered by the defendant). Defendants who advanced the assumption of risk defense claimed that they were not common innkeepers by profession, but only occasional or incidental hosts, and that their prospective guests knew this and agreed to assume the risk of any loss during their stay. PALMER, *supra* note

Palmer states that the number of innkeeper's liability cases recorded from 1368 to 1381 suggests that knowledge of the new liability was widespread.¹⁴⁰ "The innkeeper writ became frequently used and remained hotly contested."¹⁴¹ The best estimate of when Chaucer began work on *The Canterbury Tales* is the late 1380s.¹⁴² The recent litigiousness surrounding the new legal principle makes it likely that Chaucer knew about it and that the controversy over innkeeper's liability formed part of his legal frame of reference when he hit upon the idea of a frame narrative managed by his innkeeper, Harry Bailly.

B. *The Extension of Innkeeper's Liability Beyond the Inn*

To bring an action before the King's Bench required a writ issued by the Chancery.¹⁴³ The writ was "a royal order which authorized a court to hear a case and instructed a sheriff to secure the attendance of the defendant."¹⁴⁴ The Chancery officers cooperated with the wishes of the king.¹⁴⁵ Moreover, the King's Bench was the king's court. Justices appointed by the king would preside.¹⁴⁶ The *Navenby* case was of obvious interest to the Crown because money belonging to the exchequer, or royal treasury, had been stolen.¹⁴⁷ More importantly, the case also afforded the Crown the opportunity to establish that English law protected travelers carrying large sums of money or valuable merchandise from unscrupulous innkeepers.¹⁴⁸

107, at 258, refers to William de Bolton cc v. Thomas Ede of Aylesbury (1373), at 379 app. 19i, C.P. 40/447, m. 347d; C.P. 40/448, mm. 268d, 627d; C.P. 40/449, m. 350 (defendant claiming he was not a common innkeeper and refusing to lodge plaintiff unless he assumed the risk of loss); see also Bogen, *supra* note 5, at 73 n.125 (citing William Thomas v. John Sampson (1384), C.P. 40/495, m. 502, reprinted in 2 SELECT CASES OF TRESPASS, *supra*, at 443, 443-44 (defendant claiming he was not a common innkeeper). The argument was that the guests had contracted out of the liability. PALMER, *supra* note 107, at 258.

140. *Id.* at 258.

141. *Id.* at 259.

142. CT, *supra* note 1, at 3.

143. Bogen, *supra* note 5, at 66 n.94 (citing BAKER, *supra* note 110, at 49-51, F.W. MAITLAND, THE FORMS OF ACTION AT COMMON LAW 2 (A. Chaytor & W. Whittaker eds., 1962) (1909)).

144. MILSOM, *supra* note 106, at 22. A writ is defined as "a mandatory precept, issued by the authority and in the name of the sovereign or the state, for the purpose of compelling the defendant to do something therein mentioned." Bogen, *supra* note 5, at 56 n.36 (citing BOUVIER'S LAW DICTIONARY 3496 (8th ed. 1914)).

145. BRYCE LYON, A CONSTITUTIONAL AND LEGAL HISTORY OF MEDIEVAL ENGLAND 514-15 (1960).

146. *Id.* at 442.

147. Bogen, *supra* note 5, at 70.

148. *Id.* at 70-71. Besides, the amount of Navenby's loss exceeded the jurisdictional minimum for jurisdiction in the royal courts. *Id.* at 70 n.112

Thus, the rule of innkeeper's liability was based on a national public policy to encourage trade by protecting foreign merchants wherever they chose to lodge. Travel was difficult in the Middle Ages. Outlaws and highwaymen infested the forests between villages. Such thieves were especially dangerous at night. The medieval traveler could not safely sleep in the open, but needed to find a safe place where he could get food, drink, shelter and protection for the night.¹⁴⁹ Merchants, who often traveled carrying their valuables with them, had to rely upon the good faith of innkeepers in cities and towns where they were strangers. If an innkeeper stole from a guest, it would be difficult for the guest to prove fraud or negligence in a foreign land among locals who would sympathize with the innkeeper.¹⁵⁰ The Supreme Court of Hawaii summed up the need for the policy as follows:

The imposition of strict liability on the innkeeper found its origin in the conditions existing in England in the fourteenth and fifteenth centuries. . . . Innkeepers themselves, and their servants, were often as dishonest as the highwaymen roaming the countryside and were not beyond joining forces with the outlaws to relieve travelers and guests, by connivance or force, of their valuables and goods. Under such conditions it was purely a matter of necessity and policy for the law to require the innkeeper to exert his utmost efforts to protect his guests' property and to assure results by imposing legal liability for loss without regard to fault.¹⁵¹

The harsh rule of liability that was "strict and absolute, not based on negligence" arose from the nature of the innkeeper's employment.¹⁵² "He holds out a general invitation to travelers to come to his house, and he receives a reward for his hospitality. The law, in return, imposes on him corresponding duties, one of which is, to protect the property of those whom he received as guests."¹⁵³

(citing Statute of Gloucester, 1278, 6 Edw., c. 8 (Eng.), in *STATUTES AT LARGE FROM MAGNA CHARTA TO THE END OF THE LAST PARLIAMENT* 123 (Danby Pickering ed., 1762); John S. Beckerman, *The Forty-Shilling Jurisdictional Limit in Medieval English Personal Actions*, in *LEGAL HIST. STUD.* 1972, 110, 117 (Dafydd Jenkins ed., 1975).

149. SHERRY, *supra* note 7, at 4-5; see also J. J. JUSSERAND, *ENGLISH WAYFARING LIFE IN THE MIDDLE AGES* 72-89 (Methuen 1961) (1889) (describing the lack of safety experienced by travelers in the Middle Ages and the necessity of lodging houses).

150. *Hanover Ins. Co. v. Alamo Motel*, 264 N.W.2d 774, 776 (Iowa 1978), quoted in J. GREGORY SERVICE, *HOTEL-MOTEL LAW: A PRIMER ON INNKEEPER LIABILITY* 34-35 (C.C. Thomas 1983).

151. *Minneapolis Fire & Marine Ins. Co. v. Matson Navigation Co.*, 352 P.2d 335, 337 (Haw. 1960), quoted in SHERRY, *supra* note 7, at 416.

152. *Buck v. Hankin*, 217 Pa. Super. 262, 265, 265 A.2d 344, 346 (1970), quoted in SERVICE, *supra* note 150, at 35.

153. *Id.* See also *Zurich Fire Ins. Co. of N.Y. v. Weil*, 259 S.W.2d 54, 56 (Ky. App. 1953), quoted in SERVICE, *supra* note 150, at 35 (noting the exceptions to

The force of the public policy to protect guests is evident in the tendency modern courts have had to extend innkeeper's liability beyond the immediate premises of the inn and beyond the actual duration of the innkeeper-guest relationship. For instance, a guest or a prospective guest might request the hotel to pick up luggage at a train station and deliver it to the hotel where the guest was staying. In many courts, the hotel became the insurer of property which was lost or stolen anytime after an agent of the hotel had taken charge of the property at the railroad station.¹⁵⁴ The liability, then, could begin before the prospective guest had registered, that is, before the innkeeper-guest relationship had legally commenced, as long as the owner of the property had a bona fide intent to become a guest and became a guest within a

this liability provided by common law were narrow: if the loss resulted from an act of God, a public enemy, or the fault of the guest himself); *Johnston v. Mobile Hotel Co.*, 167 So. 595, 596 (Ala. Ct. App. 1936) (explaining that the second of these exceptions, the public enemy, denoted, "some power with whom the government was at war. It did not include robbers."). *See also* SERVICE, *supra* note 150, at 38 (explaining that in most states, statutes have mitigated the harshness of the common law); FLA. STAT. ANN. § 509.111(1)-(2) (West 2009) (indicating that Florida is typical in limiting the liability to a monetary maximum for items the hotel operator may voluntarily accept for safekeeping and in basing the liability on negligence); *Fla. Sonesta Corp. v. Aniballi*, 463 So. 2d 1203, 1207 (Fla. 3d Dist. Ct. App. 1985) (explaining that in order for these limitations to apply, a hotel must comply with statutory requirements and that Florida courts have held the state statutes to be in derogation of common law and thus subject to strict construction).

154. SHERRY, *supra* note 7, at 417-18.

Where a hotel keeper sends his porter to the cars, to receive the baggage of persons traveling, and baggage is delivered to the porter, and the traveler becomes the guest of the hotel, the liability of the inn-keeper as such for the baggage begins on the delivery to the porter, and continues until re-delivery to the actual custody of the guest. And if the porter of the inn-keeper takes charge of the baggage at the hotel to deliver it at the cars for the guest, the liability of the inn-keeper continues until the baggage be delivered.

Sasseen & Whitaker v. Clark, 37 Ga. 242, 1867 WL 1609, at *9 (1867); *see also* *Coskery v. Nagle*, 83 Ga. 696, 10 S.E. 491, 492 (1889) (affirming that the hotel owner was subject to liability for the loss/theft of the guest's luggage even if the porter at the depot had no authorization to receive baggage if guest did not know of such limitation on porter's authority); *Keith v. Atkinson*, 48 Colo 480, 481, 111 P. 55, 56 (1910) ("It has become a frequent custom for travelers, upon their arrival at hotels, or the stations in the cities where they are situate, to hand their baggage checks to a representative of some hotel, who assumes the duty and responsibility of having the baggage delivered from the station to the hotel for the guest. It has consequently now been repeatedly held that one who becomes the guest of a hotel, by giving his baggage checks into its possession, places the goods they represent into its custody, so far as to make the innkeeper responsible for goods which, by means of the possession of such checks, his representative or agent receives, although the baggage be never brought within the walls of the hotel.").

reasonable period of time.¹⁵⁵ Nor was it necessary for the agent of the hotel authorized to receive property to have physical possession of the property. Liability began the moment an agent of the hotel accepted the baggage claim check since that acceptance alone is symbolic of the delivery of property to the innkeeper.¹⁵⁶

Liability for the personal safety of guests is not, strictly speaking, part of innkeeper's liability, although it is related in some respects. If an innkeeper is absolutely liable for the property of guests on the premises, then the innkeeper will take steps to protect the guest's property from thieves, and these steps will often have the effect of protecting the guest from the violence of third parties intent on stealing the property. Like other businesses that invite customers onto their property, an innkeeper has a duty to protect a guest from the violence of third parties.¹⁵⁷ This is a duty of reasonable care, not strict liability.¹⁵⁸ However, in regard to assaults by third parties, courts often assign innkeepers a heightened duty of reasonable care.

For instance, concerning a hotel's duty to protect guests from third-party violence, the Supreme Court of New York stated:

There is no fixed degree of care. It depends upon the circumstances of each case. The duty or degree of care to be expected depends upon the danger to be apprehended. In the case where the defendant is a hotel, the degree of care that the defendant was required to exercise will vary with the grade and quality of the accommodations offered.¹⁵⁹

155. SHERRY, *supra* note 7, at 417; *see also* *Flint v. Ill. Hotel Co.*, 149 Ill. App. 404, 405, 1909 WL 2052, at *3 (App. Ct. 3d 1909) ("Where the baggage is delivered to the inn-keeper as the baggage of an intended guest who, within a reasonable time thereafter actually becomes a guest, the responsibility of the inn-keeper for the safe keeping of the baggage relates back to the time when the baggage was delivered."). However, if the owner of the property changes his or her mind and does not register (*Baker v. Bailey*, 103 Ark. 12, 145 S.W. 532 (1912)), or delays beyond a reasonable time in registering (*Hirsh v. Anderson Hotel Co.*, 58 Pa. Super. 387, 1914 WL 4873 (1914)), the court will hold that the innkeeper-guest relationship did not pertain when the property was handed over, and the innkeeper, as a gratuitous bailee, will only have the duty to use ordinary care. *See also* SHERRY, *supra* note 7, at 418, *Flint*, 149 Ill. App. at 404.

156. SHERRY, *supra* note 7, at 420.

It has . . . been repeatedly held that one who becomes the guest of a hotel by giving his baggage checks into its possession places the goods they represent into its custody, so far as to make the innkeeper responsible for goods which, by means of the possession of such checks, his representative or agent receives, although the baggage be never brought within the walls of the hotel.

Keith, 48 Colo. at 481, 111 P. at 56.

157. SHERRY, *supra* note 7, at 350.

158. *Id.*

159. *Dean v. Hotel Greenwich Corp.*, 21 Misc. 2d 702, 704, 193 N.Y.S.2d 712,

In this case, the environment around the hotel as well as the quality of the accommodations it offered were factors in determining whether the hotel provided sufficient security. "The defendant hotel is a place where assault, theft and kindred events are a daily occurrence. . . . [T]he plaintiff made out a *prima facie* case under the law against the defendant if under the circumstances there were insufficient guards or incompetent guards."¹⁶⁰

"Courts have increased the duty of care which hotels owe guests by expanding the scope of constructive notice."¹⁶¹ Even if previous criminal incidents differ in kind and location from the incident at bar, a court will charge a hotel with constructive notice of the incident. In *Davenport v. Nixon*, criminal incidents on the hotel premises were held to give the hotel constructive notice that its security measures in the parking lot where the plaintiff was assaulted were inadequate.¹⁶² In *Garzilli v. Howard Johnson's Motor Lodges, Inc.*, four burglaries made the hotel liable for a rape even though the hotel had ordered, but not yet received, new locks.¹⁶³ If the hotel management knows of violent criminal activity on the premises or grounds of the hotel, the grounds controlled by the hotel, or in the vicinity of the hotel, the hotel may then be held to a standard stricter than that of reasonable care to take adequate security measures to prevent such violence occurring to its guests.¹⁶⁴

Like the innkeeper's liability for guest property, liability for the guest's safety may also extend beyond the premises of the hotel.¹⁶⁵ This happened in *Coyne v. Taber Partners I*.¹⁶⁶ In that case, a local taxi drivers union in San Juan, Puerto Rico, was striking to protest competition from hotel-operated transportation to and from the airport.¹⁶⁷ The union's demonstrations at the airport were locally well-known. The plaintiff, however, arrived at the airport oblivious to the strike.¹⁶⁸ The hotel where she was going to stay sent a driver who crossed the picket line. After picking up prospective guests and their luggage, he drove back to

715 (Sup. Ct. 1959) (citations omitted).

160. *Id.*

161. SHERRY, *supra* note 7, at 354 (quotation marks omitted).

162. 434 So. 2d 1203, 1205-06 (La. Ct. App. 1983), *cited in* SHERRY, *supra* note 7, at 354.

163. 419 F. Supp. 1210 (E.D.N.Y. 1976), *cited in* SHERRY, *supra* note 7, at 355.

164. See SHERRY, *supra* note 7, at 357 ("[The innkeeper's] duty to exercise care has been increased to reflect dissatisfaction with the traditional standard of ordinary care adopted in the early cases.").

165. *Id.*

166. 53 F.3d 454 (1st Cir. 1995).

167. *Id.* at 456.

168. *Id.*

the picket line where one of the strikers hurled an object that shattered a window and injured the plaintiff.¹⁶⁹

The plaintiff sued in Puerto Rico's federal district court claiming that Article 1057 of Puerto Rico's Civil Code applied.¹⁷⁰ Unlike the United States in general, Puerto Rico is a civil law jurisdiction rather than one of common law, so that this case was not predicated on the common law of innkeeper's liability or liability based on reasonable care for violence by third parties on the premises of the inn. Like the common law, however, the statute at issue imposed liability on certain establishments, such as hotels, schools, and hospitals, that fail to provide security commensurate with the circumstances attendant to their operation.¹⁷¹ Like the state courts, the commonwealth courts had held that the duty to furnish greater security depended upon the nature of the enterprise and the relationship between the defendant and its invitees.¹⁷² Criminal activity may indicate the need for the establishment to furnish greater protection and security.¹⁷³

The district court, however, ruled that the hotel owed no duty, reasoning that the hotel supplied a taxi service for the plaintiff, and under *Jacob v. Eagle Star Insurance Co.*, cabdrivers are not liable to passengers for crimes committed by third persons.¹⁷⁴ The district court, therefore, granted the defendant's summary judgment motion.

The First Circuit reversed with reasoning based on the heightened protection that hotels are required to provide their guests and, therefore, reflecting the same public policy that animates innkeeper's liability.¹⁷⁵ The appellate court distinguished *Jacob*, which concerned an independent cabdriver whose passenger was injured by thieves when the cab paused at a red light.¹⁷⁶

169. *Id.* at 456-57.

170. *Id.* at 458 (citing article 1057 of Puerto Rico's Civil Code, P.R. LAWS ANN. tit. 31, § 3021 (1991)).

171. *Id.*

172. *Id.* (citing *Estremera v. Inmobiliaria Rac., Inc.*, 109 P.R.R. 1150, 1154-55 (1980)).

173. *Id.*

174. *Id.* (citing 640 F. Supp. 117 (D.P.R. 1986)).

175. The First Circuit was interpreting Puerto Rican law, and Puerto Rico is a civil law, as opposed to a common law, jurisdiction. Be that as it may, the First Circuit distinguished *Coyne* because the driver was working for a hotel and spoke of the need to protect the defendant as if the defendant were in a hotel room. This distinction appears to be based on common law considerations of the relationship between the innkeeper and the guest, rather than the premises liability of some other type of enterprise.

176. *Id.*

Here, however, unlike in *Jacob*, the defendant is a hotel Moreover, unlike in *Jacob*, where the court emphasized that the cabdriver was "a public carrier for hire," . . . the operator of the vehicle . . . was not a common carrier (or even a cabdriver) but an employee of the hotel, performing a private service for a private purpose. Thus, though Coyne was in a car, she was just as much a ward of the hotel as if she was in her suite or in the lobby.¹⁷⁷

The appellate court concluded that it was not the locus of the injury that gave rise to a duty to provide heightened security, but rather the hotel's special relationship with its guests, its knowledge of the danger, and its ability to take protective measures that gave rise to the innkeeper's duty to provide heightened security.¹⁷⁸ The appellate court in *Coyne* found that a host-guest relationship existed and that a jury could find the hotel had notice of the labor unrest and had a degree of control in making the travel arrangements for its guests; the defendant's motion for summary judgment was denied.¹⁷⁹

Thus, under modern law, an innkeeper's liability to its guests may extend beyond the confines of the inn. In regard to property, the extended liability may obtain if the innkeeper, through its authorized agent, takes charge of the property for a prospective guest outside the premises of the inn. Likewise, the innkeeper can be responsible for protecting a guest from injuries caused by a third party outside the premises of the inn when the innkeeper undertakes to provide transportation to a prospective guest. The modern extension of innkeeper's liability to loss of property and physical injury beyond the physical grounds of the inn and beyond the temporal duration of the host-guest relationship presents an analogy to Harry Bailly's agreement to extend his responsibility for his pilgrim guests to the road between Southwark and Canterbury.

IV. THE INNKEEPER LAWS OF LONDON AND THE INNS OF SOUTHWARK

A. *London Laws and Southwark Stews*

Chaucer drew from real life for many of the characters and places of *The Canterbury Tales*.¹⁸⁰ Harry Bailly and the Tabard

177. *Id.* (emphasis in original).

178. *Id.* at 459.

179. *Id.*

180. See Explanatory Notes in CT, *supra* note 1, at 800-26 (noting that Chaucer, of course, portrays himself as one of the pilgrims and may have provided self-deprecating, but accurate, details about himself). See also *id.* at 212-13, frag. VII, ll. 695-704 (indicating the healthy girth of Chaucer's stomach by Host's remark, "In the waist he is shaped as well as I," etc.). Included among the pilgrims for whom scholars have identified real-life

Inn are prime examples. Records indicate that a Harry Bailly represented his borough of Southwark at the Westminster Parliament of 1376-77 and the Gloucester Parliament of 1378-79.¹⁸¹ His name also appears in the tax rolls for Southwark in 1380-81: "Henri Bailiff, ostlyer [innkeeper]."¹⁸² This and other records showing that he received appointments as a controller of the subsidy for Southwark and as a special coroner suggest that he was a respectable businessman and citizen.¹⁸³ In Chaucer's day, there also existed a Tabard Inn in Southwark, a suburb of London just across the Thames River to the south.¹⁸⁴ The Tabard was on Southwark's High Street, where a cluster of several other inns could be found.¹⁸⁵ Chaucer's poem is the only evidence that Bailly was the proprietor of the Tabard.

As it did for various trades, the City of London imposed a maze of regulations on the business of innkeeping. King Edward I (1272-1307) confirmed an article that no foreigner may be an innkeeper in London, but only "freemen of the City, or who can produce a good character from the place whence they have come, and are ready to find sureties for good behaviour."¹⁸⁶ Innkeepers

personages are: the Merchant, the Sergeant of Law, the Franklin, the Cook, the Shipman, the Doctor of Physic, and the Reeve.

181. *Id.* at 825; MANLY, *supra* note 16, at 78-79.

182. CT, *supra* note 1, at 825; MANLY, *supra* note 16, at 79.

183. See MANLY, *supra* note 16, at 79-80 (stating that Harry Bailly was one of four controllers of the subsidy for Southwark). He witnessed a deed in the parish of Lesnes, near Greenwich, in 1387. *Id.* at 80. In 1392, he was appointed special coroner "to view the body of John Poole, wickedly slain in Bermondsey, which, contrary to law, had long lain unburied because the coroners of Surrey, who lived in distant parts, had neglected their duties." *Id.* He was again appointed special coroner in 1393 in two other suspicious deaths. *Id.* By the Statute of Westminster, coroners were required to be of "the most wise and discreet knights, which know, will and may best attend upon such offices." ROGER MEESON & WILLIAM N. WELSBY, 9 REPORTS OF CASES ARGUED AND DETERMINED IN THE COURTS OF EXCHEQUER & EXCHEQUER CHAMBER 554 (1843).

184. CT, *supra* note 1, at 800.

185. MARTHA CARLIN, MEDIEVAL SOUTHWARK 58, 193 n.15, figs. 6 and 9 (1996). In 1676, a fire destroyed the original inn. CT, *supra* note 1, at 800. However, Chaucer's statements regarding the size and comfort of the Tabard, "The rooms and stables were spacious, / and we were certainly as comfortable as could be," "The chambres and the stables weren wide, / And wel we weren esed ate beste," were confirmed by a sixteenth-century lease and attached inventory. CT, *supra* note 1, at 23, frag. I, ll. 28-29; CARLIN, *supra*, at 197.

186. CALENDAR OF LETTER-BOOKS OF THE CITY OF LONDON C: 1291-1309, 16, folio xv b (Reginald R. Sharpe ed., 1901), available at BHO, <http://www.british-history.ac.uk/report.asp?compid=33054> (last visited Jan. 8, 2010). The CALENDAR OF LETTER BOOKS is a collection of records "preserved among the archives of the City of London at the Guildhall under the name of 'Letter-Books' -so called from their being severally distinguished by a letter of the alphabet." *Id.*; CALENDAR OF LETTER-BOOKS OF THE CITY OF LONDON A: 1275-1298, 1 (1899), available at BHO, <http://www.british-history.ac.uk/>

had to register with the aldermen of their respective wards.¹⁸⁷ London ordinances controlled the prices innkeepers could charge.¹⁸⁸ Innkeepers had to “close their doors at curfew,” and they were to warn their guests “to return to their lodgings at a seemly hour,”¹⁸⁹ and “to leave their arms in their inns before going into the streets.”¹⁹⁰ Innkeepers were to be “under surety not to receive evildoers” and were to report “all suspicious characters . . . to the officers of the City.”¹⁹¹ They could “not receive strangers for more than a day and a night unless they [were] willing to vouch for them,”¹⁹² or “answer for them and their acts.”¹⁹³ The penalty for violating this last ordinance was £100.¹⁹⁴ Innkeepers were sworn to inform on others who harbored “[m]en of ill fame or persons suspected of larceny.”¹⁹⁵

Chaucer, however, chose to set the opening of his poem at an inn that was not located within London. He is explicit in stating the location of the Tabard Inn in Southwark from the outset of the poem, “In Southwark at the Tabard where I stayed,”¹⁹⁶ and

report.asp?compid=33019 (last visited Jan. 8, 2010).

187. Innkeepers could “sell hay at no more than 2d per day and night for each horse and oats at 6d the bushel,” and could “not charge more than the regular prices for ale . . .” *CALENDAR OF LETTER-BOOKS OF THE CITY OF LONDON H: 1375-1399*, 65-66, folio lxiii b (1377) (Reginald R. Sharpe ed., 1907), available at BHO, <http://www.british-history.ac.uk/report.asp?compid=33461>.

188. 2 *CALENDAR OF THE PLEA AND MEMORANDA ROLLS OF THE CITY OF LONDON: 1364-1381*, 164, roll A 19, membr. 1 b (1373) (A.H. Thomas ed., 1929), available at BHO, <http://www.british-history.ac.uk/report.asp?compid=36683>.

189. *Id.* at 219, roll A 21, membr. 8 (1376), available at BHO, <http://www.british-history.ac.uk/report.asp?compid=36685>.

190. 1 *CALENDAR OF THE PLEA AND MEMORANDA ROLLS*, *supra* note 109, at 156, roll A 4, membr. 1b (1343), available at BHO, <http://www.british-history.ac.uk/report.asp?compid=36657>. An innkeeper named Adam Grymmesby “was committed to prison for not warning his lodger to leave his knife indoors.” 2 *CALENDAR OF THE PLEA AND MEMORANDA ROLLS*, *supra* note 188, at 146, roll A 17, membr. 8 b (1372), available at BHO, <http://www.british-history.ac.uk/report.asp?compid=36681>.

191. 1 *CALENDAR OF THE PLEA AND MEMORANDA ROLLS*, *supra* note 109, at 156, roll A 4, membr. 6 (1343), available at <http://www.british-history.ac.uk/report.asp?compid=36657>.

192. *Id.* at 164, roll a 4, membr. 9 b (1343), available at BHO, <http://www.british-history.ac.uk/report.asp?compid=36657>.

193. 3 *CALENDAR OF THE PLEA AND MEMORANDA ROLLS OF THE CITY OF LONDON: 1381-1412*, 78-79, roll A 27, membr. 11-11 b (1384) (A. H. Thomas ed., 1932), available at BHO, <http://www.british-history.ac.uk/report.asp?compid=36698>. Also subject to the £100 penalty was the rule that innkeepers were not “to receive to their tables any strangers called “travailyngmen” [wayfarers] or others unless they had good and sufficient surety from them for their good and loyal behaviour.” *Id.*

194. *Id.*

195. *Id.*

196. See CT, *supra* note 1, at 23, frag. I, ll. 19-20 (“Bifil that in that seson on

reiterates this location later, when he places the Tabard near another Southwark Inn, the Bell, "In Southwark at this respectable inn / Named the Tabard, right next to the Bell."¹⁹⁷ The repeated linkage between the Tabard and Southwark is purposeful. Southwark would have been a logical and customary place for pilgrims to gather en route to Canterbury or other points to the southeast.¹⁹⁸ But because the Tabard was in Southwark, it was outside London's jurisdiction. As a result, Bailly did not have to concern himself with London regulations. Indeed, freedom from London restrictions is one of the major reasons for the development of the innkeeping trade in Southwark.¹⁹⁹

Along with its inns, medieval Southwark was notorious for its brothels, taverns and criminal low-life. This is how Martha Carlin sums up the situation:

Medieval Southwark was a chimera. It was a suburb of London, but outside the city's jurisdiction: a parliamentary borough without a charter of incorporation; a group of autonomous manors sharing a communal name (Southwark) and reputation (bad); a haven of criminals and forbidden practices within sight of the royal court and law courts at Westminster.²⁰⁰

Because Southwark was not subject to London's ordinances and law enforcement,²⁰¹ noxious industries that were unwanted in London, such as limeburning, tanning, prostitution, and hospitals for the impoverished sick, located in Southwark.²⁰² Two royal prisons, the King's Bench and Marshalsea Prisons, were established there.²⁰³ The Archbishop of Canterbury, the Bishop of Winchester, the Templars, and Hospitallers, all of whom administered areas of Southwark, jealously guarded their privileges.²⁰⁴ The Knights Hospitallers, for example, "maintained a place of sanctuary in which criminals of all types were received, regardless of any local protest."²⁰⁵

a day, / In Southwerk at the Tabard as I lay . . .").

197. See *id.* at 35, frag. I, ll. 718-19 ("In Southwerk at this gentil hostelrye / That highte the Tabard, faste by the Belle.").

198. CARLIN, *supra* note 185, at 194.

199. See *id.* ("Such severe regulation [in London] must have been uncongenial to many innkeepers and travelers alike, and probably contributed to the development of the innkeeping trade in Southwark."). See also WILLIAM RENDLE & PHILLIP NORMAN, *THE INNS OF OLD SOUTHWARK AND THEIR ASSOCIATIONS* 420 (1888) (explaining further that the restrictions were responsible for the development of the innkeeping trade in Southwark).

200. CARLIN, *supra* note 185, at xix.

201. This was the result of Southwark's historical development as a political entity separate from London. *Id.* at 1-18, 101-27.

202. *Id.* at 44.

203. *Id.* at 49.

204. *Id.* at 114.

205. *Id.*

Repeated attempts by London to get jurisdiction over Southwark failed. A 1327 petition to Parliament complained that "thieves and felons who have done their felonies and larcenies in the city and elsewhere, and then are esped in the city and are on the point of being taken, stealthily flee to Southwark and remain there openly where no bailiff of the city can attach them."²⁰⁶ Besides criminals, Southwark was a refuge for businessmen and women who were unwilling or unable to join the London guilds and abide by their rules. For example, London victuallers, that is, the professions which provided food and drink, constantly complained that unscrupulous competitors "repaired to the vill of Southwark" to avoid the "punishments of the City" and practice their trades in freedom.²⁰⁷ As A.R. Myers states: "Prostitutes, driven out of London by the prudish outlook of the city fathers, congregated in Southwark . . . [the] dubious taverns were also the haunts of cutthroats and pickpockets, who found the greater laxity of Southwark's government . . . more to their liking than the stricter surveillance of London."²⁰⁸

Of particular note was London's failure to control prostitution in Southwark. London first banned prostitutes from the city in 1276-1278 and again during the fourteenth century in 1382-1383 and in 1393.²⁰⁹ In the meantime, Southwark remained notorious for its brothels on the south bank of the Thames, an area known as the Bankside stews.²¹⁰ They included the Barge, the Antelope, the Bear, the Bele Heved, the Bell, the Boar's Head, the Bull, the Cardinal's Hat, the Castle, the Crane, the Cross Keys, the Elephant, the Fleur de Lys, the Hart, the Hartshorn, the Lion, the Ram, the Rose, the Saraden's Head, the Swan, and the Unicorn—all lined up along the riverfront with colorful signs to attract customers traveling or crossing the river.²¹¹ London attempted to hinder Southwark's prostitution by forbidding boatmen from

206. *Id.* at 120. This particular petition only obtained the fee farm, or profits, of the king's portion of Southwark. In all other respects, King Edward III allowed Southwark to remain exempt from the jurisdiction of London. *Id.*; A.R. MYERS, *LONDON IN THE AGE OF CHAUCER* 11 (1972).

207. Frederick Tupper, *The Quarrels of the Canterbury Pilgrims*, 14 J. OF ENG. AND GERMANIC PHILOLOGY 256, 264 (1915); MYERS, *supra* note 206, at 202.

208. MYERS, *supra* note 206, at 11.

209. CARLIN, *supra* note 185, at 213.

210. *Id.* at 209-29.

211. *Id.* at 27 fig. 4. The Southwark poll tax return of 1381 identifies seven men as having the occupation of stewmongers. *Id.* at 212; P.F. Baum, *Chaucer's "Fast by the Belle,"* 36 MODERN LANGUAGE NOTES 307, 308 (1921) (citing JOHN STOW, 2 SURVEY OF LONDON 53-55 (C.L. Kingsford ed., 1908) (1598)); see also STOW, *supra*, at 150 ("These allowed stewhouses had signs on their fronts, towards the Thames not hanged out, but painted on the walles, as a Boares heade, the Crosse keyes, the Gunne, the Castle, the Crane, the Cardinals Hat, the Bel, the Swanne, etc.").

taking passengers across the river between sundown and sunset and by various other regulations, to no avail.²¹²

B. Chaucer's Treatment of Innkeeping in Southwark

Chaucer locates the Tabard "[i]n Southwark . . . / . . . faste by [right next to] the Belle."²¹³ Besides the Southwark location of the Tabard, he emphasizes its proximity to the Bell Inn. The Bell to which Chaucer refers was not the Bell (also known as the Bell and Cock) listed above as one of the Bankside brothels. The brothel of that name was located on the riverfront at some distance from the High Street address of the Tabard, so that the Tabard could not be described as "faste by," or right next to, this brothel.²¹⁴ Like the Tabard, Chaucer's "Bell" was presumably a "gentil hostelrye," or respectable inn typical of High Street.²¹⁵

However, it is still curious that Chaucer should use the Bell as a point of reference. As Carlin's map recreating medieval Southwark indicates, the High Street Bell was not right next to the Tabard, but rather somewhat farther down and on the other side of High Street.²¹⁶ The allusion has certainly succeeded in confusing Chaucer scholars who, until recently, have identified Chaucer's Bell as a brothel.²¹⁷ While it is possible the poet

212. CARLIN, *supra* note 185, at 213. Interestingly enough, the Bishop of Winchester actually owned the property where the Bankside stews were located, and he blandly ignored outcries against them. *Id.* at 114. Indeed, the bishops tacitly sanctioned their existence by appointing officers such as bailiffs, stewards, and constables to administer the brothels. *Id.* at 213-14.

213. CT, *supra* note 1, at 35, frag. I, ll. 718-19.

214. I am grateful for an e-mail Martha Carlin sent me in response to a question, "Chaucer wouldn't have called the Tabard, which lay on the east side of Southwark High Street, 'faste by' a building on Bankside, which was nowhere in the vicinity." E-mail Correspondence with Martha Carlin, Assoc. Prof., Univ. of Wisc.-Milwaukee, Dept. of Hist. (July 19, 2006, 1:03 p.m., EST) (on file with author).

215. See CARLIN, *supra* note 185, at 34 fig. 6, 193 n.15 (noting the existence of the Bell in the sixteenth century and concluding that this is the inn to which Chaucer was referring). "The Bell" was also the name borne by more than a half dozen taverns and inns in Southwark at one time or another. CT, *supra* note 1, at 825 (citing RENDLE & NORMAN, *supra* note 199, at 420); see generally Baum, *supra* note 211.

216. CARLIN, *supra* note 185, at 34 fig. 6. Carlin's e-mail states, "In the 16th century the Bell Inn lay a bit south of the Tabard, on the west side of the High Street, and it is very likely that it was this inn that Chaucer was using as a point of reference . . . other High Street landmarks, such as the Abbot of Hyde's 'inn' (townhouse), St. Margaret's Church or the Hartshead Inn (later known as the White Hart) were much closer to the Tabard than was the Bell." E-mail Correspondence with Martha Carlin, *supra* note 214.

217. CT, *supra* note 1, at 825. Until recently, scholarly conjecture confused the Bell on High Street with the Bell in the stews and thus concluded that the Bell Chaucer referenced was a brothel. Based on a description of Southwark by the Elizabethan antiquarian, John Stow, Baum speculated that the stewhouse Bell was the Bell Chaucer described as near the Tabard. Baum,

referred to the Bell simply to satisfy the requirements of meter or alliteration, a more intriguing possibility is that Chaucer was drawing his audience's attention to the lawless and disreputable aspects of Southwark by referencing an inn which shared its name with one of the notorious Southwark brothels. The contrast between the High Street inn and the Bankside brothel is consistent with Chaucer's description of the Tabard as a "gentil hostelrye," or respectable inn, even as he reiterates that it is located in the generally disreputable Southwark.²¹⁸

Although Harry Bailly runs an inn rather than the less respectable tavern or ale-house, distinctions between these types of businesses that offered lodging, food, and drink were not established by statute until the sixteenth century. There was always a great deal of confusion in terminology.²¹⁹ An inn could degenerate into a drinking shop or even a brothel.²²⁰ It happened that prostitution at times occurred in the High Street area of Southwark. In 1436, there were allegations made in Parliament that "Stywehouses, and houses of Bordell" had been established in the high streets of Southwark where there were "misliuers" and "criminals" by whom women were "ravished and brought to evil living," and local residents and travelers were "oft times robbed and murdered."²²¹

In *The Canterbury Tales*, Chaucer demonstrates a lively recognition of the lawless and disorderly character of Southwark, particularly in respect to innkeeping. The reader may recall the salacious ribaldry of *The Miller's Tale*, involving an adultery perpetrated by broad deceit, farting, an anal kiss, and an anal branding.²²² In the prologue to that tale, its narrator Robin the Miller acknowledges he is drunk, "I know it by the sound of my voice." He then advises the pilgrims that if he should say anything amiss, they should "Blame it on the ale of Southwark."²²³

The Miller could have purchased the "ale of Southwerk" at a

supra note 211, at 308-09 (citing STOW, *supra* note 211, at 53-55).

218. CT, *supra* note 1, at 35, frag. I, l. 718.

219. PETER CLARK, THE ENGLISH ALEHOUSE: A SOCIAL HISTORY 1200-1830 5 (1983). Clark distinguishes three types of medieval English drinking place. Inns were "usually large, fashionable establishments offering wine, ale, and beer, together with quite elaborate food and lodging to well-heeled travelers." *Id.* Taverns sold "wine to the more prosperous, but without the extensive accommodation of inns," though taverns sometimes did offer food and lodging. *Id.* Alehouses were "normally smaller premises serving ale or beer (and later spirits) and providing rather basic food and accommodation for the lower orders." *Id.*

220. *Id.*

221. CARLIN, *supra* note 185, at 221.

222. CT, *supra* note 1, at 68-77, frag. I, ll. 3187-3854.

223. See *id.* at 67, frag. I, ll. 3137-40 ("But first I make a protestacioun / That I am dronke, I knowe it by my soun; / And therefore, if that I myssspeke or seye / Wyte it the ale of Southwerk I you preyre.").

Southwark tavern or brothel the previous night, or he might have bought it at the Tabard itself.²²⁴ To the extent that innkeepers and other Southwark victuallers sold food and drink, they competed with the more regulated victuallers of London, another reason why the city sought greater legal control over Southwark.²²⁵ There are indeed personal and professional rivalries among the pilgrims of *The Canterbury Tales*.²²⁶ The Miller tells a tale in which a carpenter is duped, and the Reeve, who was a carpenter in his youth, takes offense and returns the favor by telling a story in which a Miller is the gull.²²⁷ Then there occurs the rivalry between Harry Bailly and Roger of Ware, the Cook, who, because they both sold food, were rival victuallers.²²⁸

At the end of *The Reeve's Tale*, Roger the Cook makes comments likely to needle Harry Bailly about his profession as an innkeeper:

“Ha! Ha!” said he, “For Christ’s passion,
This miller had a sharp conclusion
To his argument of hospitality
Solomon said well in his language,
‘Don’t bring every man into your house.’
For putting people up at night is perilous.”²²⁹

224. Many of the Southwark inns “seem to have provided food and drink for guests and non-guests alike, much as hotel restaurants and bars do today.” CARLIN, *supra* note 185, at 199. This is, of course, true of the Tabard, where the pilgrims have supper the night before they set out for Canterbury and plan to have another supper when they return. CT, *supra* note 1, at 35, frag. I, ll. 748-49; at 36, frag. I, ll. 799-800.

225. CARLIN, *supra* note 185, at 119-27 (reviewing the jurisdictional struggles between London and Southwark victuallers).

226. CT, *supra* note 1, at 68, frag. I, l. 3189; at 33, frag. I, l. 614.

227. *Id.* There are other rivalries. The Friar tells a tale of a corrupt Summoner, and the Summoner replies with one about a corrupt Friar. *Id.* at 874 (explaining that the Friar and the Summoner are rivals because friars could hear confession and collect alms). Once absolution was given, a person could not be charged with a sin in the ecclesiastical court. This hampered the efforts of summoners to extort money from persons wishing to avoid being charged in the ecclesiastical courts. *See id.* at 116, frag. III, ll. 829-49; 122, frag. III, ll. 1265-1300; and 128, frag. III, ll. 1665-1708 (presenting the exchanges between the Friar and the Summoner).

228. Behind Roger the Cook, there is likely a real person. There was a Roger de Ware of London, Cook, named in a plea of debt in 1384-85. *Id.* at 814. And a Roger de Ware, Cook, was accused of being a common night-walker, that is, of breaking the curfew. *Id.* (citing Earl D. Lyon, *Roger de Ware, Cook*, 52 MODERN LANGUAGE NOTES 491 (1937)).

229. *See* CT, *supra* note 1, at 84, frag. I, ll. 4327-32. (“Ha! Ha!” quod he, ‘For Cristes passion, / This millere hadde a sharp conclusion / Upon his argument of herbergage! / Wel seyde Salomon in his langage, / “Ne bring nat every man into thyn hous.” / For herberwyng by nyghte is perilous.”).

The comment occurs after the first three tales, all of which turn on the consequences of providing lodging to strangers. This has led some Chaucer scholars to perceive in these first few tales a theme of “herbergage,” or taking in guests for the night.²³⁰

Harry Bailly responds to the Cook’s comments by casting aspersions on the food he sells:

Now go on, Roger, and be sure it is good,
 For you’ve drawn the gravy from many a meat pie,
 And many a Jack Dover pie have you sold
 That has been twice hot and twice cold.
 From many a pilgrim you have Christ’s curse,
 Because on account of your parsley they fare the worse,
 Since they have eaten your stubble-fed goose,
 For in your shop many a fly is loose.²³¹

This passage reflects the sharp practices of some victuallers in Southwark. As with innkeepers, London carefully regulated those who sold food within the city.²³² A London ordinance of 1379 set out increasingly severe punishments for cooks who “baked in pasties rabbits, geese, and garbage [entrails, heads, feet, and the like of birds and fowls], not befitting, and sometimes stinking, in deceit of the people; and sometimes they also have baked beef in pasties and sold the same for venison, in deceit of the people.”²³³

Roger’s reply to Bailly’s jibes is to tell a tale of an innkeeper.²³⁴ Unfortunately, Chaucer only completed about fifty lines. However, it was clearly going to be a tale of urban low-life. It concerns an apprentice of the victualling craft who spends his

230. E.G. Stanley, *Of this Cokes Tale Maked Chaucer Na Moore*, 5 POETICA 36 (1976). See CT, *supra* note 1, at 44-45, frag. I, ll. 1399-1450 (narrating that Theseus of *The Knight’s Tale* accepts Arcite into his household after banishing him); *id.* at 68, frag. I, l. 3190 (depicting how John the Carpenter of *The Miller’s Tale* rents a room to Nicholas); *id.* at 81, frag. I, ll. 4114-26 (stating that the Miller of *The Reeve’s Tale* puts up two clerks for the night).

231. See CT, *supra* note 1, at 84, frag. I, ll. 4345-52 (“Now telle on, Roger; looke that it be good, / For many a pastee hastow laten blood, / And many a Jakke of Dovere hastow soold / That hath been twies hoot and twies coold. / Of many a pilgrym hastow Cristes curs, / For of thy percely yet they fare the wors, / That they han eten with thy stubbel goos, / For in thy shoppe is many a flye loos.”) To “laten blood” means to draw the gravy off from meat pies to make them keep longer. A “Jack of Dover” is probably a twice cooked pie, one that is stale and has been warmed up. Presumably flies have been mixed with the parsley. *Id.* at 84, 853.

232. BRASWELL, *supra* note 30, at 119.

233. MURIEL BOWDEN, A COMMENTARY ON THE GENERAL PROLOGUE TO *THE CANTERBURY TALES* 188 (1949) (quoting MEMORIALS OF LONDON AND LONDON LIFE IN THE XIIITH, XIVTH, AND XVTH CENTURIES 438 (H.T. Riley trans. & ed., 1868)).

234. CT, *supra* note 1, at 85, frag. I, l. 4360.

time in riotous living—singing, dancing, playing dice, debauchery, and stealing from his master.²³⁵ When his master lets him go, he moves in with a similarly minded friend who “had a wife that for appearances had / a shop, and screwed for her living expenses.”²³⁶ Such an introduction indicates that the tale would not reflect well on innkeepers.

The brothels and taverns of Southwark must have been a target for medieval preachers. Medieval homiletic literature proverbially attacked such establishments. “In the literature of the medieval pulpit,” wrote Gerald R. Owst, “the tavern and the ale-house, apart from the acknowledged fact that they are the occasion of much gluttony and drunkenness in the ordinary way, stand for a very definite menace to the common weal.”²³⁷ An excellent reflection of this sort of medieval pulpit oratory occurs in *The Pardoner’s Tale*. The Pardoner describes the typical tavern sins, identifying the tavern as the devil’s place of worship:

In Flanders there was once a company
Of young people who frequented folly.
Like disorder, gambling, brothels, and taverns,
Where with harps, lutes, and guitars
They would dance and play dice both day and night,
And also eat and drink beyond their capacity²³⁸

Harry Bailly may have taken this attack on the tavern vices as an attack upon himself because the innkeeper had provided food, drink, and entertainment to the pilgrims.²³⁹ The Pardoner’s sermon, then, to some extent provoked the confrontation between the Pardoner and the Host at the end of the tale, an event which marks the only point in *The Canterbury Tales* where the Host has lost control of events, and it is necessary for the Knight to intervene and negotiate a reconciliation between the two.²⁴⁰

Southwark’s notoriety for criminals, pickpockets, and houses

235. *Id.* at 85, frag. I, ll. 4365-66, 4376, 4380-93.

236. *Id.* at 85-86, frag. I, ll. 4403-22. “And hadde a wyf that held for contenance / A shoppe, and swyved for hir sustenance.” *Id.* ll. 4421-22.

237. GERALD R. OWST, *LITERATURE AND THE PULPIT IN MEDIEVAL ENGLAND* 435 (2d ed. 1961).

238. See CT, *supra* note 1, at 196, frag. VII, ll. 463-68 (“In Flaundres whilom was a compaignye / Of yonge folk that haunteden folye, / As riot, hasard, stywes, and tavernes, / Where as with harpes, lutes, and gyternes, / They daunce and playen at dees bothe day and nyght, / And eten also and drynken over hir might . . .”).

239. F.B. Jonassen, *The Inn, the Cathedral, and the Pilgrimage of The Canterbury Tales*, in *REBELS AND RIVALS: THE CONTESTIVE SPIRIT IN THE CANTERBURY TALES* 1, 19-23 (S. Greer Fein, David Raybin & P.C. Braeger eds., 1991).

240. *Id.*; CT, *supra* note 1, at 202, frag. VI, ll. 941-68.

of prostitution made it a questionable, if not hazardous, place for strangers to stay for the night, despite its convenience for setting out to the southeast.²⁴¹ In the absence of the law and order of London, the fourteenth-century Southwark lodger had to place a great deal of trust in the innkeeper. For the Canterbury pilgrims, Harry Bailly's reputation for good faith and honesty likely provided a guarantee that they could enjoy a feast with strangers in Southwark, and yet be safe in their persons and property. But if this were not enough, the fourteenth-century English courts supplemented the honest innkeeper's business interest in reputation with the law of innkeeper's liability. Chaucer's choice of setting makes Harry Bailly the guarantor that the Tabard Inn is a safe haven in the midst of the chaotic dangers of Southwark. And through the establishment of innkeeper's liability, all innkeepers of the realm were made guarantors against the loss and theft of the property of their guests.

C. Chaucer's Treatment of Innkeeper's Liability

Aside from the passages from *The Cook's Tale* and *The Pardoner's Tale* which raise the chaotic aspects of the life of an inn, particularly a Southwark inn free of London regulations, twice in the course of *The Canterbury Tales*, Chaucer alludes to situations that would concern the dangers of theft at the inn. One of these is very brief. It occurs in *The Parson's Tale*, a penitential guide for examining one's conscience before confession, and the final tale before the pilgrims reach Canterbury Cathedral.²⁴² The Parson speaks of the sin "when people of low degree, such as those who operate inns, collaborate in the theft of the inn servants, and do so by many types of deceit."²⁴³

Chaucer treats the dangers of the inn at greater length in *The Nun's Priest's Tale*. In this fable, the rooster, Chauntecleer, had been frightened by his dream of a yellow and red beast (a fox) that had caught him, and Chauntecleer attempts to demonstrate to his wife, Pertelote, that dreams have significant meaning. He does so by citing learned authorities and providing exemplary stories.²⁴⁴ One tale he recites concerns two pilgrim friends who come to a town where they are unable to find room at any inn for both of

241. The tendency of medieval inns to attract criminal activity was not exclusive to Southwark. See BRONISLAW GEREMEK, *THE MARGINS OF SOCIETY IN LATE MEDIEVAL PARIS* 99, 109, 278 (Jean Birrell trans., 1987) (noting much the same for medieval Parisian inns).

242. CT, *supra* note 1, at 956.

243. See *id.* at 301, frag. X, l. 439 ("Or elles, whan this folk of lowe degree, as thilke that holden hostelries, sustenen the thefte of hire hostilers, and that is in many manere of deceits.")

244. *Id.* at 255-57, frag. VII, ll. 2970-3156.

them.²⁴⁵ Thus, one gets a comfortable bed at an inn, and the other must sleep in an ox's stall.²⁴⁶ The one who is comfortably lodged has a dream in which his friend calls upon him for help because he is being murdered.²⁴⁷ However, the dreamer simply goes back to sleep, regarding the dream as inconsequential.²⁴⁸ The third time the dream wakes the dreamer, he sees his friend with bloody wounds. The friend says he is now slain, and asks the dreamer to go to the town's western gate, where he will find his body hidden in a dung-cart.²⁴⁹ The friend explains that the motivation was robbery. "My gold caused my murder, to tell you the truth."²⁵⁰

In the morning, the dreamer went to the ox's stall where his friend had slept and called for him.²⁵¹ He was answered by the innkeeper.

The innkeeper responded to him right away,
And said, "Sir, your friend is gone.
As soon as it was day, he went out of town."²⁵²

Remembering his dream, the pilgrim went to the west gate of the town and saw a dung-cart.²⁵³ He cried out for justice for this "felonye."²⁵⁴ When the people overturned the cart they found the dead man, "who had just been murdered," in the middle of the dung.²⁵⁵ After reflecting on the belief that murder will always out, Chauntecleer relates how the carter and the innkeeper were tortured until they admitted their crime, "[a]nd were hanged by the neck-bone."²⁵⁶ It was more or less assumed that the innkeeper would be involved.

Like many of the passages in the course of *The Canterbury Tales*, this particular story in the *Nun's Priest's Tale* reflects risks inherent in making the kind of journey or pilgrimage that undergirds the entirety of *The Canterbury Tales*. One pilgrim finds safety and security in a decent room at a respectable inn. The other must make due in an ox's stall at the margins of an inn.

245. *Id.* at 255, frag. VII, ll. 2984-91.

246. *Id.* frag. VII, ll. 2992-3000.

247. *Id.* frag. VII, ll. 3001-07.

248. *Id.* at 255-56, frag. VII, ll. 3008-11.

249. *Id.* at 256, frag. VII, ll. 3012-20.

250. *See id.* frag. VII, l. 3021 ("My gold caused my mordre, sooth to seyn, . . .").

251. *Id.* frag. VII, ll. 3025-28.

252. *See id.* frag. VII, ll. 3029-31 ("The hostiler answered hym anon, / And seyde, 'Sire, your felawe is agon. / As soone as day he wente out of the toun.'").

253. *Id.* frag. VII, ll. 3032-38.

254. *Id.* frag. VII, ll. 3039-40.

255. *Id.* frag. VII, ll. 3041-49. "And in the myddel of the dong they founde / The dede man, that mordred was al newe." *Id.* frag. VII, ll. 3048-49.

256. *Id.* frag. VII, ll. 3050-62. "And were anhangen by the nekke-bon." *Id.* frag. VII, l. 3062.

One takes his rest, though it is troubled by dreams concerning his companion. The other is robbed and murdered. One goes out to look for his friend the next day. The other has been buried in the filth and corruption of a dung heap. This pilgrimage was a disaster. Instead of providing the spiritual renewal sought by religious pilgrims, it has brought tragedy and ruin: violent death to one and traumatic loss to the other. And at the heart of this failed pilgrimage was the corrupt innkeeper who attempted to hide the theft and murder.

Although this crime concerns more than the loss of property at an inn, the motivation was the pilgrim's property, his gold. The story is an illustration that innkeeper's liability protected more than the lodger's property. As noted in the discussion of *Navenby*, the rule also protected the lodger from the violence that may be committed in the course of the theft. In making the innkeeper the insurer of the guest's property, innkeeper's liability protected the guest, as well as the guest's property, from dangers posed by third parties, whether these third parties worked at the inn or not. This recent and controversial extension of the innkeeper's responsibility to the guest provides a contemporary legal backdrop to the relationship between Bailly and the pilgrims while they are guests at his inn. Like modern courts, however, Chaucer extends the liability of his innkeeper to care for his pilgrim guests beyond the premises of the Tabard, to the road between Southwark and Canterbury. And this is done, with appropriate legal formality, through a contract.

V. THE TALE OF THE CONTRACT

A. A Model Fifteenth-Century Oral Contract

In his book, *The Crisis of Truth*, Richard Firth Green provides an account of an oral contract struck about the year 1450 between a London goldsmith named Robert Ellesmere and a carpenter, William Searle.²⁵⁷ Ellesmeare wished to buy from Searle leases on certain houses for £40. To create a binding contract, he met Searle and his wife with two witnesses and George Houton, "a man of Counsel."²⁵⁸ Here is Houton's account of the meeting:

Then I, the seid George, did spake and seid unto them, "Then ye be accorded?" Then I, the same George, giving better erylis to their speche [listening more closely to their terms], desired to knowe howe they were accorded.

Then seide the seid Robert, "I shall geve a grete some of money."

"What some?" I, the seid George, desired to wete [know].

257. *Supra* note 82, at 121-22.

258. *Id.* at 121.

And he answered me and seid, "xl li. [£40], and it must be purveyd agenst [executed by] our lade day Anunciacion [August 15], at whiche tyme, it is accorded that the seid William shall delyver unto me," seide the same Robert, "all the seid evydences togeder with other evydences to be engrossed of the seid bargeyn. And yet," seide the same Robert, "I thank the godeman here, he puttyth me at my choyse whether I will have it or leve it [he gives me the option to take it or leave it] at [th]e said day."

"Then," seide I, to the seide William, "be ye accordeth in the maner as Robert here hath rehersed?"

And he seid "Ye."

"Then, goo we drynke."

And so we did, unto the Swan, a brewhaus fast by Seynt Antoinnes [in Threadneedle Street], and they departed, &c.²⁵⁹

Green adds that the account was corroborated by the witnesses, one providing the further detail that the drink which sealed the bargain was bought "ate the coste of the saide Robert Ellesmere."²⁶⁰ Green makes the point that this oral agreement "is a scrupulously performed trothplight," or pledge of faith, "complete with formal language, ritual gesture, and even a respected borrow."²⁶¹ This account, dated within fifty years of Chaucer's death, was the deposition of an attorney who, on behalf of his client, fashioned his testimony to illustrate that all the legal formalities required to make an oral contract binding were followed. It happens that Bailly and the pilgrims seal their story-telling agreement with much the same formality.

B. Harry Bailly's Story-Telling Contract

Near the end of *The General Prologue to The Canterbury Tales*, after the pilgrims have had supper and made their "rekenynges,"²⁶² that is, paid their bills, Harry Bailly proposes his

259. *Id.* Green cites W. T. Barbour, *The History of Contract in Early English Equity*, 4 OXFORD STUD. IN SOC. AND LEGAL HIST. 207 (1914), for this account; however, he states he augmented it from the Public Record Office of London, C 1/19/354.

260. GREEN, *supra* note 82, at 122.

261. *Id.* Green explains that a borrow originally was a witness to a contract who made sure the parties met their contractual obligations. *Id.* at 66-69. The borrow later evolved into the surety who guaranteed that a person's debt would be paid. Green argues that the word "truth" or "troth" had a variety of complex meanings in the fourteenth century: legal, ethical, theological, and intellectual. *Id.* at 8-10. Legally, to plight one's troth is to make a legally binding promise, and it could be applied to any agreement. *Id.* at 9-13.

262. CT, *supra* note 1, at 35, frag. I, l. 760. A reckoning, of course, is a settling of accounts, a type of judgment. MED, *supra* note 68, s.v. rekinig: "1.(a) The act or an instance of calculation, computation, accounting; . . . 3.(a) An accounting for one's conduct, esp. to God; also an accounting for others' conduct or others' souls; (b) judgment before God, esp. the last judgment."

story-telling game. From l. 769 to l. 858, a cluster of legal terms appear. Bailly offers the pilgrims entertainment on the journey if they would unanimously, or "by oon assent,"²⁶³ abide by his judgment, "stonden at my juggement."²⁶⁴ He takes a vote, asking for a show of hands, "Hoold up youre hondes, withouten moore speche."²⁶⁵ Bailly readily obtains the group's decision, or "conseil."²⁶⁶ The group granted, "graunted,"²⁶⁷ him his request without more deliberation, "avys,"²⁶⁸ and asks him to pronounce his verdict as he wishes, "And bad him seye his voirdit as hym leste."²⁶⁹

Then Bailey announces the terms of the story-telling game. To shorten the trip, he asks each of the pilgrims to tell four stories, two on the way to Canterbury and two on the return trip. The one who tells the best story on this occasion, or case, "caas," will have a free supper paid by everyone else back at the Tabard Inn.²⁷⁰ To preside over the arrangement, Bailly will ride with the pilgrims at his own expense and be their guide. Should anyone dispute Bailly's judgment, "my juggement withseye," that person would

263. CT, *supra* note 1, at 35, frag. I, l. 777. MED, *supra* note 68, s.v. assent: "1. formal endorsement; . . . 2.(a) Mutual agreement; . . . 3.(b) will, intent, intention."

264. CT, *supra* note 1, at 35, frag. I, l. 778. MED, *supra* note 68, s.v. jugement: "1.(a) The action of trying at law; a trial; . . . 2.(a) A penalty imposed by a court or someone in a position of authority; . . . 3.(a) A decision; verdict."

265. CT, *supra* note 1, at 35, frag. I, l. 783. The vote strikes Elizabeth A. Dobbs, *Literary, Legal, and Last Judgments in The Canterbury Tales*, 14 STUD. IN THE AGE OF CHAUCER 31, 46 (1992), as suggestive of a jury poll. The Host here seems to regard the pilgrims as a jury he is polling. 'Hoold up youre hondes' (line 783), for unanimous agreement, 'oon assent' (line 777), to some unspecified judgment that he, as judge, will render." CT, *supra* note 1, at 35, frag. I, ll. 777, 783.

266. CT, *supra* note 1, at 35, frag. I, l. 784. MED, *supra* note 68, s.v. conseil: "4.(b) a legal adviser, lawyer, counsel, or advocate; lerned ~, man of ~, a trained lawyer or barrister; ben of ~, to be (someone's) legal adviser; ben of ~ for, plead in (a lawsuit); ben of ~ with, be the legal adviser or representative of (sb.); . . . 5.(a) Counsel, advice instruction; . . . 6(a). A decision; a plan, scheme."

267. CT, *supra* note 1, at 35, frag. I, l. 786. MED, *supra* note 68, s.v. graunten: "3.(a) To allot (sth.), decree, ordain appoint; . . . (c) to give authoritative sanction to (sth.), approve (laws, etc.)."

268. CT, *supra* note 1, at 35, frag. I, l. 786. MED, *supra* note 68, s.v. avis: "4.(a) Judgment, opinion; . . . 6.(a) A spoken judgment, an expressed opinion; . . . (d) law. Advice (implying consultation and agreement upon a course of action)."

269. CT, *supra* note 1, at 36, frag. I, l. 787. MED, *supra* note 68, s.v. verdit: "(a) Law. A decision rendered by a jury in an inquest or a court case, verdict; (b) a pronouncement, ruling or binding decision made by someone empowered to render judgment, often for a group, on a matter under dispute."

270. CT, *supra* note 1, at 36, frag. I, l. 797. MED, *supra* note 68, s.v. cas: "8. Law. (a) Any civil or criminal question contested before a court of law, a suit, a cause; also *fig.*; (b) the side of one party in a trial, (someone's) case or cause; (c) an accusation, a charge."

have to pay for all that the group spends on the trip.²⁷¹

Next, Bailly asks for the pilgrims to “vouche sauf” or consent to these terms.²⁷² The pilgrims agree and swear oaths, “This thing was graunted, and oure othes swore.”²⁷³ The pilgrims bind Bailly to the terms of his agreement by requiring that he also swear his oath to be their governor for the trip, and the judge and record keeper of the stories.

The thing was granted, and we swore our oaths
Very willingly, and we asked him also
That he would agree to do so [swear his oath],
And that he would be our governor,
And the judge and reporter of our tales²⁷⁴

The pilgrims and Bailly agree to set a price certain for the dinner on their return, “And sette a soper at a certeyn pris.”²⁷⁵ The pilgrims committed themselves to be ruled, “reuled”²⁷⁶ as Bailly wishes, and they unanimously agree to his judgment, “thus by oon assent / We been accorded to his juggement.”²⁷⁷ Wine is served, and drunk, and everyone goes to bed. “And thereupon the wyn was fet anon; / We drunken, and to reste wente echon.”²⁷⁸

The next day, the pilgrims begin their journey, and at the

271. CT, *supra* note 1, at 36, frag. I, l. 805. MED, *supra* note 68, s.v. withseien: “2.(a) To make a refutation or counterargument; provide refutation . . . ; also, make a denial; (b) to contradict (sb. or sth.), refute . . . ; (c) to dispute the validity of (a title, an agreement, etc.); challenge (a decision); (d) to deny (sth.). 3. To renounce (sth.), repudiate; . . . also disavow (an oath).” See also *id.*, s.v. withseier: “(b) one who seeks to invalidate an ordinance.”

272. *Id.* at 36, frag. I, l. 807. MED, *supra* note 68, s.v. vouchen sauf: “1. To grant (sth.), bestow, provide, give.” Cf. MED, *supra* note 68, s.v. vouchen: “1. To summon (sb., a group of individuals), call . . . ~ to warrant, ~ ani grant, to summon (sb.) to court to give guarantee of title to property; . . . 1.(g) to refer (to a statute, text, etc); submit (to an authority); appeal (to sb. for judgment or confirmation); . . . 3.(b) in phrase: ~ . . . sauf, sauf . . . ~ : to give assent; accept.”

273. CT, *supra* note 1, at 36, frag. I, l. 810. MED, *supra* note 68, s.v. oth: “1.(a) A solemn invocation of God, sacred relics, one’s troth, etc. to witness the truth of a statement or one’s intent to carry out a promise, agreement, etc.; a statement or promise made with an oath; also, the act of stating or promising with an oath; 1.(b) *Law*. “An oath used as legal proof of someone’s innocence, motive, etc.; also, an oath to the truth of one’s statements in a legal or governmental proceeding.”

274. See CT, *supra* note 1, at 36, frag. I, ll. 810-14 (“This thyng was graunted, and oure othes swore / With ful glad herte, and preyden hym also / That he wolde vouche sauf for to do so, / And that he wolde been oure governour, / And of oure tales juge and reportour . . .”).

275. CT, *supra* note 1, at 36, frag. I, l. 815.

276. *Id.* at 36, frag. I, l. 816. MED, *supra* note 68, s.v. reulen: “1.(d) *law*. of a court, a justice: to direct (sb. to do sth.); also, *fig.* decide (a cause) authoritatively.”

277. CT, *supra* note 1, at 36, frag. I, ll. 817-18.

278. *Id.* at 36, frag. I, ll. 819-20.

first place they stop, Bailly reminds them of their contract, or "foreward." "Ye woot youre foreward, and I it yow recorde." "You know your contract, and I remind you of it."²⁷⁹ He then warns any would-be shirkers that such a person would have to pay for them all. "As evere mote I drynke wyn or ale, / Whoso be rebel to my juggement / Shal paye for al that by the wey is spent."²⁸⁰ He begins the game by inviting the pilgrims to draw straws to determine who will begin, "Now draweth cut, for that is myn accord."²⁸¹ The Knight draws the short straw, and so must tell his tale "[b]y foreward and by composicioun," by contract and agreement.²⁸² The Knight obeys "[t]o kepe his foreward by his free assent," "[t]o keep his contract given by his free consent."²⁸³

Within these eighty lines, the words that resonate of the law include: assent, juggement, hoold up youre hondes (a jury vote?), graunt, avys, conseil, voidit, caas, withseye, prey, vouche sauf, governour, juge, reportour, oth, reul, accord, the drink of wine to seal the contract, recorde, foreward, and composicioun. Several of the words, e.g., assent, juggement, graunt, vouche sauf, governour, and foreward, are repeated. In using these legal terms, Bailly is not merely aping legal jargon. Harry Bailly was an innkeeper in Southwark, a member of Parliament, and a coroner, appointed for his integrity and reliability.²⁸⁴ He is likely to have known something about legal procedure, given the investigations into suspicious deaths which he undertook as a coroner. Every day, this innkeeper would need to lodge guests, buy food and drink, and pay artisans for repairs to his inn. He knew how to make a contract binding.

C. A Legally Binding Contract

The Canterbury pilgrims observe standard rituals commonly employed during the Middle Ages to create a binding contract. In the fifteenth-century leasing agreement quoted above, the attorney Houton made his client repeat the terms of the contract and made Searle clearly assent to these terms. Hornsby notes that Bailly and the pilgrims observe both these formalities as

279. CT, *supra* note 1, at 36, frag. I, l. 829. MED, *supra* note 68, s.v. recorde: "3. A legal opinion or decision; . . . 6.(a) Testimony, attestation"; s.v. recorden: "4.(d) to pronounce judgment on (sb.); pronounce (a judgment); . . . 7.(a) To bear witness, testify, attest."

280. CT, *supra* note 1, at 36, frag. I, ll. 832-34.

281. CT, *supra* note 1, at 36, frag. I, l. 838. MED, *supra* note 68, s.v. accord: "1.(c) ben at or of on ~, be of one and the same opinion, be agreed or unanimous; . . . 5.(a) A formal agreement or covenant between parties at war or in dispute; settlement of a dispute, treaty of peace . . . ; (b) a specific contractual agreement."

282. CT, *supra* note 1, at 36, frag. I, l. 848.

283. *Id.* at 36, frag. I, l. 852.

284. See *supra* notes 180-85 and accompanying text.

well.²⁸⁵ Bailly first proposes the terms, from ll. 790 to 809, emphasizing that his “juggement” should dominate. From ll. 812 to 818, the pilgrims repeat the terms of the contract, with emphasis on the “juggement” of Harry Bailey. Finally, the next day, when Bailly is about to put the agreement into effect, he reminds the pilgrims of the terms in ll. 828-834, again focusing on his “juggement.” Such repetition is a reasonable formality in the formation of any oral contract to assure that all the parties know and understand its terms.²⁸⁶ Houton also had the parties to the leasing agreement seal their bargain with a drink at the local brewhouse.²⁸⁷ In similar manner, the pilgrims and the Host of *The Canterbury Tales* bind themselves to their story-telling agreement with a libation of wine.²⁸⁸ Hornsby notes that in Chaucer’s day, it was customary among merchants to signify the creation of a binding contract by this very means.²⁸⁹

The term “foreward” merits attention. Chaucer repeatedly describes the story-telling agreement as a “foreward.” The *Middle English Dictionary* defines the word as “[a]n agreement, a contract, treaty, bargain; terms of an agreement; pledge or

285. *Supra* note 9, at 81-82.

286. *Id.* at 81-82. HORNSBY notes similar formality in *Sir Gawain and the Green Knight*. *Id.* at 82 n.38. When the Green Knight enters Arthur’s court, he bears an ax and offers to allow anyone there to take a swing at his head with the ax provided the person allows him a return swing one year later at his home. SGGK, *supra* note 87, at 9, ll. 283-300. After Sir Gawain accepts the challenge, the Green Knight makes him repeat the terms of the beheading contract. *Id.* at 11, ll. 377-85. In requesting this, the Green Knight uses the term, “foreward,” “Refourme we oure forwardes, er we fyrrer passe,” “Let us repeat our contracts, before we go any further.” *Id.* l. 378. After Gawain cuts off the head of the Green Knight, the Knight retrieves his head and holds it before the court. The head then reminds Gawain of his contractual obligation to meet the Green Knight one year later. *Id.* at 12-13, ll. 421-56.

287. GREEN, *supra* note 82, at 122.

288. CT, *supra* note 1, at 36, frag. I, l. 819.

289. HORNSBY, *supra* note 9, at 82 n.39. Maitland states, “according to common custom the bargain is bound by a drink. In French, if not in English, law, this solemnity seems to have had a legal force.” 2 SELECT PLEAS IN MANORIAL AND OTHER SEIGNORIAL COURTS 138-39 (F.W. Maitland ed., Selden Soc’y 1888). THEODORE F.T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 630 (1956), notes that the use of a drink to bind an agreement was a formality associated with mercantile transactions. *Sir Gawain and the Green Knight* again provides a parallel. HORNSBY, *supra* note 9, at 83 n.40. Gawain makes an agreement with his host Sir Bertilak, at whose castle he stays just before he is to meet the Green Knight, and this agreement is also a “foreward.” See SGGK, *supra* note 87, at 31, l. 1105 (“A forwarde we make.” “Let’s make a deal.”). Sir Bertilak will go out hunting while Gawain remains at the castle. *Id.* at 30-31, ll. 1088-1109. The two agree to share whatever winnings they should acquire during the day, and they seal this bargain with a drink. *Id.* at 31, ll. 1105-11. “Who bryngez vus this beuerage, this bargain is maked.” “If one should bring us a drink, this bargain is done.” *Id.* at 31, l. 1112.

promise.” The *Oxford English Dictionary* has “an agreement, compact, covenant, promise.” Hornsby states that Middle English “foreward” is synonymous and interchangeable with the word “covenant,” and covenant was the Middle English word that would cover legally binding agreements in general.²⁹⁰ For Chaucer’s contemporaries, then, a “foreward” is a binding agreement roughly equivalent to the word “contract” today. Its use throughout *The General Prologue of The Canterbury Tales* is consistent with this definition.²⁹¹

When Bailly turns to the Man of Law, he invites him to tell a tale, “as forward is,” “according to your contract.”²⁹² Bailly goes on to inform the Man of Law that he has “submitted” himself by his “free assent,”

“To stand under my judgment in this case.
Perform now your promise;
Then you’ll have done your duty, at least.”²⁹³

The Man of Law assents, stating,

“To break my foreward is not my intent.
Promise is obligation, and I will surely keep
All my promise”²⁹⁴

Aside from “foreward,” other legal terms found in *The General Prologue* reappear: assente, cas, juggement; and new legal terms appear: submitted, acquiteth, entente, biheste, dette, and

290. “The term *covenant* – not, as today, *contract* – was the general term covering all sorts of agreements. . . . *covenant* referred to any type of agreement and in many cases, whether oral or written, one which was legally binding.” HORNSBY, *supra* note 9, at 35. “It seems reasonable to consider ‘foreward’ and ‘covenant’ both as interchangeable terms and as denoting similar types of legally valid agreements.” *Id.* at 75. On the synonymous meanings of foreward and covenant in Middle English, Hornsby cites the MED. *Id.* at 74-75 n.15; MED, *supra* note 68, s.v. covenaut and foreward; SGGK, *supra* note 87, ll. 392-93, 406-09, 1404-08. However, the term “covenant” can also be used in a more specific or technical sense to denote an exchange of promises as opposed to a transaction in which some benefit is transferred. HORNSBY, *supra* note 9, at 35.

291. The word “foreward” also turns up in the Deluge Pageant of the Chester Plays (c. 1450), where God refers to the covenant He makes with Noah, never to flood the earth again: “A forwarde now with thie I make.” OXFORD ENGLISH DICTIONARY (2d ed. 1989) (hereinafter “OED”), s.v. foreward. It comes from Old English “fore-ward,” which consists of the prefix “fore” with the sense of in front, and “weard,” a security or precaution. *Id.*

292. CT, *supra* note 1, at 87, frag. II, l. 34.

293. See *id.* ll. 35-38 (“To stonden in this cas at my juggement. / Acquiteth yow now of youre biheeste; / Thanne have ye do youre devoir atte leeste.”).

294. See *id.* frag. II, ll. 40-42 (“To breke forward is nat myn entente. / Biheste is dette, and I wole holde fayn / Al my biheste”).

devoir.²⁹⁵ When Bailly turns to the Parish Priest, he says, "Tell us a tale, as was your earlier foreward."²⁹⁶ Other exchanges also assume the existence of a binding agreement. To the Clerk, Bailly states that when a person participates in a game, he "[m]ust assent to the rules of the game."²⁹⁷ The Clerk replies, "I am under your authority,"

"For now, you have governance over us,
And therefore I will be obedient."²⁹⁸

Bailly has similar exchanges with the Squire²⁹⁹ and the Franklin.³⁰⁰

It is evident that the characters of *The Canterbury Tales* regard the story-telling agreement to be binding. The Man of Law expresses the attitude when he states: "biheeste is debt," a promise creates an obligation or debt; in Latin, "pacta sunt servanda," agreements are to be kept.³⁰¹ Though Harry Bailly is not a real judge or governor, or even an attorney for that matter, the pilgrims play along with the legal rules of the story-telling arrangement so that Bailly is, in effect, the judge and governor of the pilgrimage.³⁰²

295. *Id.* frag. II, ll. 35-41. MED, *supra* note 68, s.v. submitten: "2.(b) chiefly *law. refl.* To defer or submit (to a judge, lord, etc.) for a decision or judgment; submit (to the disposition of a judicial authority)"; s.v. aquiten: "1.(b) to redeem (a pledge, surety); make good (a promise, an obligation); . . . 4.(b) to acquit (the accused); to clear (oneself) of a charge of wrongdoing . . ."; s.v. entente: "7.(a) *Law.* A legal claim, a demand; (b) the provisions, substance, or essence of a contract, a law, a will; the meaning or purport of a document in the eyes of the law"; s.v. biheste: "(a) A promise or pledge"; s.v. dette: "2. *Law.* accioun (ple, pledinge) of ~, a suit to recover what is owed"; s.v. dever: "3.(a) A feudal service or tax; (b) whatever is due or proper."

296. See CT, *supra* note 1, at 103, frag. II, l. 1167 ("Telle us a tale, as was thi forward yore.").

297. See *id.* at 137, frag. IV, ll. 10-11 ("For what man that is entred in a pley, / He nedes moot unto the pley assente.").

298. See *id.* ll. 22-24 ("I am under youre yerde; / Ye han of us as now the governance, / And therefore wol I do yow obeisance, . . .").

299. *Id.* at 169, frag. V, ll. 4-5.

300. *Id.* at 177, frag. V, ll. 696-98, 703-04.

301. *Id.* at 87, frag. II, l. 41; HORNSBY, *supra* note 9, at 33-34 n.6. On the Latin proverb, HORNSBY cites HAROLD J. BERMAN, 1 LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION 247 (1983).

302. A character's faithfulness to his or her word, even in a promise improvidently given, is a common motif in fourteenth-century English literature. See SGGK, *supra* note 87 and *The Franklin's Tale*, CT, *supra* note 1, at 178-93, frag. VI, ll. 709-1624 (exemplifying faithful promise-keeping in fourteenth-century English literature); GREEN, *supra* note 82, at 316-32 (showing further that the faithfulness was a common motif). See also *id.* at 37-40, 283-335 (explaining that the fourteenth century witnessed a transition in which courts moved away from establishing truth by means of oaths sworn by witnesses to establishing truth by means of documentary and physical

D. The Parties to the Agreement

There have been two close examinations of the story-telling agreement of *The General Prologue*. Joseph Allen Hornsby interprets the contract as a debt agreement.³⁰³ However, he states that these legal formalities merely “give the agreement the *illusion* of being legally binding.”³⁰⁴ He suggests that Bailly cleverly manipulates the pilgrims into what only appears to be a binding agreement to return to the Tabard at their journey’s end.

Chaucer has compiled enough legal detail to give the *impression* that a serious, binding agreement has been created. . . . Although the agreement is simple, only Harry Bailly seems to be aware of its full significance. He stands to make a good deal of money from the pilgrims by virtue of the contract they have made with him. The inclusion of legal details in Chaucer’s description of the ratification of the agreement *makes it look as if* the Host has bound his guests to a *quasi-legal obligation* to spend their money with him when they return home.³⁰⁵

Hornsby never makes it quite clear why, as he suggests, the contract is illusory. He does, however, discuss the distinction in medieval legal theory between an agreement or covenant, which is legally binding because of “the terms of the promises made by one person to another,” and what he terms a “real contract” (or simply a “contract” to fourteenth-century common lawyers), which is legally binding by virtue of an “underlying transaction generating the obligation,” that is, “by the transfer of something of value from one person to another [such as a loan or sale] instead of by the promise alone.”³⁰⁶ Thus, a real contract creating a debt is generated by a *quid pro quo*.³⁰⁷ Hornsby recognizes that the story-telling agreement provides Bailly with the benefit of a return night’s business. But he never recognizes any benefit that the pilgrims receive from Bailly. This lack of a *quid pro quo* may account for Hornsby’s suggestion that the agreement is only an

evidence, and, as a result, fourteenth-century literature often explored the value of an individual’s word).

303. HORNSBY, *supra* note 9, at 81-84.

304. *Id.* at 81 (emphasis added).

305. *Id.* at 83-84 (emphasis added).

306. *Id.* at 35; *see also* BAKER, *supra* note 26, at 317 (“The word ‘contract’ possessed a more confined meaning for [medieval common lawyers] than [sic] it now does. It denoted a transaction, such as a sale or loan, which transferred property or generated a debt; it did not mean a mere consensual agreement, an exchange of promises.”) *But see* D.J. IBBETSON, A HISTORICAL INTRODUCTION TO THE LAW OF OBLIGATIONS 22 (1999) (suggesting that “covenant” meant most any type of agreement and would cover actionable contracts. “For an anonymous lecturer of the early fourteenth century the ideas of covenant and contract were essentially indistinguishable.”).

307. BAKER, *supra* note 26, at 317; IBBETSON, *supra* note 306, at 22.

illusory contract.³⁰⁸

Elizabeth A. Dobbs perceives a more complicated situation. First, she believes that “the language and the situation at the end of *The General Prologue* refer rather to *several* contractual or quasi-contractual arrangements,” including “actions of covenant and debt, and account.”³⁰⁹ Secondly, according to Dobbs, the proposal and reaction to it also allude “to parts of legal procedure.”³¹⁰ This procedural aspect provides Bailly with his peculiar pilgrimage role as judge and governor. In regard to the contractual implications of *The General Prologue*, Dobbs rejects Hornsby’s analysis as “too one-sided” in casting Bailly as a “clever rogue” who manipulates the pilgrims into an apparently binding contract.³¹¹ Yet, the only *quid pro quo* which she understands the pilgrims to receive is the insubstantial mirth and entertainment of the tales which the arrangement affords them.³¹² This leads Dobbs to argue, “[T]he heart of the proposal . . . is the tale-telling itself and involves the pilgrims to the exclusion of the Host.”³¹³ The main contract is an agreement “among the pilgrims” and not with Bailly.³¹⁴

The story-telling contract is not illusory, nor is it an agreement among the pilgrims to the exclusion of Harry Bailly. The story-telling contract is between Bailly on the one hand and the pilgrims on the other. The *quid pro quo* which Bailly exchanges for the pilgrims’ agreement to tell their tales and return to spend more money at the Tabard is his service as their guide free of charge.

And for to make yow the moore mury,
I wol myselven goodly with yow ryde,
Right at myn owene cost, and be youre gyde;

And in order to make you the merrier,
I will myself ride with you gladly,
Absolutely at my own expense, and be your guide;³¹⁵

Bailly’s guidance is of great practical value to the pilgrims. Because of his professional expertise, Bailly would know at what

308. On the necessity of a *quid pro quo* to create an actionable debt in fourteenth-century law, see William M. McGovern, *Contract in Medieval England: The Necessity for Quid pro Quo and a Sum Certain*, 13 AM. J. LEGAL HIST. 173 (1969); IBBETSON, *supra* note 306, at 80-82.

309. Dobbs, *supra* note 265, at 31.

310. *Id.*

311. *Id.* at 38.

312. *Id.* at 38-39.

313. *Id.* at 38.

314. *Id.*

315. CT, *supra* note 1, at 36, frag. I, ll. 802-04.

inns they should stay, how to avoid highwaymen, and where to buy wholesome food and drink at fair prices. In the most practical terms, Bailly's profession as an innkeeper guarantees the pilgrims' safety and security at his inn in the midst of the shady environs of Southwark,³¹⁶ and his undertaking as a guide guarantees their safety and security on the road to Canterbury so that none of them will meet anything like the fate of the pilgrims in the *Nun's Priest's Tale*.³¹⁷

Moreover, Bailly's governance and judgment in handling the story-telling game-contract will also be crucial to the success of the pilgrimage. To keep his guests interested in the journey and the tales, Bailly will skillfully wield his judgment, powers of persuasion, and, most importantly, his playful contractual authority over this temporary community of pilgrims. His expertise is evident. Bailly turns from one pilgrim to another to tell a tale, reminding the pilgrim, if necessary, of the story-telling contract, his authority as judge and governor, and the penalty for refusing to pay this debt.³¹⁸ But he also has the wisdom to understand the limits of his power. When the Miller interrupts and insists he will tell the second tale or leave, Bailly gives in.³¹⁹ From time to time, he allows others to jump in as they wish.³²⁰ He supports the Knight in interrupting the Monk because the Monk's tale is too boring,³²¹ and he stops *The Tale of Sir Thopas* offered by Chaucer the pilgrim because the poetry is insupportably bad.³²²

While it is true, as many commentators have said, that Bailly cleverly binds the pilgrims to this scheme in order to bring them back to the Tabard where they will spend their money once again at his inn, the story-telling contract serves more than Bailly's petty self-interest. It also serves the interest of the pilgrims. The story-telling provides entertainment that engages the pilgrims, making it more likely that they will continue on the pilgrimage and not be distracted from their goal of Canterbury Cathedral.³²³

316. See *supra* Part IV.A (describing social and legal conditions in the London suburb of Southwark).

317. See *supra* Part III.B (tracing the extension of innkeeper's liability beyond the inn), and *supra* Part IV.C (presenting Chaucer's treatment of innkeeper's liability in *The Canterbury Tales*).

318. See *supra* Part V.C (relating Bailly's treatment of the Man of Law, Clerk, Squire, and Franklin).

319. CT, *supra* note 1, at 67, frag. I, ll. 3120-35.

320. See, e.g., *id.* at 78, frag. I, ll. 3899-3908 (explaining that when the Host sees that the Reeve wishes to tell a tale in response to the Miller, he allows him to go ahead with his tale).

321. *Id.* at 252, frag. VII, ll. 2767-2805.

322. *Id.* at 216, frag. VII, ll. 919-35.

323. See VICTOR TURNER, DRAMAS, FIELDS, AND METAPHORS: SYMBOLIC ACTION IN HUMAN SOCIETY *passim* (1974) (developing an anthropological analysis of pilgrimage); see generally Victor Turner, *Pilgrimage and Communitas*, 23 STUDIA MISSIONALIA 305 (1974).

Under these terms, Bailly undertakes to provide something which the pilgrims, by virtue of their religious commitment to the pilgrimage, may hold much more valuable than their personal property: the successful completion of the pilgrimage to Canterbury.³²⁴ The pilgrims are not gulls. They know a good deal when they see it. Not only does Bailly bind the pilgrims to obey him as their judge and governor, but they bind him to act as their guide.

E. *Bailly v. Canterbury Pilgrims*

It may be idle to speculate on the possibility of hypothetical cases based on a fourteenth-century work of fiction, especially when the author himself cautions his readers, "[M]en shal nat maken ernest of game," "[M]en shall not take a game seriously."³²⁵ However, such speculation may also provide insight into the legal thought with which Chaucer informed his poetry. The following section is a preliminary and speculative examination of evidence that, in the details of the story-telling contract, Chaucer laid the groundwork for three types of legal action that might have been brought in the late fourteenth century: an action on the covenant, an action for debt, and trespass based on *assumpsit*.

At the Tabard Inn, before the pilgrimage begins, Bailly promises to guide the pilgrims to Canterbury and back and to judge and manage the story-telling contest, while the pilgrims promise to accept his rule, tell the tales, and pay their portions of the free dinner for the winner. Anyone who rebels against Bailly's rule must pay for all that is spent by the entire group to and from Canterbury. There is no suggestion in the poem that the pilgrims committed the terms of the story-telling agreement to writing.³²⁶

Under fourteenth-century English law, an oral agreement, like a written one, was binding.³²⁷ This should not be surprising in a society where literacy was limited.³²⁸ However, then, as always, oral agreements presented problems of proof. Before written agreements became commonplace, symbols, rituals, and witness testimony were evidence of the agreement.³²⁹ Rituals in which parties pledged their faith, took an oath, shook hands, or had a

324. Chaucer's pilgrims would likely be familiar with such Biblical verses as MARK 8:36: "For what does it profit a man if he gain the whole world, but suffer the loss of his soul?"

325. CT, *supra* note 1, at 67, frag. I, l. 3186.

326. Of course, the poem itself records the agreement. However, the poem is a work of fiction; it is not a legal document, a deed under seal.

327. HORNSBY, *supra* note 9, at 34-36.

328. *Id.* at 37; see generally William M. McGovern, *The Enforcement of Oral Covenants Prior to Assumpsit*, 65 NW. U. L. REV. 576 (1970); William M. McGovern, *The Enforcement of Informal Contracts in the Later Middle Ages*, 35 CAL. L. REV. 1145 (1971).

329. HORNSBY, *supra* note 9, at 37-38.

drink were formalities to which witnesses could attest. The story-telling agreement is not lacking in the formalities that would provide legal evidence to make it legally binding. The pilgrims swear an oath and request Harry Bailly to do the same.³³⁰ The group further seals the bargain with a drink.³³¹ All the pilgrims are witnesses to these rituals.

Let us suppose that a pilgrim or several pilgrims rebelled against Bailly's authority. Or suppose one of the pilgrims broke the story-telling agreement by leaving the pilgrim group, by refusing to return to the Tabard Inn, or by failing to pay a fair share of the dinner for the winner. Could Harry Bailly have taken the pilgrim to court?

The mutual promises of the story-telling agreement create a covenant, providing Bailly with a possible action on the covenant. An action on the covenant applied to any consensual agreement or exchange of promises.³³² For a breach of the agreement, this action provided specific performance where possible, money damages where not.³³³ In Chaucer's day, in order to access the royal courts to litigate an action on the covenant, it would be necessary that the amount at issue meet a jurisdictional minimum of forty shillings, and the plaintiff would have to produce a deed under seal memorializing the covenant.³³⁴ It is difficult to know whether the amounts at stake in the story-telling agreement would have met the forty-shilling minimum, and, of course, there is no written deed.³³⁵ However, "local courts were quite competent

330. CT, *supra* note 1, 36, frag. I, ll. 810-12.

331. *Id.* ll. 819-20.

332. HORNSBY, *supra* note 9, at 35; BAKER, *supra* note 26, at 318.

333. BAKER, *supra* note 26, at 318.

334. HORNSBY, *supra* note 9, at 70; BAKER, *supra* note 26, at 319.

335. See Beckerman, *supra* note 148 (commenting on the forty-shilling minimum). Estimating what forty shillings might be worth in modern terms is difficult. See generally British Money, Contexts: The Value of British Money, www.broadviewpress.com/babl/index.php?option=com_docman&task=doc_download&gid=118 (last visited Jan. 10, 2010). The website provides two tables with dates from 1300 to 2005. The first indicates the amount of money that could historically purchase the equivalent of what £100 could purchase in 2005. *Id.* at 3. The second table indicates the amount of money that historically would equal the purchasing power of £20,000, the average British salary in 2005. *Id.* at 4. I believe the first table, indicating retail purchases, is what would more closely reflect the damages that would have to meet the jurisdictional minimum of the King's Bench. This table suggests that in 1400, five shillings, four pence would buy what £100 could buy in 2005. In the old currency of Great Britain, there were twelve pence in every shilling. Five shillings, four pence, or sixty-four pence is to forty shillings, or four hundred and eighty pence, as £100 is to £750, or \$1170.00 at the current rate of exchange. For the thirty pilgrims, that would be an average of sixteen pence, or one shilling, four pence, per pilgrim for the trip, which would be approximately thirty-nine dollars. If the pilgrims spent this amount, Bailey could have gotten to the King's Bench if he had claimed one or more rebellious

to deal with informal agreements.”³³⁶

Twice, Bailly provided for the penalty that any pilgrim who denied or rebelled against his authority would pay for everything the group spent on the road.³³⁷ In adding this penalty clause, as it were, Bailly may have had in mind a common fourteenth-century practice for covenanted parties to insure performance by creating a conditional bond. By such a bond, the party who had borrowed money or promised to perform a service agreed that he would owe a specific sum. The bond became void only if the debt were paid or the service rendered by a certain date.³³⁸ In essence, the conditional bond transformed an action on the covenant into an action for debt. The amount of the bond was a real penalty for nonperformance because it would typically be greater than the plaintiff's loss.³³⁹ Moreover, the bond agreement allowed the plaintiff to bring an action for debt rather than covenant. An action for debt was desirable because debt made recovery more secure.³⁴⁰ For example, if the defendant in an action for debt appeared to have defaulted, the plaintiff was entitled to immediate judgment for the amount of the debt, whereas for a breach of covenant, a jury would have to decide the amount of damages.³⁴¹ However, such bonds were generally in writing, accompanied written covenants, and specified a sum certain.³⁴² Bailly's penalty was not in writing and did not provide for a specific sum, though it may have provided the means for arriving at the sum by adding all the expenses of the pilgrims on the Canterbury trip. Perhaps the best that can be said is that Bailly's oral penalty clause creates an analogy to the fourteenth-century practice of attaching a conditional bond to a covenant.

Bailly still has a claim on the covenant, though the remedy is unclear. Specific performance would not be a possibility since any legal action would occur after the pilgrimage was long over, for better or for worse. The value of the performance would also be unclear. However, Bailly might find another way to convert his action on the covenant into an action for debt. An action for debt was appropriate where a defendant owed, or unjustly withheld

pilgrims owed him everything that was spent to and from Canterbury, which, in fact, was the penalty Bailly set. See CT, *supra* note 1, at 36, frag. I, ll. 805-06, 832-34.

336. See BAKER, *supra* note 26, at 320 (“In the mayor's court of London, and probably in all other local courts, covenants continued to be actionable without a deed; this was as much the law of the land as the stricter evidential rule of the central courts.”).

337. CT, *supra* note 1, at 36, frag. I, ll. 805-06, 832-34.

338. IBBETSON, *supra* note 306, at 28-30.

339. *Id.* at 30; BAKER, *supra* note 26, at 324.

340. BAKER, *supra* note 26, at 320-21.

341. IBBETSON, *supra* note 306, at 29-30; BAKER, *supra* note 26, at 324.

342. IBBETSON, *supra* note 306, at 29-30; BAKER, *supra* note 26, at 323-24.

from the plaintiff, a sum of money or quantity of fungibles.³⁴³ Typically, the action was based on a written contract or on visible conduct such as a sale, a loan, or a service that generated a duty to pay.³⁴⁴ On an action for debt, the plaintiff would need to show that there was a transaction in which the defendant had received a material benefit, a *quid pro quo*.³⁴⁵

At the time the story-telling agreement was struck, nothing of value had yet been exchanged. However, once Bailly began to guide the pilgrims and manage their stories, he was rendering a valuable service to them, as has been argued above. Completion of Bailly's part of the bargain, then, would have been a valuable *quid pro quo*. Bailly could argue that the value of his service was the business he expected to receive when the pilgrims returned. He and the pilgrims had agreed on a specific price for the dinner which the winner of the story-telling contest would receive, "sette a soper at a certeyn pris."³⁴⁶ The portion of this sum which every pilgrim owed would be the sum certain for Bailly's action for debt against any pilgrim who refused to pay. Harry Bailly would then have a colorable action against a pilgrim or pilgrims who refused to pay their share of the free dinner which the best story-teller would have won.

Suppose now that under Bailly's guidance, highwaymen robbed the pilgrims, or imagine that they had lost their way for some reason and never arrived at Canterbury Cathedral. Could the pilgrims have brought suit against the Host?

Any of the pilgrims who was a party to the story-telling agreement could argue the existence of an action on the covenant if Bailly broke his promise to guide the pilgrims. Alternatively, the pilgrims could argue that they had an action for debt because they had performed a valuable service for Bailly in telling their tales under Bailly's direction. But it would be difficult to define the monetary value of the service the pilgrims performed for Harry Bailly on the road to Canterbury, whether it be for calculating damages in an action on the covenant or an action for debt. Even if the entertainment value of the tales were considered a beneficial service creating a debt Bailly would owe the pilgrims, it would be unclear what particular sum he would owe them for going along with his story-telling agreement. The pilgrims and Bailly never agreed to a sum certain that could be attached to their stories. At best, Bailly owed the pilgrims the performance of his promise to guide them to Canterbury, a service rather than a debt of money or property.

Nevertheless, based on the covenant or "foreward" the

343. BAKER, *supra* note 26, at 321.

344. *Id.* at 322.

345. *Id.*

346. CT, *supra* note 1, at 36, frag. I, l. 815.

pilgrims had with Bailly, they might have tried an action in *assumpsit*. An action in *assumpsit* was a type of trespass on the case. Originally, a trespass was simply a wrong committed against another resulting in some injury in breach of the king's peace.³⁴⁷ Through the development of the action for trespass on the case, trespass came to include wrongs that did not necessarily involve violence, what a modern lawyer would call a tort.³⁴⁸ An action for trespass or trespass on the case was not an action on the covenant or an action for debt; therefore, the plaintiff did not have to show there was a sum certain lost because of the breach of a covenantial promise, nor a transfer of a benefit as in an action for debt, in order to seek damages.

During the fourteenth century, plaintiffs attempted to use trespass on the case based on *assumpsit*, especially to litigate in the royal courts, what was really a breach of contract.³⁴⁹ The plaintiff would allege that, as part of a covenant, the defendant had undertaken, or assumed (*assumpsit* in Latin), the duty to perform a certain promise and had failed to perform it properly, with the result that the plaintiff suffered a wrong and incurred damages.³⁵⁰ Examples of such actions would be the case of *Bukton v. Townsend* (1348), where a ferryman agreed to ferry a mare across a river but lost it on account of overloading his boat;³⁵¹ *Dalton v. Mareschal* (1369), in which a veterinarian surgeon undertook to treat a horse and killed the animal by his negligence;³⁵² and *Birchester v. Leech* (1390), where a doctor undertook to cure a man's hand and negligently maimed it.³⁵³

The pilgrims, then, could allege that by virtue of the story-telling covenant, Bailly had undertaken to guide them to Canterbury and back. However, due to his poor performance, the undertaking had caused them damages. There would be some

347. IBBETSON, *supra* note 306, at 14-17, 39-43.

348. *See id.* at 43-56 (explaining how during the early fourteenth century, plaintiffs preferring the procedural advantages of an action for a trespass, as opposed to one for breach of covenant, alleged that the defendant acted by force and arms against the King's peace for transgressions that were not violent in nature, but merely consisted of the poor performance of a contractual duty that damaged the plaintiff). In order to make the jury aware that the case involved an allegation of nonviolent wrongdoing, around 1370, plaintiffs were allowed to include the details of their cases in the formal pleadings. *Id.* This trend is probably why the details of *Navenby v. Lassels* are included in the writ which the Chancery issued.

349. BAKER, *supra* note 26, at 329-31; MILSOM, *supra* note 106, at 271-75.

350. BAKER, *supra* note 26, at 329-30.

351. *Id.* at 330; IBBETSON, *supra* note 306, at 46-47; MILSOM, *supra* note 106, at 271-72; BAKER & MILSOM, *supra* note 134, at 358.

352. BAKER, *supra* note 26, at 330; MILSOM, *supra* note 106, at 107. BAKER & MILSOM, *supra* note 134, at 359.

353. BAKER, *supra* note 26, at 330. 7 SELECT CASES IN THE COURT OF THE KING'S BENCH 63 (G.O. Sayles ed., Selden Soc'y, vol. 88, 1971).

limitations to this action. Since an *assumpsit* action was based on the idea of a wrong, late fourteenth-century courts allowed such actions only for misfeasance, not for nonfeasance, of a contractual obligation.³⁵⁴ The action against Bailly would obtain if he performed poorly, but not if he did not perform at all.³⁵⁵ There were also advantages to *assumpsit*. Despite being subject to a number of defenses, the trespassory liability was essentially strict liability.³⁵⁶ The case of *Navenby v. Lassels* is itself an example of the use of trespass on the case (but not *assumpsit*) to hold an innkeeper strictly liable for the plaintiff's loss.³⁵⁷ Under *assumpsit*, the pilgrims would not have to produce a deed of the covenant or provide evidence of a transaction. It is conceivable that, depending on what might have been lost on the pilgrimage, a single pilgrim or the entire group could have sustained losses substantial enough to meet the jurisdictional minimum of the royal courts. In the light of the newly formulated doctrine of innkeeper's liability, the Chancery and King's Bench might have been inclined to allow an action in *assumpsit* against an innkeeper who, after promising to guide his pilgrim guests to and from Canterbury Cathedral, led them astray on the road. And like the First Circuit in *Coyne v. Taber Partners I*, the fourteenth-century justices of the King's Bench might have considered the Canterbury pilgrims to have been just as much wards of Harry Bailly on the road to Canterbury as they would have been in the dining hall or chambers of the Tabard Inn.³⁵⁸

Bailly's proposed "foreward," then, has the effect of extending the liability he owed the pilgrims under the recently established law of innkeeper's liability. Like modern courts which have demonstrated a tendency to extend such liability beyond the premises of the inn to the railroad station or to the airport, Bailly extended his duty to the pilgrims by contract beyond the premises of the Tabard to the road between the Tabard Inn and Canterbury Cathedral.

CONCLUSION

Chaucer's life provides ample evidence that he was familiar with the law and legal culture of his time. The positions to which he was appointed required a professional knowledge of law. His

354. BAKER, *supra* note 26, at 333-35; MILSOM, *supra* note 106, at 278-79.

355. There were exceptions to the nonfeasance rule. See, e.g., BAKER, *supra* note 26, at 336 (noting that attorneys and doctors could be sued in *assumpsit* for nonfeasance).

356. IBBETSON, *supra* note 306, at 58-63.

357. *Id.* at 53, 69.

358. See *supra* Part III.B (discussing the extension of innkeeper's liability beyond the premises of the inn where the inn provides services such as transportation to its guests, as in *Coyne v. Taber Partners I*).

circle of friends and audience contained many lawyers, and the legal-literary culture of his professional and personal life encouraged the incorporation of legal concepts into his poetry. The author chose Southwark as the site of the Tabard Inn to evoke an ambiance that was both risky on account of Southwark's relaxed laws, but also free from the legal strictures of London. The royal courts had recently made innkeepers like Harry Bailly the guarantors of their guests' property and, to some extent, of their safety. Bailly's professional integrity and character, reinforced by the law of innkeeper's liability, provided the pilgrims with the maximum of freedom and the minimum of risk in the heady environment of Southwark and on the road to Canterbury.

Harry Bailly extends his legal responsibility to his guests by offering to be their guide on the road to Canterbury through his covenant with the pilgrims. In return, the pilgrims agree to make him the judge and governor of their journey and to come back to the Tabard for a return supper. His story-telling contract provides entertainment that shortens the way to their goal. The informal agreement also superimposes a legal structure or template derived from the doctrines and procedures of the fourteenth-century English courts upon the tales. Chaucer's great frame narrative has a legal framework. The juxtaposition of the hard-edged realism of the law with the humanism of the tales is highly characteristic of Chaucer's poetic art.

