



# hospitality law

managing legal issues  
in the hospitality  
industry

SECOND EDITION



Stephen Barth

# **HOSPITALITY LAW**





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Managing Legal Issues in the Hospitality Industry  
Second Edition

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## INDEX



# ▶ Preface

This textbook was written to help teach hospitality students what they need to know to manage a facility legally. It was not written for attorneys who wish to specialize in hospitality law.

In the day-to-day operation of a hospitality facility, it is the manager, not the company attorney, who will most influence the legal position of the operation. Rarely will you find a hospitality manager who is also a licensed attorney. However, professional hospitality managers (and, by extension, their staffs) make decisions every day based on their own interpretation of the law. The quality of these decisions will ultimately determine whether lawyers and the expense of fees, trials, and potential judgments may become necessary. A few examples will help illustrate this fact.

- ▶ A restaurant guest is unhappy with the quality of service provided during his meal. He complains to the manager and angrily demands his money back, but his meal has been eaten.

Is the guest legally entitled to a refund?

- ▶ A hotel guest maintains that a \$50 bill she had left on her bedside table was gone when she returned to her room after going out for lunch.

Is the hotel required to replace the funds?

- ▶ A resort employee is arrested by the local police for driving under the influence of alcohol. He is employed by the hotel as a van driver, but was not on duty at the time of the arrest.

Should the hotel suspend his employment?

- ▶ A hotel food and beverage director is presented with a bottle of rare and expensive wine as a Christmas gift from her linen vendor.

Can she legally accept the gift without threatening her employment status?

- ▶ A franchise restaurant owner receives a letter from her franchisor stating that the “casual Friday” dress code policy recently adopted by the owner is in violation of the franchise agreement.

Must the owner change her policy?

These examples are just a few of the thousands of legal issues that daily confront hospitality managers. Obviously, it would be very expensive to consult an attorney each time a legal issue arises. It is also true, however, that making the *wrong* decision in any of these cases could result in tremendous costs in legal fees and settlements, or in costly negative publicity. Because that is true, a hospitality student’s and a professional manager’s greatest need is to understand how they can act in ways to ensure that they are managing legally in the hospitality industry. This book will show them how.

## THE CONCEPTUAL DEVELOPMENTAL PROCESS

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The authors’s years of teaching hospitality law at the undergraduate, graduate, and continuing professional education level have helped shape this textbook’s content enormously. The result of these activities was a recognition of the need

for a different kind of resource that could be used to teach hospitality students what they need to know about managing in today's litigious environment.

Before developing the first edition of this book, a survey of attorneys and human resource directors at the top 100 U.S. hospitality organizations was completed. The participants were asked to identify the primary areas they felt were critical to a hospitality student's legal education and training. The most significant areas of interest focused on the ability to manage correctly and, thereby, reduce the potential for legal liability.

Thus, preventing liability through a proactive management of the law is the dominant theme of this textbook. In all cases, where issues of content, writing style, and design were involved, the touchstone for inclusion was simply: "Does this add to a student's ability to do the right thing?" That is, will this feature improve his or her ability to legally manage his or her own operation? If so, it was considered critical; if not, it was quickly deemed superfluous. For that reason, this book will look and read very differently from any other hospitality law textbook on the market. The legal information in it has been carefully selected and classroom-tested to be clear, understandable, and easy to apply.

## **NEW TO THIS EDITION**

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This second edition has new features that will further enhance the learning outcomes for your students.

First, a new chapter, 13, covers legal issues that arise in travel and tourism, including transportation, travel agents, tour operators, gaming, mixed use and time share, as well as amusement parks. This chapter also includes legal issues that can arise due to the Internet booking phenomenon. Of course, the continuing saga of supermanager Trisha Sangus is included.

Second, each of the Web exercises has been updated to ensure accuracy and to enrich the learning experience.

Third, we have added the International Snapshots feature to Chapters 2 through 12 to give the instructor and students a global perspective on legal issues. Each of these was contributed by practicing attorneys or professionals in their field and describe the differences between U.S. law and that in the international arena in general or as it compares to a particular foreign country.

Finally, summaries of actual legal cases have been included at the end of each chapter to further illustrate and practically apply the law. A brief Message to Management is included at the end of each summary to continue the emphasis on being proactive and to clearly identify the impact of the case.

## **CREATING AN INTERACTIVE LEARNING ENVIRONMENT**

---

This textbook has been designed as a necessary tool for developing a hospitality law course that will foster within students an attitude of "compliance and prevention" in their work ethic and personal management philosophy. Compliance and prevention means teaching students ways to prevent or limit their legal liability by complying with legal norms. Instead of approaching the topic of hospitality law from a traditional case study viewpoint, this book provides an understanding of the basic foundations and principles of the laws affecting the hospitality industry. It then goes on to provide guidelines and techniques that show students how to manage preventively and apply a practical legal awareness to their actions.

Much of the book's effectiveness as a learning tool relies on having students participate in an interactive learning process. Several different types of learning features and exercises have been included that directly involve students, and are intended to help develop a pattern of behavior that will teach them to consider the legal implications of day-to-day management activities. Recognizing the im-

portance of technology, both in education and the industry, a number of activities were designed to showcase the value of the computer as a lifelong learning tool.

**Chapter Outline.** Each chapter begins with an outline that helps students see how topics fit together in the context of the overall subject they are learning about.

**Opening Vignette.** Students will follow the daily routine of fictional hotel manager Trisha Sangus as she grapples with challenges and dilemmas that demonstrate how an understanding of the chapter topic would be critical to a real-life hospitality manager's decision-making ability.

**In This Chapter You Will Learn.** More than just a list of learning objectives, this feature identifies concrete skills and necessary information that students will have gained after studying the chapter. Demonstrating how the information will be useful to them in their management careers will motivate students to learn.

**Legalese.** Legal definitions are provided, written in simple language to help students develop the vocabulary and understanding they need to follow the law.

**Analyze the Situation.** In these hypothetical but realistic scenarios, students will learn how a legal concept they have just encountered in the textbook is relevant to situations they will likely face in the hospitality industry. These situations—and the critical thinking questions that accompany them—may be assigned to students individually or discussed in a classroom setting. In many cases, we have intentionally made the facts ambiguous to challenge students to think through the situation and to foster discussion in the classroom.

**Search the Web.** Every chapter includes interactive Search the Web exercises. Students are directed to a carefully chosen collection of Internet sites that hospitality managers can use to find guidelines, access information, or learn more about the hospitality industry and the law. The questions that are part of every exercise are intended to guide students through a particular Web site and demonstrate how the computer can help them become better hospitality managers.

**Legally Managing at Work.** These sidebars contain practical legal guidelines for managers, covering a variety of situations that directly relate to restaurant and hotel operations. Topics range from recommended steps for managers when responding to guest injuries or health emergencies, to legal guidelines for drawing up contracts, and dealing with the media during an emergency situation. Using checklists, step-by-step procedures, and written forms, students will learn how to create policies and respond to situations in a manner that will help ensure compliance with the law and protect their business.

**International Snapshot.** An attorney or industry professional has compared U.S. legal practices with the same practices in the international community at large or a specific country. This section will create an enhanced perspective for your students.

**What Would You Do?** These realistic decision-making scenarios ask students to put themselves in a situation that requires them to apply the legal principles they have learned in the chapter. Many include a concrete activity, and all contain questions that require students to make a personal decision in a set of circumstances they may likely face in their future careers.

**The Hospitality Industry in Court.** Instructors often use actual legal cases as examples or learning tools in their hospitality law course. The challenge lies in selecting cases that effectively illustrate the topic being discussed. Many court cases that become famous are ultimately decided on the basis of

procedural issues or legal technicalities, rather than the facts of the case. Consequently, they are of interest to law students, but much less helpful to hospitality managers. Each chapter of the book includes summaries of real-life hospitality cases. The cases have been selected specifically to reinforce the “compliance and prevention” theme of the textbook. Professors are encouraged to have students look up the entire cases on their own or to use the summaries as springboards for assignments or class discussions.

***What Did You Learn in This Chapter?*** The main ideas and objectives of each chapter are briefly summarized here. The summary can be used by students as a supplement to, but not as a substitution for, a thorough review of the chapter material.

***Rapid Review.*** In addition to traditional end-of-chapter self-evaluation questions, each chapter’s Rapid Review also includes specific exercises designed to build students’ writing skills. For example, students may be asked to draft a policy for their staff, write a memo to their boss, or perhaps compose a letter to a local government official. Each chapter’s Rapid Review also includes at least one assignment that requires students to use the World Wide Web.

***Team Activity.*** Employers continue to stress the importance of working in teams. This is especially true for managers at every level, who may be called on to participate on committees or supervise projects with other groups of employees. This textbook provides you with classroom-tested activities that will stimulate thinking and discussion, while allowing students to practice the team-building and social skills they will need to succeed as hospitality managers.

## INSTRUCTOR’S MANUAL

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To help instructors manage the large number of exercises, activities, and discussion questions posed in this textbook, an Instructor’s Manual (ISBN: 0-471-70863-1) is available. Please contact your Wiley sales representative for details. Or, to access an electronic copy of the Instructor’s Manual, go to **[www.wiley.com/college/barth](http://www.wiley.com/college/barth)**.

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Stephen Barth  
Houston, Texas

# **HOSPITALITY LAW**



# ▶ Chapter 1

## Prevention Philosophy

### **1.1** THE FUTURE HOSPITALITY MANAGER AND THE LEGAL ENVIRONMENT

### **1.2** THE HOSPITALITY MANAGER AND LEGAL MANAGEMENT

Historical Origins of the Law  
The Evolutionary Nature of Common Law

### **1.3** PREVENTATIVE LEGAL MANAGEMENT

STEM the Tide of Litigation

### **1.4** ETHICS AND THE LAW