



HOSPITALITY LAW

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Week 2:

Hospitality Contracts

CONTRACT

THIS AGREEMENT made this _____
by _____
and between _____
and _____

_____ day of _____, 20____

WITNESSETH: That in consideration
kept and performed on the part of _____

I. Said party of _____
_____ (First Party)
_____ (Second Party),
_____ covenants and agreements to be
_____ hereto, respectively as herein stated:
_____ and agrees that it shall: _____

_____ and said party of the second _____

INTRODUCTION TO CONTRACTS

Generally speaking, litigation in the hospitality industry arises because the **plaintiff** believes one of the following to be true:

- ❖ **The defendant** did something he or she was not supposed to do.
- ❖ The defendant didn't do something he or she was required to do.

- **Contracts, and the laws** surrounding them, have been established so that both parties to an agreement can more clearly understand exactly what they have agreed or promised to do.

Plaintiff versus defendant



千图网 (2023), Original Lawyer Court Office Character Scene Flat Style Illustration Illustration, https://png.pngtree.com/illustrations/20190321/ourlarge/pngtree-original-lawyer-plaintiff-defendant-png-image_25156.jpg

- **Plaintiff:** The person or entity that initiates litigation against another. Sometimes referred to as the **claimant, petitioner, or applicant**
- **Defendant:** The person or entity against which litigation is initiated. Sometimes referred to as the **respondent.**
- **Contract:** An agreement or promise made between two or more parties that the courts will enforce

Written and Verbal Contracts



JESSE WHITE (2020), Why a Written Contract Is Better Than a Verbal Agreement,
<https://kirasystems.com/uploads/learn-herowhyawrittencontractisbetterthanaverbalagreement.png>

- **Hospitality managers** make a great number of promises and enter into a **multitude of agreements on a daily basis.**
- While effective managers enter into these agreements in good faith, any number of **problems can arise** that may prevent a promise from being fulfilled

ANALYZE THE SITUATION 2.1

- In response to a **telephone inquiry**, Vincent's Tree Service offered to trim an apple tree on the lawn outside the **front lobby of the Olde Tyme Prime Rib restaurant**, for a fee of **\$500**. Mr. Wilbert, the restaurant's manager, agreed to the price and a start date of Monday. At noon on Monday, Vincent's informed Mr. Wilbert that the job was completed.

Cont'

- ❑ The tree trimming went fine, **but a large amount of branches and leaves** from the tree were left neatly piled near the tree's base. When Mr. Wilbert inquired about the removal of the debris, **Vincent's stated that removing it had never been discussed, and was not included in the quoted price.**

Cont'

- Mr. Wilbert agreed that the topic of removal was never discussed, **but stated that it is generally assumed that when a company trims a tree, it will remove the brush it generates; therefore, he refused to pay until the brush was removed.**

Which party's argument seems valid? Why or why not?

Your comments.....

- ❖ **Valid contracts** may be established either in **writing or verbally.**
- ❖ Generally speaking, **written contracts are preferred over verbal contracts** because it is **easier to clearly establish the responsibilities of each party** when those responsibilities are **completely spelled out.**

- ❖ **Interestingly**, despite the fact that written contracts have distinct advantages over verbal agreements, in the hospitality industry, most transactions with **guests are established orally, rather than in writing.**
- ❖ When a potential customer calls a restaurant to order a pizza for home delivery, a contract is established **via telephone.** The guest agrees to pay for the pizza when delivered, just as the restaurant agrees to prepare and deliver a high-quality product

Components of an Enforceable Contract

- ❖ All **contracts**, whether verbal or written, must include **specific components** that will make them legally enforceable in a court of law.
- ❖ If any of the components are missing, the courts will consider the contract **unenforceable**.

❖ To be enforceable, a contract must be legally valid, and it must consist of **an offer, acceptance, and consideration.**

- **Offer:** The offer simply states, in as precise a manner as possible, exactly what the offering party is **willing to do**, and what he or **she expects in return**.

- **Consideration:** An important part of the contract is consideration, which can best be viewed as something of value, such as **the payment or cost of the promises of performance agreed to in a contract.**
- Consideration may be **something** other than money.

- **Acceptance:** Because it takes at least **two** parties to create a contract, a legal offer and its consideration must be clearly accepted by a **second party** before the contract comes into existence.

ANALYZE THE SITUATION 2.2

- JoAnna Hart was offered a position as **director of foodservice for the independent school district** of Laingsford. She received a written offer of employment on the first of the month, with a stipulation that the offer would be in effect until the fifteenth of the month.

- If Ms. Hart were to accept the employment offer, she would have to sign the employment contract and return it to the Laingsford Superintendent of Schools before the **offer expired on the fifteenth**. Upon reading the details of the contract, Ms. Hart felt that the salary identified in the letter **was too low, and thus she adjusted it upward by \$5,000,** initialing her change on the contract copy.

- She then returned the offer letter to the schools superintendent with a **cover letter, stating she was pleased to accept the position as detailed in the contract.** The contract arrived by mail in the office of the superintendent on the fourteenth of the month, at which time, **the superintendent called Ms. Hart to express his regret that she had rejected the employment offer.**

- During the telephone call, Ms. Hart realized that the superintendent would not accept her salary **revision proposal**, so instead she verbally accepted the position at the original rate of pay.

- The superintendent, however, declined her acceptance, stating that **the original employment offer no longer existed.**

Your comments.....!

1. Does the school have the legal right to withdraw its offer of employment? Why or why not?

Acceptances: Hospitality particularities

- Legal acceptance may be established in a variety of ways. In the hospitality industry, these generally take the form of one of the following:

- 1. Verbal or nonverbal agreement**
- 2. Acceptance of a deposit**
- 3. Acceptance of partial or full payment**
- 4. Agreement in writing**

Common Hospitality Contracts

1. Franchise Agreements: In a franchise agreement, the owner of a hospitality facility (**the franchisee**) agrees to operate that facility in a specific manner in exchange for a franchise.

- A franchise can take many forms, but is generally the **right to use the name, trademark, and procedures** established by the **franchisor** for the sale of a product or service in a specific geographic area.

2.Management Contracts :A management contract is created when the owner of a hospitality facility allows another party to assume the day-to-day operation of that facility.

- **In a management contract**, the facility owner allows the management company to make the operational decisions that are required in order for the facility to effectively serve its clientele.

3. A group rooms contract: is developed when an individual or organization requires a large number of hotel rooms.

- Some hotels require that any request exceeding a total of **10 sleeping rooms** per night be confirmed by a group rooms contract.

4. Convention or Meeting Space Contracts : Similar to the group rooms contract, and in fact sometimes a part of the same document, is **the convention or meeting space contract.**

- While hotels primarily contract for the sale of sleeping rooms, **many hotels also offer guests the ability to reserve meeting rooms or exhibition halls.**

5. Purchasing Agreements: These agreements can cover even **the simplest of tasks, such as the daily delivery of milk, bread, or produce.**

- In this case, the restaurant may agree, either **verbally or in writing, to buy a certain product at market (current) price from a vendor who is trusted to provide high-quality products and services**

ESSENTIAL HOSPITALITY CONTRACT CLAUSES

- All hospitality contracts should contain certain **essential clauses, or stipulations, that a manager should identify and review carefully before entering into the contract relationship**
- The reason is to prevent **ambiguity and misunderstanding.**

1. Essential Clauses for Providing Products and Services to Guests

- **Length** of time that contract price terms are in existence
- Identification of who is authorized **to modify** the contract.
- Deposit and cancellation policies

- Allowable attrition: [**Attrition**]: Reduction in the number of projected participants or attendees
- Indemnification for **damages**
- Payment **terms**
- Performance **standards** related to quantity.

2. Essential Clauses for Receiving Products and Service

- Payment terms
- Delivery or start date
- Completion date

- Performance standards
- Licenses and permits
- Indemnification
- Nonperformance clauses
- Dispute resolution terms

Screenshot: Entertainer Nonperformance Clause (example)

The "Entertainer" recognizes that failure to perform hereunder may require Hotel to acquire replacement entertainment on short notice. Therefore, any failure to provide the agreed-upon services at the times, in the areas, and for the duration required hereunder shall constitute a default, which shall allow the Hotel to cancel this contract immediately on oral notice. The "Entertainer" and or his or her agent shall be liable for any damages incurred by the Hotel, including without limitation, any costs incurred by the Hotel to secure such replacement entertainment.

STEPHEN BARTH (2009), Hospitality Law: Managing Legal Issues in the Hospitality Industry , p 45 ,Figure 2.7 Entertainer nonperformance clause, <https://www.pdfdrive.com/hospitalty-law-managing-legal-issues-in-the-hospitality-industry-e157128399.html>

3. Exculpatory Clauses

- In addition to **the essential elements** related to providing and receiving products and services just listed, some hospitality managers would add an exculpatory clause, especially when providing products and services to guests.

- These clauses seek to **exculpate, or excuse, the hospitality operator from blame in certain situations.**
- An example would be a sign in a pool area that states **“Swim At Your Own Risk,”** or a clause in a group rooms contract that states **“Operator not responsible for materials left in meeting rooms overnight.”**

ANALYZE THE SITUATION 2.3

- **Laureen Statte** was a guest at the Boulder Inn, a midpriced hotel in an urban area. When she checked into the hotel she inquired about the **availability of a workout room**. Upon receiving assurances that the hotel did indeed have such an area, Ms. Statte checked into the hotel, put away her luggage, changed into workout attire, and **proceeded to the workout area**.

- Upon entering the workout room, she noticed a **sign prominently posted near the entrance to the workout room stating: “Hotel Not Liable for Any Injuries Incurred During Workouts.”**

According to her attorney, Ms. Statte lifted deadweights for approximately 10 minutes, then mounted a treadmill.

- As an experienced treadmill user, **she started slowly, gradually increasing the treadmill's speed.** Shortly after beginning the treadmill workout, Ms. Statte fell backward **into a plate-glass window that was approximately 2 feet behind the treadmill.** The shards from the glass **severely injured Ms. Statte.**

- Ms. Statte's attorney claimed the accident was the fault of the hotel because the treadmill **was too close to the window, and the hotel neglected to outfit the windows with safety glass.** As its defense, the hotel pointed out the presence of the **exculpatory clause sign**, which was clearly posted, and which Ms. Statte agreed that she read prior to beginning her workout.

Your comments:.....! Who is liable?

1. As the hotel manager, how might you resolve this dispute?
2. Could a lawsuit have been prevented?

Your comments:.....!

Breach of Contract

- In some cases, the agreements and promises made in a contract are not kept.
- When this happens, the party that has not kept its agreement is said to be **in breach of, or to have breached**, the terms of the contract.

- There can be a variety of reasons for breaching a contract, and the consequences of such a breach can be **very serious, even if the breach was unavoidable**

Eight Steps to Follow When Drawing Up Contracts

1. Get it in writing
2. Read the contract thoroughly
3. Keep copies of all contract documents
4. Use good faith when negotiating contracts

5. Note and calendar **time deadlines** for performance
6. Ensure the performance of third parties
7. **Share** contract information with those who need to know, and **educate staff** on the consequences of contract breach
8. **Resolve ambiguities** as quickly and fairly as possible

References

[1] STEPHEN BARTH (2009), Hospitality Law: Managing Legal Issues in the Hospitality Industry , p 20-56 ,<https://www.pdfdrive.com/hospitalty-law-managing-legal-issues-in-the-hospitality-industry-e157128399.html>

[2] Ma Junyu (2020), HOSPITALITY INDUSTRY, A CONTRACT IS AN AGREEMENT OR PROMISE, https://www.researchgate.net/publication/344088055_HOSPITALITY_INDUSTRY_A_CONTRACT_IS_AN_AGREEMENT_OR_PROMISE

Thank you!

Next lecture: Hospitality Business Structures

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