Law and the Hospitality Industry

Sandi Towers-Romero
Edison State College

CAROLINA ACADEMIC PRESS
Durham, North Carolina
To my students, my friends, my colleagues and the wonderful staff at Carolina Academic Press.
Contents

Table of Cases xxii

Preface xxiii

About the Author xxv

Chapter One · Overview of the Hospitality Industry 3

Chapter Objectives 3

Travel Agents 3

What Is the Function of a Travel Agent? 3

Travel Agent Compensation 3

Responsibilities of a Travel Agent 4

Travel Agency Regulators and Facilitators 5

ARC Airline Reporting Corporation Verified Travel Consultants (VTCs) 5

International Airline Travel Agent Network (IATAN™) 5

Why IATAN™ Accreditation? 6

Who Can Get IATAN™ Accreditation? 6

American Society of Travel Agents (ASTA®) 6

Institute of Certified Travel Agents (ICTA) 7

Are There U.S. Federal Regulations of the Travel Industry? 7

Travel Agency Liability Issues 7

1. Failure to Provide Services Promised 7

2. Failure to Honor an Agreed Upon Price 8

3. Failure to Discover and Disclose 8

Transportation 8

Common Carriers 8

Airlines 9

Delay or Cancellation of U.S. Flights 10

Tarmac Delays/U.S. Flights 10
Delay or Cancellation of Non-U.S. Domestic Flights 10
(Flights Intra-Country Outside the U.S.)
Delay or Cancellation of European Union Related Flights 10
Delay and Cancellation of Non-EU International Flights 11
Overbooking and Involuntary Bumping on U.S. Airlines 11
U.S. Airline Passenger Protections 13
Denied Boarding Compensation in the EU 14
Compensation for Downgrading of Service in the EU 14
Trains 14
Amtrak’s® Disclaimer of Liability 15
High Speed Rail Initiative and the Budget 15
Buses 16
Car Rentals 17
Price Disclosure 17
GPS Monitoring 17
Taxes 17
Liability 18
Lodging 18
Cruise Lines 18
Cruise Lines International Association (CLIA®) 19
Why Become a Member of CLIA®? 19
World’s Largest Cruise Ships 19
Admiralty Law 20
Jurisdiction on the Sea 20
Tour Operators 21
Regulations of Tour Operators 22
South Africa Tour Operator Regulations under the Operation License Board 22
The United States Tour Operators Association (USTOA®) 23
The National Tour Association (NTA®) 24
Liability Issues with Tour Operators 25
Food Services 26
Attractions and Entertainment 27
Liability of Amusement Venues 28
Safety and Amusement Parks 28
Behavior of Park Guests 28
Expectations of Guests 28
Gaming 29
Agency
  Who Can Be a Principal? 56
  Who Can Be an Agent? 56
  What Is the Basis of the Agency Relationship? 56
  What Are the Obligations of the Agent to the Principal? 57
  What Are the Obligations of the Principal to the Agent? 57
Chapter Summary 58
Key Terms 58

Chapter Three · The Legal System and Hospitality Industry 61
Chapter Objectives 61
The Court System 61
  Federal Courts 61
    U.S. District Court 63
    Bankruptcy Courts 64
    Chapter 11 64
    Chapter 13 65
    Chapter 7 65
    U.S. Court of Appeals 65
    U.S. Supreme Court 65
Difference between Federal and State Courts 66
Alternative Dispute Resolution 67
Governmental Entities 70
  Federal 70
    Internal Revenue Service (IRS) 70
    Occupational Safety and Health Administration (OSHA) 71
    Environmental Protection Agency 72
    Food and Drug Administration (FDA) 73
    Equal Employment Opportunity Commission (EEOC) 74
    Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) 75
    Department of Labor 75
    Department of Justice (DOJ) 77
State Regulators 78
  Employment Security 78
  Alcohol and Beverage Control 79
  Attorney General 81
  Department of Revenue 81
  Health Department 81
  Department of Transportation 82
CONTENTS

Local (Town, City, County) Regulators 82
    Health and Sanitation 82
    Building and Zoning 82
    Historic Preservation 83
    Fire Departments 83
    Police 84
    Tax Assessor/Collector 84
Chapter Summary 84
Key Terms 85

Chapter Four · Contracts 87
    Chapter Objectives 87
    Essential Elements of a Contract 87
        Unilateral and Bilateral Contracts 89
    Termination of Contract Rights 89
    Breach of Contract 89
        Impossibility of Performance 90
        Mutual Rescission 90
        Operation of Law 90
        Statute of Limitations 90
    Contract Remedies for Breach 91
    Avoiding Breach of Contract 92
    Reservations as Contracts 93
        Estimating Guest/Traveler/Capacity/Arrivals 94
    Uniform Commercial Code 95
        Article 2/Sales of Goods 96
        Warranties under the UCC 96
        Article 2A/Leases of Personal Property 99
        Article 9/Secured Transactions 100
Chapter Summary 101
Key Terms 101

Chapter Five · Torts/Crimes 103
    Chapter Objectives 103
    Intentional Torts/Crimes 104
        Assault and Battery 104
        Defamation 104
        Invasion of Privacy 105
        Disparagement 106
False Advertising/Unfair Competition 106
False Imprisonment 107
Intentional Infliction of Emotional Distress 108
Negligent Infliction of Emotional Distress 108
Trespass 109
Conversion 110
Intentional Interference with Contract Relations/Interference with Prospective Contract 111
Unfair Competition 111
Interference with Business Relations 112
Misrepresentation 112
Negligence 113
The Reasonable Person 114
Actual Causation 114
Proximate Causation 115
Defenses to Negligence 115
Contributory Negligence 115
Comparative Negligence 116
Negligence and Criminal Acts 117
Strict Liability 117
Damages in Tort Cases 118
Crimes against a Hospitality Business 119
Consumer Theft of Services 120
Fraudulent Payment 120
Credit Cards 120
Cash 121
Personal Checks 121
Internal Theft of Assets 122
Embezzlement 122
Theft of Company Property 123
Chapter Summary 123
Key Terms 124

Chapter Six · Property 127
Chapter Objectives 127
Nature of Real Property 127
Commercial Property 128
Essential Elements of a Deed 129
Clauses Required in a Deed 130
<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-Employment Testing</td>
<td>155</td>
</tr>
<tr>
<td>Background Checks</td>
<td>156</td>
</tr>
<tr>
<td>References</td>
<td>156</td>
</tr>
<tr>
<td>Classified Ads</td>
<td>157</td>
</tr>
<tr>
<td>Who Must Comply with This Law?</td>
<td>157</td>
</tr>
<tr>
<td>Affirmative Action</td>
<td>157</td>
</tr>
<tr>
<td>Americans with Disabilities Act</td>
<td>158</td>
</tr>
<tr>
<td>What Is Reasonable Accommodation?</td>
<td>158</td>
</tr>
<tr>
<td>Age Discrimination</td>
<td>159</td>
</tr>
<tr>
<td>Verification of Eligibility to Work</td>
<td>160</td>
</tr>
<tr>
<td>Acceptable I-9 Documents</td>
<td>160</td>
</tr>
<tr>
<td>Retaining Form I-9</td>
<td>161</td>
</tr>
<tr>
<td>Fair Labor Standards Act of 1938</td>
<td>162</td>
</tr>
<tr>
<td>Youth Employment</td>
<td>164</td>
</tr>
<tr>
<td>Tip Credit</td>
<td>165</td>
</tr>
<tr>
<td>Requirements for the Use of Tip Credits</td>
<td>165</td>
</tr>
<tr>
<td>Tip Pooling</td>
<td>169</td>
</tr>
<tr>
<td>Retention of Tips</td>
<td>169</td>
</tr>
<tr>
<td>Penalties for FLSA Violations</td>
<td>169</td>
</tr>
<tr>
<td>Employment at Will</td>
<td>170</td>
</tr>
<tr>
<td>Sexual Harassment</td>
<td>171</td>
</tr>
<tr>
<td>Family and Medical Leave Act</td>
<td>172</td>
</tr>
<tr>
<td>The Family and Medical Leave Act and National Defense Authorization Act</td>
<td>173</td>
</tr>
<tr>
<td>FMLA Rights and Responsibilities Notice</td>
<td>173</td>
</tr>
<tr>
<td>FMLA Designation Notice</td>
<td>174</td>
</tr>
<tr>
<td>Recordkeeping under FMLA</td>
<td>175</td>
</tr>
<tr>
<td>Federal Income Tax and Social Security and Medicare Taxes</td>
<td>175</td>
</tr>
<tr>
<td>1099s</td>
<td>176</td>
</tr>
<tr>
<td>Social Security and Medicare</td>
<td>176</td>
</tr>
<tr>
<td>International Social Security Agreements</td>
<td>177</td>
</tr>
<tr>
<td>Federal Unemployment Tax</td>
<td>177</td>
</tr>
<tr>
<td>Unemployment Claims</td>
<td>177</td>
</tr>
<tr>
<td>Earned Income Tax Credit</td>
<td>178</td>
</tr>
<tr>
<td>Workers’ Compensation</td>
<td>178</td>
</tr>
<tr>
<td>Termination of Employees</td>
<td>179</td>
</tr>
<tr>
<td>The Worker Adjustment and Retraining Notification Act</td>
<td>180</td>
</tr>
<tr>
<td>What Triggers Notice?</td>
<td>180</td>
</tr>
<tr>
<td>Sale of Businesses</td>
<td>181</td>
</tr>
</tbody>
</table>
CONTENTS

Uniform Commercial Code Warranty of Merchantability 219
UCC and Implied Warranty: Fitness for Particular Purpose 220
Prevention of Food Borne Illness 221
Truth in Menu Laws 222
Laws Regulating Food Labeling and Advertising 223
2002 223
2003 223
2004 223
Preparation Requirements 223
Grilled 223
Homemade 224
Fresh 224
Breaded Shrimp 224
Kosher Style 224
Kosher 224
Baked Ham 224
Ingredients in Food Served 224
Origin of the Food Served 225
Size of the Food Served 225
Gluten-Free 226
The FDA and Gluten-Free 226
Questions and Answers as to Gluten-Free 226
Serving Customers with Food Allergies and Celiac Disease 232
Gluten-Free and Allergy-Free Ingredients 232
Allergy Free Food Preparation and Cooking 233
Menus and Allergy Free 234
Alerting Staff How to Accommodate Food Allergy Customers 234
The Serving of Alcohol 235
Examples of State Laws and Alcohol 235
Texas 235
Massachusetts 237
Tennessee 237
Age Restrictions for Alcohol 237
Training Employees for the Service of Alcohol 238
Washington Licensee’s Certification Card 238
Liability and Alcohol Service 239
How to Prove Excess Intoxication 239
Missouri’s Dram Shop Act 240
Chapter Summary 241
CONTENTS

Health Insurance 257
  Small Businesses and the Affordable Care Act (ACA) 258
    Top Things to Know about the ACA 258
    Insurance Exchange Program 259
  Dental Insurance 259
    Preferred Provider Organizations 259
    Dental HMOs 260
  Vision Insurance 260
  Pet Insurance 260
  Life and Disability Insurance 260
Product Liability Insurance 260
Professional Liability Insurance 261
Home-Based Business Insurance 261
Dram Shop Insurance 261
  What to Look For/Ask For in a Liquor Liability Policy 262
    Assault and Battery Coverage 262
    Defense Costs Included 262
    Employees Included 262
    Damage Definition Includes Mental Damages 262
    Reduced Premiums Based on Safety and Claims 262
Umbrella Policies 263
  What Does an Umbrella Insurance Policy Mean? 263
How to Read an Insurance Policy 263
  Declarations 263
  Coverage Form or Insuring Agreement 264
  Definitions 264
  Endorsements 264
  Conditions 265
Chapter Summary 265
Key Terms 266

Index 267
Table of Cases

AmBrit v. Kraft, 191
BMW of North Dakota, Inc. v. Gore, 119
Bourque v. Morris, 144
California v Cabazon Band of Mission Indians, 30
Garratt v. Dailey, 104
Gratz v. Bollinger, 157
Grushevski v. Texas Wings Inc., et al, 154
Hanf v. United States, 235
Kewanee Oil Company v. Bicron Corp., 192
Li v. Yellow Cab Co., 117
Massey v. United States, 235
National Federation of Independent Business v. Sebelius, 258
Old Monastery Co. v. United States, 235
Rylands v. Fletcher, 118
South Dakota v. Dole, 80
Spirit Airlines v. U.S. Department of Transportation, 13
State v. Anonymous, 144
State v. Jorden, 203, 204
Van Dusen v. Barrack, 63
Zatarain’s, Inc. v. Oak Grove Smokehouse, Inc., 188
Preface

Law and the Hospitality Industry was designed and written to give the reader an easy-to-understand view of the multifaceted world of hospitality law. Both United States and international law is highlighted in this text. Within each chapter are found chapter objectives, chapter summary, and key terms—all meant to give the reader a better understanding of the subject-matter.

Law and the Hospitality Industry was designed to be versatile—it can be used as a complete text, a reference book, or as a hospitality manager's legal handbook.
About the Author

Sandi Towers-Romero has been involved in the hospitality industry since the age of four. She was first introduced to this wonderful industry in the Catskills of New York. For twenty-five summers, Sandi learned first-hand the ins and outs of hospitality. At first, she would help her father with his role as athletic or social director, and when she was old enough, she became a water safety instructor, social director, and camp director; did front and back office work; and even did some dining service.

She has had her own travel agency in Corona del Mar, California; done tours to Mexico, Hollywood, Universal Studios, and NBC studios in Burbank, California. Sandi had her own tour operation to Cabo San Lucas, Mexico; has done the ground work for a fast-food franchise in London, England; given tours of Solomon’s Castle in Florida; and taught students to become travel agents and flight attendants at Kottner Travel School in Honolulu, Hawaii. She has been around the world alone, twice, traveling by plane, train, boat, ship, car, bus, “tap-tap,” rickshaw, camel, and elephant.

Besides holding her JD degree, she is also a graduate of Pacific Travel School in Santa Ana, California. She currently teaches hospitality law at Edison State College at their Fort Myers, Florida campus. Sandi has also taught business and law classes at South Florida Community College, Arcadia campus; Florida Southern College, Charlotte/DeSoto campus, and the University of California, Irvine. She has authored four other books—The Essentials of Florida Real Estate Law, Media and Entertainment Law, Those of Distant Campfires, and Then There’s Tomorrow.