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COMMON LAW, NEGLIGENT HIRING, AND EMPLOYEE RIGHTS

Scrutinize employee applications and do not hire on the spot. Make them come in for a second interview, which creates an aura of privilege to work there—as it should be. Check references. Ask for written references, if possible.¹

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CHAPTER OBJECTIVES

After completing this chapter, you will be able to

- Recognize the importance of prescreening job applicants and the negative consequences that may occur if this phase of the hiring process is not completed.
- Understand the concepts of negligence, liability, and reasonable care.
- Define common law and apply it to the employment relationship.
- Define at-will employment.
- Understand the rights of individuals in the workplace.
- Identify the various circumstances that provide an employee with the grounds for filing a suit against his or her employer.



HRM IN ACTION

Hotels and restaurants are increasingly diligent about screening job applicants before giving them access to customers' credit card numbers, handing them pass keys and allowing them to transport luggage to guest rooms, and sending them to customers' homes to deliver hot pizzas and other home delivery items. According to a recent article in *Hospitality News*, "9.6 percent of job applicants have some kind of criminal record."² While criminal background checks as well as preemployment drug screenings are becoming the norm for large hotel and restaurant companies, smaller operations are slower to jump on the bandwagon, most likely due to the associated cost and the amount of time required to properly prescreen all job applicants. Unfortunately, cutting corners when prescreening potential employees can be extremely detrimental to small hospitality business owners. Consider the following:

- A restaurant manager raped his 16-year-old female coworker. He had a history of sexual abuse, but his employer chose not to do a background check. Judgment against the restaurant: \$6.5 million.³
- A hospital employee murdered a coworker. He had two previous convictions for assault. Judgment against the hospital: \$864,000 (National Institute for the Prevention of Workplace Violence).⁴

It is essential that managers and supervisors understand the potential liability of hiring a bad apple. Clearly, both the time and dollar investment necessary to conduct routine background checks on potential employees is minimal in comparison to the potential financial loss that could ensue if a staff employee commits unlawful acts.

COMMON LAW AND ITS IMPACT ON THE WORKPLACE

You may be somewhat familiar with the concept of **common law**, or perhaps you have heard the terms "common-law marriage" or "common-law spouse." Common law is the traditional, unwritten law of England and has been around for centuries. It is primarily based on custom and usage, and it evolved over a thousand years before the founding of the United States. Today, almost all common law has been enacted into various statutes by all states with the exception of Louisiana, which is still influenced by the Napoleonic Code. This makes sense when you consider that the state of Louisiana was not founded by the British but by French and Spanish settlers.

The common law, as applied in civil cases, was devised as a means of compensating someone for wrongful acts known as **torts**, including both intentional torts and those torts caused by **negligence**. In the common law, a tort is a civil wrongdoing for which the law provides a remedy. Loosely defined, negligence is doing (or not doing) what a sane, reasonable person would (or would not)

TALES FROM THE FIELD

My wife and I had a pizza delivered from a well-known national chain. It was about 11 in the evening, and a few moments after the driver had delivered our pizza, there was banging and yelling at our front door. I went to the door, and there stood the driver, all bloodied, telling a story about how he had just been mugged on the way back to his car that was parked at the curb. We let him in and called his store as well as the police. We later learned that the driver routinely carried a loaded pistol in his pocket while making deliveries, and during the attack, he was able to get the pistol out and get off a wild shot that zinged into the tree branches before the mugger disarmed him and ran away with the pistol. The police located the driver's gun in our neighbor's yard the next morning, and the driver was terminated for carrying a loaded firearm on the job.

Ken, 58, Louisville, Kentucky



Photo 4.1

Placing a warning sign on a recently mopped restaurant floor is an example of providing “reasonable care.”

do under like or similar circumstances. If a restaurant employee spills a beverage on the dining room floor and fails to properly clean it up and a customer subsequently slips and falls, the restaurant could be held liable for the customer's harm and injuries. In this simple example, the law holds that a “reasonable person” could easily **foresee** a slip and fall accident and should, therefore, know to take the actions necessary to ensure safety by protecting the area and quickly cleaning up the spill to prevent an accident.

In most jurisdictions, it is necessary to initially demonstrate that a person had a legal duty to exercise care in a given situation, that he or she breached that duty, and that his or her negligence or breach was the **proximate cause** for the harm or injury. It is important to remember, however, that *all* innkeepers, restaurant and bar owners, and managers have a legal duty under common law to provide reasonable care to protect guests, customers, and their own employees from harm or injury. It is also important to note that owners and managers do not need to insure their guests' and customers' safety; rather, they are obligated to prevent foreseeable acts from occurring. In other words, the law does not expect us to protect people from acts that are not foreseeable.

McDonald's Coffee Too Hot?

In the infamous McDonald's hot coffee lawsuit in which the 81-year-old plaintiff was initially awarded \$2.7 million (later reduced on appeal to \$480,000), the McDonald's Corporation primarily lost the case on the issue of foreseeability. Figure 4.1 details some important elements of this 1994 case.⁵

As the McDonald's coffee lawsuit illustrates, it is clear that in spite of its aging demeanor, the common law still has teeth. While the purpose of this book is not to inform you about the legal relationship you will have with your guests and customers, it is important to recognize and understand the legal implications that common law will have on your relationship with your employees.

The facts of the case, which caused a jury of six men and six women to find McDonald's coffee was unreasonably dangerous, are as follows:

1. For years, McDonald's had known there was a problem with its coffee—the coffee was served much hotter (at least 20 degrees more so) than at other restaurants.
2. McDonald's knew its coffee sometimes caused serious injuries—more than 700 incidents of scalding coffee burns in the past decade have been settled by the corporation—and yet the company never consulted a burn expert regarding the issue.
3. The woman involved in this infamous case suffered very serious injuries—third-degree burns on her groin, thighs, and buttocks that required skin grafts and a seven-day hospital stay.
4. The woman, an 81-year-old former department store clerk who had never before filed a suit against anyone, said she wouldn't have brought the lawsuit against McDonald's had the corporation not dismissed her request for compensation of her medical bills.
5. A McDonald's quality assurance manager testified in the case that the corporation was aware of the risk of serving dangerously hot coffee and had no plans to either turn down the heat or to post warning about the possibility of severe burns, even though most customers wouldn't think it was possible.
6. After careful deliberation, the jury found that McDonald's was liable because the facts were overwhelmingly against the company. When it came to the punitive damages, the jury found that McDonald's had engaged in willful, reckless, malicious, or wanton conduct and rendered a punitive damage award of \$2.7 million dollars. *(The equivalent of just two days of coffee sales, McDonald's Corporation generates revenues in excess of 1.3 million dollars daily from the sale of its coffee, selling 1 billion cups each year.)*

Figure 4.1

A summary of facts in the McDonald's coffee-burn case. (Source: *Liebeck v. McDonald's Restaurants*, No. CV-93-02419, 1995, N.M. Dist. August 18, 1994.)

EMPLOYEE RIGHTS UNDER COMMON LAW

Hotel and restaurant owners and managers have a legal duty under common law to exercise reasonable care in the practice of supervising the activities of others. Some of the potential legal pitfalls that may occur as a result of management's failure to do so include lawsuits based on the following:

- Wrongful discharge
- Constructive discharge
- Assault and battery
- Intentional infliction of emotional distress
- False imprisonment
- Defamation by libel or slander
- Invasion of privacy
- Negligent hiring
- Negligent retention

WRONGFUL DISCHARGE

Most U.S. employees can generally be categorized as at-will employees. An **at-will employee** can be terminated at any time, for any reason or no reason at all, and the courts will generally not intervene to protect the ex-employee from allegedly unfair treatment by the employer. At-will employees may also leave their jobs at any time and for any reason. However, things are not always as simple as they seem. Most employees of the U.S. federal government are not at-will employees but can be demoted or fired in an effort to promote the efficiency of the service. Similarly, most employees of state governments are not at-will employees. On the contrary, most members of labor unions are covered by a written contract called a **collective bargaining agreement**, which contains a clause specifying that their employment can be terminated only for just cause. While in most states the employment laws continue to respect the spirit of at-will employment, there are a number of exceptions that have evolved over time. For instance, if you are operating in an at-will state, it does not necessarily mean that you can fire your at-will employees for no reason at all. State and federal laws regulate terminations. For example, Title VII of the 1964 Civil Rights Act states that it is illegal to fire an employee due to his or her race, gender, ethnicity, color, or religion. If you terminate an employee for an illegal reason, you are liable under state and federal laws, even if you are in an at-will state. In addition, even if you

are in an at-will state, you should still have a justifiable, nondiscriminatory business reason for any discharge. Why? Because if an employee submits a claim for a **wrongful discharge** based on one of the many statutes or legal theories available, the employer is normally required to state a legitimate reason for the discharge. While it's not illegal to fire someone for no reason in at-will states, it is not smart. An employer should always have a legally defensible reason for any discharge. Figure 4.2 provides additional exceptions to at-will employment.

Many state courts have recognized two basic exceptions to the employment at-will rule, as follows:

1. An employer may not terminate an employee at will if the termination would violate public policy.
2. An employer may not terminate an employee at will in which there is an implied contract between the employer and employee.

Public Policy Exception

A majority of the states have adopted the public policy exception to the employment at-will rule. This exception is based on the theory that employees should not be fired for reasons that violate public policy. For example, an employee fired as retaliation for opposing an employer's illegal activities, reporting fire or other safety hazards, or for other kinds of "whistle-blowing activities" may be an illegal termination.

Implied Contract Exception

Employers are usually careful not to state or imply that there is any contract of employment for an individual employee. When an express-employment contract does not exist and the employee is terminated, courts will often infer contractual obligations from the circumstances between a particular employer and employee. In many states, the contractual obligations have been found in an employer's oral or written assurances that employees would only be discharged for cause. Courts often have inferred these promises from an employer's words and actions. For example, a contractual promise has been inferred when statements like these were made by the employer:

"You will be employed as long as your performance is satisfactory."

"You will be terminated unless your performance improves."

It is always best to have a legitimate reason for discharge, but do not attempt to create one if it does not exist. Make sure that the reasons for discharge are legal.

Figure 4.2 Exceptions to the employment at-will rule.

ethical dilemma

Emma is the housekeeping manager of a popular inn located in New England. Lisa, one of the inn's long-time room attendants, has been calling in sick a lot lately, and when Lisa is at work, her mood seems angry; she often has to be sent back to re-clean parts of her rooms. Emma calls Lisa in for a private consultation, and she learns that Lisa was recently diagnosed with HIV. Lisa asks Emma to keep the information confidential, and Emma promises that she will, even though she feels that she needs to advise the inn's general manager, Mrs. Fee. After thinking about the situation for a few days, Emma decides to tell Mrs. Fee about Lisa's diagnosis. After hearing the news, Mrs. Fee seems more concerned with the inn's reputation than she does with Lisa's HIV status. She tells Emma to "keep a close eye on Lisa," and if her attendance does not improve, she should "write Lisa up and then let her go." Which of the *10 Ethical Principles for Hospitality Managers* has been violated? Was it necessary for Emma to inform Mrs. Fee about Lisa's HIV status? What should Emma do if Mrs. Fee forces her to terminate Lisa?

CONSTRUCTIVE DISCHARGE

Constructive discharge often occurs in harassment and discrimination cases. An employee can sue on the basis of constructive discharge if he or she is forced to resign to escape intolerable work conditions. In these situations, the employee is not actually fired, but rather the employee quits his or her job, usually as a result of unbearable treatment in the workplace by managers, supervisors, or coworkers. While the law of constructive discharge is complex and varies depending on the jurisdiction of the employer, these suits often occur when one or more of the following workplace conditions exists:

- Intolerable hostility toward an employee
- Intolerable employment discrimination
- Sexual harassment
- Retaliation for reporting a wrongdoing or for whistle blowing
- The humiliating demotion of an employee

Some managers use these techniques to rid their workplace of unwanted employees, rather than take the time to properly and fully document legitimate reasons for terminating an employee.

Physical contact such as touching or brushing up against an employee or even an intent of physical contact such as blocking a pathway or standing in forced close proximity could result in **assault and battery** charges. **Intentional infliction of emotional distress** occurs when a manager or supervisor's treatment is deemed particularly abusive and the employee can demonstrate some form of hardship as a result of the treatment. This may occur during the termination process, with managers loudly firing an employee in front of other employees and/or customers. The best way to avoid a constructive-discharge lawsuit is to treat employees in a fair and just manner and keep the lines of communication open. It is also important for management to set a proper tone and example and to clearly communicate what will and will not be tolerated to all employees.

FALSE IMPRISONMENT, DEFAMATION, AND INVASION OF PRIVACY

McDonald's Corporation was named as a defendant in a \$30-million lawsuit for **false imprisonment** and sexual misconduct when a McDonald's restaurant manager in Kentucky, acting on the directions of a man on the telephone who identified himself as a police officer, took an 18-year-old female employee into the back office of the restaurant, forced her to strip naked, and held her against her will for several hours. When the restaurant became busy and the manager was needed at the front of the store, she called her boyfriend into the office to stand guard over the female employee. The manager's boyfriend molested the teenage employee and has since pleaded guilty to sexual abuse, sexual misconduct, and unlawful imprisonment; he was sentenced to a five-year prison term. The McDonald's manager will stand trial mid to late 2006, and the man who allegedly posed as a police officer and phoned the restaurant was arrested; his trial date is scheduled for late 2006. McDonald's Corporation, the defendant in the civil lawsuit, claims it is innocent. This tawdry episode played out on national television when the ABC news show *20/20* obtained copies of the actual videotapes recorded by the restaurant's own in-house security system.⁶ Under the law, "the act of the employee is the act of the employer," so McDonald's could potentially be liable in this case.

DEFAMATION OF CHARACTER

When managers communicate false information about current or former employees, either verbally or in writing, and that information casts a negative light upon the character of that individual, charges of **defamation by libel** (writ-

ten) or **defamation by slander** (verbal) often result. As you will learn in a later chapter, civil charges such as this are often the reason that hospitality businesses are reluctant to provide any kind of employment reference—good or bad—on current and former employees. A good rule of thumb when providing references is to say only what is true and what can easily be defended in court. Avoid subjective statements such as “she is not eligible for rehire,” as these have no real, concrete meaning. What does that mean? Did she steal the cash register or was she late for work on one too many occasions?

Employee personnel records tend to be locked tightly in the offices of professional human resources departments of large hotel and restaurant operations. These documents are kept under lock and key to ensure that the personal employee information doesn’t fall into the wrong hands. However, if this does occur, a lawsuit based on **invasion of privacy** is likely to follow. Where are these sensitive records kept in smaller operations? In an unlocked file cabinet shoved somewhere in a back office perhaps, where anyone with the desire to snoop can dig into employees’ personal information? Whether you are affiliated with a larger hospitality operation or a smaller business, it’s a good rule of thumb to properly protect and safeguard employee personnel files and strictly limit access on a bona fide need-to-know basis.



Photo 4.2

Employee personnel records are confidential and should be kept in a secure place at all times or a hospitality business could be sued for “invasion of privacy.”

With the advent of modern technology and the ability to install closed-circuit TV monitoring cameras throughout the operation, it is also important to note that the courts have consistently ruled that employees have a reasonable expectation of privacy in employee locker rooms and restrooms. Employees at the Sheraton Boston Hotel were secretly videotaped before and after their shifts by cameras hidden in their locker room. Managers claimed they were trying to catch a busboy they suspected of selling cocaine, although they never found any evidence of illegal activity. The Sheraton employees in this case shared a \$200,000 settlement for invasion of their privacy.⁷

NEGLIGENT HIRING AND NEGLIGENT RETENTION

Under the legal doctrine of **respondeat superior**, employers are liable for the indirect or vicarious job-related actions of their workers. Roughly translated, it means, “The act of the employee is the act of the employer.” *Respondeat superior* is often difficult to prove because it requires an injured person to prove the worker’s wrongful conduct was within the course and scope of his or her job. Because intentional misconduct is simply not part of most employees’ job descriptions, this is often very difficult to prove.

But hotel and restaurant owners and managers could be found liable for **negligent hiring**, if they knew or should have known that hiring a particular individual could potentially put customers or other employees at risk of harm or injury. It is important that you not confuse the two because the second asserts that management itself did something wrong through their negligence in hiring the employee and indirectly permitted the employee to harm the victim.

The concept of negligent hiring has been successfully utilized to protect three classes of people: coworkers, customers, and the public at large. Obviously, the concept of the public at large greatly expands the number of people who can sue your hospitality business for the wrongful acts of an employee. As a manager or owner, your obligation to conduct a thorough background review is particularly strong when an employee is allowed access to a customer’s home or business, as is the case with many restaurants that provide delivery service. The definition of *home* also includes a temporary residence such as a motel or hotel room, so bell staff, room service waitstaff, as well as members of the housekeeping and engineering departments should undergo thorough preemployment screening. Employees who have access to customer’s credit card numbers or other such valuables should also be thoroughly screened.

While no court has provided a list of jobs for which background checks are required, it seems clear that the greater the contact with the public, the greater the need for a rather detailed preemployment screening. Clearly the prudent hotel or restaurant operator will take the necessary steps to prevent the kind of litigation described in some of the preceding scenarios. Figure 4.3 provides some guidelines in establishing a policy for conducting preemployment background checks.

Negligent retention occurs when an employee is “retained,” rather than fired after he or she has demonstrated some propensity for violent behavior or other such conduct that could possibly cause harm or injury to coworkers, guests, or the public at large. An example of this would be a valet parking attendant who takes a customer’s car for a quick joyride before properly parking it. Management decides to give the employee a second chance and instead of terminating the employee, a written report is placed in the employee’s personnel file. Two weeks later this same employee pulls the same stunt, but this time he causes an accident where an innocent third party is injured or, even worse, killed. Manage-

ESTABLISHING A COMPANY POLICY

The courts suggest a two-step process when establishing a policy for conducting preemployment background checks.

1. The company should review the job description to determine the position's risk to third parties. If it is determined that the position has the potential for the employee coming into contact with third parties, then some level of background check should be initiated.
2. Given the risk factors, if the duties of the job dictate that a background check should be conducted, then the depth, breadth, and scope of the background check should also be determined at the same time. These decisions should then be written into the company's personnel manuals.

Important: By utilizing this two-step method (and no other), the employer is able to avoid any later criticism that some or all of the background check was based on the applicant's race, religion, or other statutorily protected criteria.

Figure 4.3 Process for establishing a background screening policy.

ment's decision to retain rather than to terminate the employee contributed to the accident, so management is liable because they knew or should have known the employee's potential for this type of behavior.

Finally, remember that the purpose of this book is to emphasize the importance of attracting, hiring, training, and retaining the very best employees so that you can deliver quality products and services to a demanding and industry-savvy customer base. Aside from the legal minefield that you may encounter by running afoul of some of these laws, you must also consider the negative effects one simple lawsuit could have on your business. The negative public-relations fallout that would certainly occur in the wake of one simple lawsuit would have dire effects on both the quality of job applicants and the overall success of the operation. Remember, the community of hospitality employees in your area is smaller than you think, and these professionals love to talk and share war stories. Getting branded with a bad reputation for poor human resources practices would greatly diminish your ability to attract top talent in the future.

SUMMARY

- Owners and managers of hospitality businesses have a common-law duty to provide reasonable care in preventing harm or injury to their customers, guests, and employees.

- When an incident is foreseeable, managers who fail to provide reasonable care may be held liable if someone is harmed or injured.
- Employees also have rights under common law because management has a legal duty to exercise reasonable care in the practice of supervising the activities of others.
- Areas in which an employee could have a legal cause of action against his or her employer include wrongful discharge, constructive discharge, assault and battery, intentional infliction of emotional distress, false imprisonment, defamation by libel or slander, and invasion of privacy.
- Where instances of negligent hiring and/or negligent retention occur, management is not only liable to its employees but also to its guests, customers, and members of the public at large.
- Because of the potential for financially devastating lawsuits, most experts agree that some level of preemployment screening is necessary in order to prevent hiring a bad apple.

**PRACTICE
QUIZ**

1. All states in the United States follow British common law.
A. True B. False
2. Many smaller hospitality operations find preemployment screening to be too expensive or too time consuming.
A. True B. False
3. According to *Hospitality News*, more than 65 percent of all job applicants have some kind of criminal record.
A. True B. False
4. Common law requires that hotel and restaurant managers insure their customers' safety and security regardless of whether or not incidents that could cause harm or injury are foreseeable.
A. True B. False
5. The McDonald's Corporation won the infamous hot-coffee lawsuit because most people thought the lawsuit was stupid.
A. True B. False
6. Employees working in at-will states can be terminated
A. at any time.
B. for any reason.
C. for no reason.
D. All of the above.

7. Employees working in just-cause states can be terminated
 - A. for any reason.
 - B. for a proper and just reason.
 - C. for no reason.
 - D. All of the above.
8. Constructive discharge occurs when the following occurs:
 - A. A manager fires an employee for stealing.
 - B. a manager fires an employee for harassing another employee.
 - C. an employee quits or resigns due to intolerable work conditions.
 - D. A manager fires a whistle blower for reporting drug use at the restaurant.
9. Defamation by libel occurs in
 - A. written form.
 - B. verbal form.
 - C. written or verbal form.
 - D. contract form.
10. Managers who fail to properly secure and protect sensitive employee personnel files could be sued for
 - A. slander.
 - B. defamation of character.
 - C. invasion of privacy.
 - D. wrongful discharge.

**REVIEW
QUESTIONS**

1. Joe has applied to be a line cook in your restaurant, and he has considerable experience as well as solid references. His position will require that he occasionally drive the company van to assist with off-site catering events. After conducting a routine background check, you discover that Joe has two DUI offenses on his criminal record; one dates back to seven years ago, and the second offense occurred three years ago. Should Joe's history of drunken driving offenses eliminate him from the running for this position? Why or why not? If Joe is hired, could the restaurant later have legal troubles with respect to negligent hiring? Explain your answers.
2. Sally worked as a room attendant in your hotel for six years. You terminated Sally two months ago because you suspected her of stealing guest's valuables while she cleaned the guest rooms. You have no direct proof that Sally stole, but you did discover a ring and a camera in her locker during a routine locker inspection. The items that you discovered were later identified as belonging to one of your guests, and you felt that you were on solid

ground by terminating Sally. Now you have received a call from the director of housekeeping of a hotel in a nearby town where Sally has applied for work. The housekeeper would like to check Sally's references and is calling you because you were listed as her most recent employer. What information will you provide on the past employee? Is there any information that you would not provide? Explain your answer in detail.

3. Conduct a general Internet search and find four or five examples of recent lawsuits brought against a hotel or restaurant. Try to narrow your search to include only lawsuits having to do with employment issues or lawsuits having to do with the establishment failing to provide reasonable care. What were the outcomes of the lawsuits that you researched? What might the business have done prior to the lawsuit that may have prevented it? Be prepared to share your findings with the rest of the class.
4. You are the general manager of an old-fashioned ice cream parlor located within a hotel. In addition to the usual menu items, you make and sell frozen ice cream cakes, which you proudly display in a reach-in freezer in the dining area of your store. It is a slow evening with only a few guests sitting in your establishment. You direct two of your staff members to clean the reach-in freezer. To do so, they remove the cakes and the metal racks. The cakes are temporarily stored in the walk-in freezer in the kitchen, and the employees have stacked the racks against a booth in the dining room. What potential liability could be incurred in this scenario? What should you do to ensure you are providing reasonable care for the safety of your guests? Be specific and give examples.
5. Conduct a general Internet search and locate two or three companies in the hospitality industry business that provide preemployment screening. What kinds of services do the companies offer? If you owned a small lodging or food service operation, what kinds of preemployment screening would be most beneficial to you? Least beneficial? Explain your answers in detail.

HANDS-ON HRM

Lindsey is an experienced hotel night auditor who has been employed full time at the Argos Hotel for nearly six years. Her employment record at the Argos has been exceptional. She rarely misses work, both guests and management recognize her positive attitude toward customer service, and her attention to detail in her nightly paperwork is impeccable. Management has really come to rely on Lindsey, but now there is a problem. An internal audit has uncovered evidence of theft, and the finger of guilt points directly at Lindsey.

Mr. Jacobson, the hotel's general manager, is sick with grief when he realizes that he must call Lindsey into his office and confront her with the hard evidence that she has stolen nearly \$2,000 over the past six months. When confronted, Lindsey breaks down sobbing and admits to everything.

She tells Mr. Jacobson that her youngest child has had serious health problems and she and her husband have been struggling financially. She begs to keep her job and even promises to pay the money back. Mr. Jacobson is saddened, but he tells Lindsey that he is going to have to terminate her employment immediately. He says that he does not believe that the company wishes to file any criminal charges against Lindsey, but that she will need to collect her belongings and be escorted immediately from the building.

A few weeks later, Mr. Jacobson's secretary comes into his office and says that she has Erica Stovall, the human resources director at the Wyandotte Hotel, an upscale property located in a town about 20 miles away, on the line. Stovall is calling to get an employment reference for Lindsey, who has submitted an application to the Wyandotte for the position of full-time night auditor. "Oh no," Jacobson thinks to himself. "Why in the world did she ever list me as a reference?" He takes a moment to compose himself and then says to his secretary, "Okay, put her through."

QUESTIONS

1. Since it is unlikely that Erica Stovall will ask Mr. Jacobson whether or not Lindsey is a thief, should Jacobson volunteer this information? If so, how should he present this information? If not, explain your answer.
2. If Mr. Jacobson chooses not to volunteer the information, could his hotel possibly face any liability in the future if the Wyandotte Hotel hires Lindsey and later learns the truth? Explain.
3. If Mr. Jacobson decides to tell Erica Stovall that Lindsey was terminated for theft, what might be the legal ramifications, if any, for the Argos Hotel? Explain your answer.
4. What steps and procedures should the Argos Hotel implement in the event that any future employees are caught stealing and have to be terminated? Please explain in detail.

KEY TERMS

Common law The traditional, unwritten law of England that has been around for centuries and forms the foundation of many current U.S. laws and statutes.

Tort A civil wrong for which the law allows some form of legal remedy.

Negligence Failing to do (or not do) what any sane, reasonable person would (or would not) do under like or similar circumstances.

Foresee To be able to determine in advance. Normally associated with common-law negligence in which events need only to be prevented if they are foreseeable.

Proximate cause In negligence lawsuits, the breach of one's legal duty to provide reasonable care must be the proximate cause, or main reason, for the harm or injury.

At-will employee Employees in at-will states may be terminated for any reason at any time.

Collective bargaining agreement A type of employment contract used by labor unions.

Wrongful discharge Firing an employee for reasons that violate public policy, terms of a contract, or a covenant of good faith and fair dealing.

Constructive discharge When an employee feels compelled to quit his or her job due to intolerable work conditions.

Assault and battery Assault (the threat of violence) and battery (actual physical violence) against another person.

Intentional infliction of emotional distress Treating an employee in an outrageous manner with the intent of causing mental or physical distress.

False imprisonment Preventing or threatening to prevent an employee to move freely.

Defamation by libel False information communicated in writing to a third party with the intent to harm a person's character.

Defamation by slander False information communicated verbally to a third party with the intent to harm a person's character.

Invasion of privacy Accessing information about an employee without a bona fide need to know that information.

Respondeat superior The act of the employee is the act of the employer.

Negligent hiring Hiring an individual who harms or injures another when a proper background check would have shown the individual's propensity for violence or other unacceptable behavior.

Negligent retention Retaining an employee who harms or injures another when termination of that employee would have prevented such harm or injury from occurring.

NOTES

1. Maren L. Hickton, "Service: Problem Employees," *Restaurant Report, LLC* (Miami, FL) www.mareninc.com.
2. Kelly Smith, *Hospitality News*, May 2003, p. 27.
3. *Ibid.*
4. *Ibid.*
5. *Liebeck v. McDonald's Restaurants*, No. CV-93-02419, 1995 (N.M. Dist. August 18, 1994).
6. Andrew Wolfson, "Bullit County Man Pleads Guilty in McDonald's Strip-Search Case," *Courier-Journal* (Louisville, KY) February 3 2006, sec. 1A.
7. *Clement v. ITT Sheraton Boston Corp.*, Suffolk Cty, Case No. 93-0909-F, Massachusetts Superior Court.