

CHAPTER 1

PREVENTION PHILOSOPHY

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TRISHA SANGUS WAS busy and more than a little frustrated. As the general manager of a 275-room resort hotel, she knew that the peak season was about to begin, and she had no front office manager to handle the supervision of her front desk staff, the reservationists, van drivers, night auditors, and other guest service employees. Without an experienced front office manager, the tourist season could be extremely difficult. She had spent the entire morning on the telephone attempting to do background checks on the three top applicants she had interviewed. Inevitably, she got the same response from all of the past employers she called. Either they would not give out any information about the candidates or they would only tell Trisha the person's name and employment dates. It seemed as if everyone was too cautious to say anything that she could use to help make a good hiring decision. She wondered if it was worth the effort of verifying the employment of her applicants at all.

Her thoughts were interrupted by the telephone. It was her human resource director, asking whether

Trisha had made a decision about purchasing employee workbooks that explained the new tip-reporting requirements, which had changed again, making obsolete the current booklets that had been used for employee training. Trisha asked the director to get a cost estimate on the 75 booklets they would need and promised a decision in the next few days. As she hung up the telephone, Trisha wondered how many of her food and beverage employees were actually in compliance with the new reporting requirements. *It sure seemed easier when the government left people alone*, she thought. On the other hand, it was only fair for employees to pay all the taxes they legally owed.

Trisha looked at her watch and jumped up from behind her desk. Her monthly safety meeting was about to start. The meeting was to be chaired by her director of security, and she knew how important it was to attend. It sent the right message, Trisha thought, for her employees on the Safety Committee to see her at the meetings. It let them know how she

felt about the importance of safety and security training. Unfortunately, she had only had time to skim the article “Workplace Violence,” which she knew was to make up the major topic of this week’s meeting. Lately, it seemed there were too few hours in the day to accomplish all that she had to. Keeping up her own education in the field was getting harder and harder each month.

The last meeting of the day was the most difficult. Sanitation scores on the local Health Department inspections had been going down over the past few months. The violations were not serious, but the scores did tell Trisha that the managers in that department seemed to be letting the small things slip. A quick walk through the kitchen made Trisha aware that the problems remained unresolved. She wondered why the standards seemed to be slipping, despite the fact that her food and beverage director, and indeed most of the food and beverage staff, were long-time property employees.

As Trisha walked back to her office, she reflected on the issues of the day. She had worked hard to become a general manager. She was one of the youngest GMs in her company. The customer contact she so enjoyed, however, seemed to be less and less a part of her daily routine now. Rules, regulations, and paperwork seemed to consume most of her time. She needed to reprioritize her efforts, but so many issues were important that she was not quite sure where to start.

As she flipped through the afternoon mail, she noticed a headline on the front page of the local newspaper: “City Hotel Targeted in Lawsuit.” She was familiar with the hotel. Its general manager was one of her friends and colleagues. Trisha knew that it was an important part of her job to minimize the chances of a lawsuit like the one in the paper from happening at her hotel. She wondered if her own efforts were enough, and if not, what she could do to improve them.

IN THIS CHAPTER, YOU WILL LEARN:

1. Why the study of laws related to hospitality is important.
2. The historical origins of the law and its evolutionary nature.
3. A philosophical framework to help prevent legal difficulties before they begin.
4. How to evaluate management actions on an ethical basis.

1.1 THE FUTURE HOSPITALITY MANAGER AND THE LEGAL ENVIRONMENT

Hospitality law is the body of law relating to the foodservice, travel, and lodging industries. That is, it is the body of law governing the specific nuances of transportation, hotels, restaurants, bars, spas, country clubs, conventions, events, and more.¹

Today, hospitality managers must be multitasking individuals. In addition to knowledge of their own designated area of expertise, such as food and beverage, marketing, accounting, or rooms management, hospitality managers are often called on to assume specialized roles, such as employee counselor, interior designer, facility engineer, or computer systems analyst. Given the complexity of the modern business world, it is simply a fact that the skill level required for success today in this field is greater than it was in the past.

Hospitality management has always been a challenging profession. Whether in a casino, a school lunch program, a five-star hotel, a sports stadium concession program, or myriad other environments, hospitality managers are required to have a breadth of skill not found in many other areas of management. Hospitality managers are in charge of securing raw materials, and producing a product or service and selling it—all under the same roof. This makes them very different from their manufacturing counterparts (who are in charge of product production only) and from their retail counterparts (who sell, but do not manufacture, the product). Perhaps most

¹http://en.wikipedia.org/wiki/Hospitality_law?oldid=0.

important, the hospitality manager has direct contact with guests, the ultimate end users of the products and services supplied by the industry.

Additionally, hospitality managers are called on frequently to make decisions that will, in one manner or another, impact the legal standing of their employers. Robert James, founder of one of the largest hotel contract management companies in the United States, once estimated that 60 to 70 percent of the decisions he made on a daily basis involved some type of legal dimension. This is not to say that hospitality managers need to be *attorneys*. They do not. However, the decisions that they make may or may not increase their organization's chances of needing the services of an *attorney*.

Consider the situation in which a hospitality manager is informed that a guest has slipped and fallen in an area of the dining room containing a salad bar. It appears that the guest had been serving himself and slipped on a piece of lettuce dropped by a previous guest. Was this a simple accident? Could it have been prevented? Is the restaurant responsible? What medical attention, if any, should the manager be prepared to provide? What if the injuries are severe? Should the restaurant be held responsible? Can the restaurant manager be held personally responsible? Most important, what should the manager actually do when the incident is brought to his or her attention? What, if anything, should the employees do? Who is responsible if the employees were not trained in what to do?

From this example, it is clear that the hospitality manager is in a position to profoundly influence the legal position of the operation. Day after day, in hundreds of situations, the actions of hospitality managers will influence the likelihood of the business or the manager becoming the subject of *litigation*.

There is a unique body of law relating to the foodservice, travel, and lodging industries. These laws have developed over time as society and the courts have sought to define the relationship between the individual or business serving as the host and the individual who is the guest. This textbook will give you up-to-date information on the most important of those special laws and relationships. That is not to imply, however, that this book is designed to make you a lawyer. What it will do, if you use it properly, is train you to think like one. It will teach you to consider carefully how the actions taken by you and those you work with will be viewed in a legal context. The industry's very best legal educators, hospitality managers, writers, and reviewers have created this book especially for you. They all speak with one voice when they say, "Welcome to the world of hospitality management!" As an industry, we need your skill, ability, and creativity. This textbook, if studied carefully, will help you become the hospitality manager you deserve to be and that our industry and guests require you to be.

1.2 THE HOSPITALITY MANAGER AND LEGAL MANAGEMENT

Jack P. Jefferies, who served for more than 20 years as legal counsel for the American Hotel and Lodging Association (AH&LA), has stated: "Over 135,000 new federal and state *laws* are issued annually, as well as hundreds of thousands of federal and state administrative rules."² With this much change in the *law*, some believe that the topic is too complex to learn in an introductory course or from one book. In addition, they would argue that because the law is constantly changing, even if an individual learned the law today, his or her knowledge would be out of date in a very short time. Although these positions are understandable, they argue for, not against, the future hospitality manager's study of legal management.

Although the law is indeed complex, certain basic principles and procedures can be established that will minimize a manager's chances of encountering legal difficulty.

²Jack P. Jefferies, *Understanding Hospitality Law*, 3rd ed. (East Lansing, MI: The Educational Institute of the American Hotel and Lodging Association, 1995).

LEGALESE

Attorney: Any person trained and legally authorized to act on behalf of others in matters of the law.

LEGALESE

Litigation: The act of initiating and carrying on a lawsuit. Often, used to refer to the lawsuit itself.

LEGALESE

Law: The rules of conduct and responsibility established and enforced by a society.

Since it is possible to prevent legal difficulty by anticipating it beforehand, it is less important to know, for example, the specific rules of food safety in every city than it is to know the basic principles of serving safe food. No one, not even the best lawyer, can be expected to know everything about every area of the law. In the same way, hospitality managers are not required to have a comprehensive knowledge of every law or lawsuit that impacts their industry. What they must know is how to effectively manage their legal environment. To begin this journey, it is important to grasp three key concepts:

1. Laws have historical origins, and managers need to know them.
2. Laws have an evolutionary nature, based on changes in society.
3. It is possible to use a philosophy of preventative management to manage the legal environment and minimize the chances of litigation.

Historical Origins of the Law

Common law and *civil law* are the two major systems of law in place in the Western world. Common law is the body of law that has descended from the law created in Great Britain and is used in the United States and most countries in the British Commonwealth. Civil law is descended from the law created in the Roman Empire and is used by most Western European countries, as well as Latin America, Asia, and Africa. Although both legal systems certainly defy oversimplification, it can generally be said that common law comes from reviewing past litigation that has been decided by the courts. It is greatly interested in precedent, or what has been decided in previous court cases with similar situations or facts.

In civil law, decisions evolve based on written laws or codes. Judges in civil law feel less bound by what others have decided before them and more compelled by the law as it has been established by government bodies. Given the nearness of countries within Europe, and the influence of the British Empire, it is no wonder that these two great legal systems frequently operated in close proximity, which has often blurred their distinctions. Interestingly, the term *civil law* is actually used in the common law system to refer to private law (or private disputes), as opposed to public or criminal matters.

Common law developed in England following the Norman Conquest. In common law, the principle of *stare decisis* is followed. A decision made by a higher court must be obeyed by all lower courts. In this manner, citizens know which actions are legal and which are punishable. Essentially, the purpose of the common law was to interpret and enforce rules related to the granting of land by the British monarchy to those subjects deemed worthy of such land grants. The barons who received this land would often grant parts of it to those they felt were deserving. The courts that were created at this time were charged with overseeing the peaceful resolution of disputes regarding land, inheritance, marriage, and other issues related to land grants.

Between 1765 and 1769, an Englishman, Sir William Blackstone, wrote four volumes he titled the *Commentaries*. In these books, Blackstone sought to compile a general overview of all the common law of his time. Blackstone's work formed the basis for much of the law in the New World, as his work migrated there with the English colonial settlers. Laws related to those in the hospitality industry were, of course, included.

Despite the anger against Britain that resulted in the Revolutionary War, the colonists of the soon-to-be United States embraced the common law as their favored rules of conduct and responsibility. Blackstone's work was widely used as a textbook in the law schools of the new country, and it influenced many of its early law students, including Thomas Jefferson, John Marshall, James Monroe, and Henry Clay. Inevitably, succeeding generations throughout the history of the United States have taken the common law as they have found it and modified it to meet the needs of their ever-changing society.

LEGALESE

Common law: Laws derived from the historical customs and usage of a society, and the decisions by courts when interpreting those customs and usages.

LEGALESE

Civil law: The body of law (usually in the form of codes or statutes) created by governmental entities that are concerned with private rights and remedies, as opposed to criminal matters.

LEGALESE

Stare decisis: The principle of following prior case law.

Evolutionary Nature of Common Law

It should come as no surprise that a rapidly changing society will often revise its rules of conduct and responsibility. This is true in society as a whole and in how society views the hospitality industry. In the United States of the 1850s, obviously, one would not have been expected to find a law requiring a certain number of automobile parking spaces to be designated for people with disabilities seeking to enjoy an evening meal at the town’s finest restaurant, because the world in that era contained neither the automobile nor the inclination of society to grant special parking privileges to those who were disabled. In today’s society, we have both. What changed? First, the physical world changed. We now have automobiles, along with the necessity of parking them. More significant, however, is the fact that society’s view of how people with disabilities should be treated has changed. Parking ordinances today require designated “disabled” parking spaces, generally located close to the main entrances of buildings to ensure easy access. Not only is it good business to have such spaces, but current laws also mandate that the hospitality manager provide them.

In this case, parking requirements grew out of a law created at the federal government level. The law is called the *Americans with Disabilities Act (ADA)*. This act, and its many applications to hospitality, will be discussed in greater detail in Chapter 7, “Legally Selecting Employees.” It is mentioned here to illustrate that laws evolve just as society evolves. Changes in society lead to changes in the law.

Laws in the United States may be enacted at the federal, state, and local levels (see Figure 1.1).

LEGALESE

Americans with Disabilities Act: Federal legislation (law) that protects the rights of people with disabilities so that they may be treated fairly in the workplace and have access to places of public accommodation, such as hotels, restaurants, and airplanes.

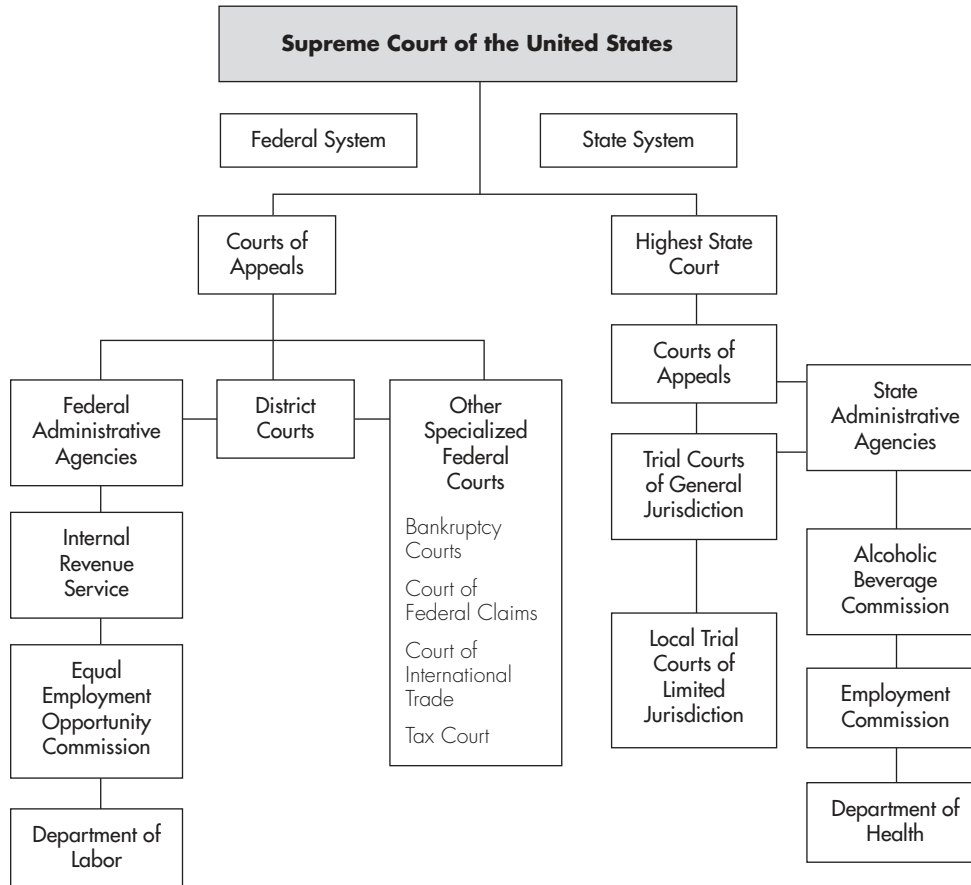


Figure 1.1 The U.S. legal system.

LEGALESE

Hospitality law: Those laws that relate to the industry involved with the provision of food, lodging, travel, and entertainment services to its guests and clients.

At each of these levels, the laws reflect the changing desires of the citizens and their elected officials. Because society includes members who operate hospitality facilities, *hospitality-related laws* created and modified by society impact those who work in the hospitality industry.

Search the Web **1.1**

Go to the Internet. Search for categories related to laws regulating tobacco use and sales in your state and/or city.

Assignment: Draft a one-paragraph essay summarizing the laws governing tobacco use in your state. Are there any special stipulations that a hospitality manager would especially want to be aware of (such as the designation of smoking and nonsmoking areas in a restaurant or public lobby)?

Preventative Legal Management

Future hospitality managers will encounter laws that do not currently exist. How, then, can they be expected to operate their facilities in full compliance with the law throughout their career? Just as important, how can they be expected to manage these facilities in a way that will minimize their chances of doing something illegal? The answer is not to attempt to monitor every legislative body empowered to enact law. The answer is to operate hospitality facilities in a way that combines preventative legal management with sound ethical behavior.

Lessons from the Medical Field

In the medical field, it is widely agreed that it is better to prevent a serious illness beforehand than to treat it after the fact. For example, doctors advise that it is preferable to prevent a heart attack through proper diet, exercise, and the cessation of smoking than for a patient to have a bypass operation after a heart attack has occurred. In the case of prevention, the doctor advises the patient, but it is, in large measure, up to the patient to put into practice the recommendations of the physician.

In a similar vein, it is far better for hospitality managers to operate their facilities in a way that minimizes the risk of litigation, rather than in a manner that exposes their operations to the threat of litigation.

STEM the Tide of Litigation

As noted, the law is not static; in fact, it changes frequently. Managers must stay abreast of these changes so that ultimately, on a daily basis, they integrate their acquired knowledge and awareness of the law into a personal style of management and decision making. The acronym STEM was coined as an easy way to remember the steps in a decision-making process that can assist managers in getting started. It stands for: select, teach, educate, and manage. It is presented here as a way of beginning to “STEM” the tide of litigation. The details of how STEM works are included in the box on page 7.

On any given day, the general manager of a hotel or restaurant in the United States will make decisions about hiring, firing, and/or providing benefits to employees. Other daily tasks might include approving a meeting space contract for a major event to be

held on the property, an event that involves the service of alcohol. Decisions regarding if and when to add a lifeguard to the pool area, whether to subcontract parking services to a local valet company, and even the uniform requirements of staff, will all be made by the manager. All of these seemingly independent decisions have a significant common denominator—they all have legal implications.

Whether it is opening a restaurant, operating a country club, or hiring a housekeeper, hospitality managers must be aware of the legal implications of each and every decision they make. It is of vital importance that managers resolve to be fair, to operate within the law, and to manage preventatively. On occasions when they do not, and a lawsuit results, the courts may hold managers *liable* for their inattentiveness.

This philosophy of preventative management becomes even more important when one considers that a great many litigation matters encountered by hospitality operators have a common denominator: a poorly prepared employee. Injuries and the resulting damages, whether financial, physical, or mental, are usually a consequence of an employee who has not been sufficiently taught to perform his or her duties. He or she might make an omission, such as not cleaning up a spill near a salad bar, or might pursue an activity outside the scope of his or her duties, such as sexual harassment or arguing with a customer.

LEGALESE

Liabile: To be legally responsible or obligated.

LEGALLY MANAGING AT WORK:

Applying the STEM Process in Hospitality Management

A process can be implemented that will help reduce employee errors and omissions and, therefore, litigation and liability. The process is called STEM, for *select*, *teach*, *educate*, and *manage*. It works like this:

1. *Select:* Managers can begin reducing litigation by selecting the right employee for the right job. Managers cannot hire “just anyone” at the last minute. Employees must be selected based on specific job qualifications, written job specifications, and information derived from a thorough investigation of the candidate for the position, whether the employee to be hired is a busperson, waitperson, hostess, door supervisor, or line supervisor.
2. *Teach:* Managers must develop proper training methods for employees, including feedback devices such as competency testing, to ensure that the training is effective.
3. *Educate:* Managers must continuously educate themselves so that they know which topics and procedures must be passed on to employees through effective teaching methods.
4. *Manage:* Effective managers know that if you consistently do things the right way, the chances for mistakes—and, therefore, for litigation—will diminish. Management has been defined as consisting of four functions: planning, organizing, controlling, and motivating. Although all four have legal implications, the STEM process focuses almost exclusively on the motivating function. A manager who creates a supportive work environment will gain the trust and respect of employees, who will then be motivated to do their best work, and thus avoid making errors that could result in litigation.

The recent increasing number of lawsuits is not caused solely by employees, of course. The legal system and some attorneys certainly share the blame. Managers, however, bear most of the responsibility for what has been occurring. When an employee makes a mistake, often it is the result of management error. Either the wrong person was hired for the job, the duties for the job were not effectively communicated to the employee, the employee was not properly trained, or the employee was not effectively supervised or motivated to do the job properly.

To create an environment conducive to motivation, you must first establish trust and respect. When managers make a commitment to employees or guests, they must follow through. They also must be willing to accept responsibility for their mistakes, and to apologize for them when appropriate. Managers must set an example: If managers ask employees to be on time, then managers must also be on time; if managers expect employees to pay for food, beverages, and services, then he or she must also pay for food, beverages, and services. In current parlance, managers must walk the talk!

Finally, all of the planning, organizing, controlling, and motivating in the world will not help if management cannot effectively communicate its vision and plan to the employees who will carry out that vision. The ability to communicate with skill and grace is a critical component of being a successful manager.

Today's culturally diverse workforce will require diverse motivating techniques. Remember that different people are motivated by different incentives. Money is a perfect example. To some, it is a strong motivating factor; others would prefer more time off instead of additional pay. Managers must know their employees and determine—by asking them, if need be—what will motivate them, both as individuals and as a work team. Examples of possible motivational efforts include the following:

- A sales contest with a significant prize
- A parking space with recognition for the employee of the month
- A 50 percent discount on meals at the restaurant
- A card on their birthday
- A written “pat on the back” for a job well done
- Taking the time to ask employees how their day was
- Involving employees in setting goals
- Seeking employee input in developing work schedules
- Listening to their concerns

All of those listed and others are the types of activities a manager should undertake to build the trust and loyalty of employees. If a consensus can be reached on what to do and how to do it, the motivating task becomes much easier.

The goal of STEM is to reduce employee mistakes. By continually encouraging and rewarding good performance, managers can create an environment that will, in fact, reduce the number of times employees make mistakes. Remember that even if a goal may be reached, the efforts of the individual or group still might merit praise. In other words, managers should try to catch their employees doing something right instead of trying to catch them doing something wrong.

It is not possible to manage effectively while sitting behind the desk. Effective managers know that “management by walking around” is alive and well, particularly in a service industry such as hospitality. Of course, an important part of managing is the ability to motivate employees. As much as managers would like all employees to come to the job every day brimming with enthusiasm, the fact is, too often, just the opposite is true. A significant number of employees may dislike coming to work, their jobs, their situation in life, and much more. They must be motivated to perform at the level management has targeted in order to exceed management's own expectations, and, more important, those of the guest.

To recap the STEM process: Select the right employee for the right job; teach employees while creating a training trail; educate management; motivate staff in a positive and nurturing manner. All these efforts will help foster loyalty and goodwill, while reducing the likelihood of litigation.

» ANALYZE THE SITUATION 1.1

A FELLOW SUPERVISOR CONFIDES in you that he has been arrested for a second time in two years for driving under the influence of alcohol. His current case has not yet gone to trial. This supervisor is responsible for the late-night closing of the restaurant in which you both work.

1. Should you discuss this situation with the restaurant's general manager?
2. After reading the next section on Ethics, has your answer changed?
3. Which aspect of STEM is relevant here?

1.3 ETHICS AND THE LAW

It is not always clear whether a course of action is illegal or simply wrong. Put another way, an activity might be legal but still be the wrong thing to do. As a future hospitality manager who seeks to manage his or her legal environment and that of other employees, it is important that you be able to make this distinction.

Ethics refers to the behavior of an individual toward another individual or group. Ethical behavior refers to behavior that is considered “right” or the “right thing to do.” Consistently choosing ethical behavior over behavior that is not ethical will go a long way toward avoiding legal difficulty. This is true because hospitality managers often will not know what the law requires in a given situation. In cases of litigation, juries may have to make determinations of whether a manager's actions were ethical or deliberately unethical. How juries and judges decide these questions may well determine their view of a manager's liability for an action or inaction.

Although it is sometimes difficult to determine precisely what constitutes ethical behavior, the following seven guidelines can be very useful when evaluating a possible course of action:

1. *Is it legal?* Does the law or company policy prohibit this activity?
2. *Does it hurt anyone?* Will this action negatively affect any stakeholders?
3. *Is it fair?* Is it fair to all the stakeholders?
4. *Am I being honest?* Are you being honest with yourself and with the company?
5. *Would I care if it happened to me?* Would it bother you if you were the recipient of the action?
6. *Would I publicize my action?* Would you be embarrassed if stakeholders became aware of your action?
7. *What if everyone did it?* Could the business effectively operate in an equitable fashion?

Consider the hospitality manager who is responsible for a large wedding reception in a hotel. The bride and groom have selected a specific champagne from the

LEGALESE

Ethics: Choices of proper conduct made by an individual in his or her relationships with others.

hotel's wine list to be used for their champagne punch. The contract signed by the bride and groom lists the selling price per gallon of the punch but does not specifically mention the name of the champagne selected by the couple. In the middle of the reception, the hotel runs out of that brand of champagne. A less costly substitute is used for the duration of the reception. Neither the bride and groom nor the guests notice the difference. Using the seven ethical guidelines just listed, a manager could evaluate whether he or she should reduce the bride and groom's final bill by the difference in selling price of the two champagnes.

How an individual determines what constitutes ethical behavior may be influenced by his or her cultural background, religious views, professional training, and personal moral code. A complete example of the way someone would actually use the seven ethical guidelines is demonstrated in the following hypothetical situation.

An Ethical Dilemma: Free Champagne

Assume that you are the food and beverage director of a large hotel. You are planning for your New Year's Eve gala and require a large amount of wine and champagne. You conduct a competitive bidding process with the purveyors in your area and, based on quality and price, you place a very large order (in excess of \$20,000) with a single purveyor. One week later, you receive a case of very expensive champagne, delivered to your home with a nice note from the purveyor's representative stating how much it appreciated the order and that the purveyor is really looking forward to doing business with you in the years ahead. What do you do with the champagne?

Ethical Analysis

Your first thought might be the most obvious one—that is, you drink it. But, hopefully, you will first ask yourself the seven questions of the ethical decision-making process.

1. Is it legal?

From your perspective, it might not be illegal for you to accept a case of champagne. However, there could be liquor laws in your state that prohibit the purveyor from gifting that amount of alcoholic beverage. You must also consider whether it is permissible within the guidelines established by the company for which you work. Many companies have established gift acceptance policies that limit the value of the gifts that employees are eligible to accept. In this case, violation of a stated or written company policy may subject you to disciplinary action or even the termination of your employment. Accordingly, you need to be extremely familiar with the ethics policy that has been adopted by the company you are working for. Assuming that it does not violate a law and/or company policy, go to question 2.

2. Does it hurt anyone?

Well, it probably would not hurt you, unless you drank all of the champagne at once; but, realistically, are you really going to be fair and objective when you evaluate next year's bids, or is your mind going to be thinking back to the case of champagne that you received? Assuming that you do not think that it is hurting anyone, go on to question 3.

3. Is it fair?

Before answering this question you have to recognize who the stakeholders are in this particular situation. How might others in your company feel about the gift you received? After all, you agreed to work for this firm at a set salary. If benefits are gained because of decisions you make while on duty,

should those benefits accrue to the *business* or to *you*? Assuming that you have decided that it is fair for you to keep the champagne, go to question number 4.

4. Am I being honest?

This question gives you the opportunity to second-guess yourself when you are answering questions 2 and 3. Do you really believe that you can remain objective in the purchasing aspect of your job and continue to seek out the best quality for the best price, knowing that one of the purveyors rewarded you handsomely for last year's choice and may be inclined to do so again?

5. Would I care if it happened to me?

If you owned the company you work for, and you knew that one of the managers you had hired was given a gift of this magnitude from a vendor, would you question the objectivity of that manager? Would you like to see all of your managers receive such gifts? Would you be concerned if they did?

6. Would I publicize my action?

If you have trouble remembering the other questions, try to remember this one. Would you choose to keep the champagne if you knew that tomorrow morning the headlines of your city newspaper would read: "Food and Beverage Director of Local Hotel Gets Case of Champagne after Placing Large Order with Purveyor"? Your general manager would see it, other employees would see it, all of the other purveyors that you are going to do business with would see it, and even potential future employers would see it.

7. What if everyone did it?

If you justify your choice of keeping the champagne, consider: Does this process ever stop? What would happen if the executive housekeeper had a bed delivered to her home every time she ordered new bedding for the hotel? What would happen if every time she ordered new washers and dryers, she received a matching set at home?

Alternative Options

What are some of the realistic alternatives to keeping the champagne?

- Return it to the purveyor with a nice note stating how much you appreciate it but that your company policy will not allow you to accept it.
- Turn the gift over to the general manager to be placed into the normal liquor inventory (assuming that the law will allow it to be used this way).
- Donate it to the employee Christmas party.

Use the seven questions to evaluate each of these three courses of action. Do you see any differences?

Codes of Ethics

Some hospitality managers feel it is important to set their ethical beliefs down in a code of ethics. Figure 1.2 is the code of ethics developed by the Club Managers Association of America (CMAA). These managers are involved primarily in the management of private and public country clubs, city clubs, and athletic clubs.

In some cases, a company president or other operating officer will relay the ethical philosophy of a company to its employees in a section of the employee handbook or through a direct policy statement, as illustrated in the ethics statement presented in Figure 1.3, which was created by Hyatt Hotels.

Club Managers Association of America Code of Ethics

We believe the management of clubs is an honorable calling. It shall be incumbent upon club managers to be knowledgeable in the application of sound principles in the management of clubs, with ample opportunity to keep abreast of current practices and procedures. We are convinced that the Club Managers Association of America best represents those interests, and as members thereof, subscribe to the following code of ethics:

We will uphold the best traditions of club management through adherence to sound business principles. By our behavior and demeanor, we shall set an example for our employees and will assist our club officers to secure the utmost in efficient and successful club operations.

We will consistently promote the recognition and esteem of club management as a professional and conduct our personal and business affairs in a manner to reflect capability and integrity. We will always honor our contractual employment obligations.

We shall promote community and civic affairs by maintaining good relations with the public sector to the extent possible within the limits of our club's demands.

We will strive to advance our knowledge and abilities as Club Managers, and willingly share with other Association members the lessons of our experience and knowledge gained by supporting and participating in our local chapter and National Association's educational meetings and seminars.

We will not permit ourselves to be subsidized or compromised by any interest doing business with our clubs.

We will refrain from initiating, directly or through an agent, any communications with a director, member or official of another club regarding its affairs without the prior knowledge of the Manager thereof, if it has a Manager.

We will advise the national Headquarters, whenever possible regarding managerial openings at clubs that come to our attention. We will do all within our power to assist our fellow club managers in pursuit of their professional goals.

We shall not be deterred from compliance with the Law, as it applies to our clubs. We shall provide our club officers and trustees with specifics of Federal, State and Local laws, statutes and regulations, to avoid punitive action and costly litigation.

We deem it our duty to report to local or national officers any willful violations of the CODE OF ETHICS.

Figure 1.2 CMAA code of ethics.

WHAT WOULD YOU DO?

Assume that your local municipality is considering the passage of a law that would prohibit the sale of all tobacco products from the interiors of bars and restaurants but not grocery stores. The restaurant you manage has a cocktail lounge, and cigarettes are both consumed and sold in that section of your restaurant. There is no current effort to prohibit smoking in cocktail lounges such as the one you operate. You are

considering whether to address the local government body charged with creating such legislation:

1. What are the major considerations you will think about before you decide to support or oppose the proposed legislation?
2. Will the fact that you do or do not smoke influence your position?
3. Which ethical issues are in play here?

INTRODUCTION

The following statement is designed to reaffirm and further implement Hyatt Corporation's ("Hyatt") standing policy of strict observance of all laws and ethical standards applicable in jurisdictions in which the Corporation conducts its business. This statement is applicable to all of Hyatt's subsidiaries, affiliates and divisions, operating both inside and outside the United States (the "Corporation") and is applicable to all officers and employees of the Corporation. Unless amended by the Board of Directors of Hyatt, this statement and the compliance therewith is subject to no waivers or exceptions in the name of competitive or commercial demands, social traditions, or other local exigencies.

1. Policy Statement to Conduct Business in Accordance with all Laws and Complete Honesty

It is the policy of the Corporation to conduct its business in accordance with all applicable laws and regulations of the jurisdictions in which such business is conducted and to do so with complete honesty and integrity and in accordance with the highest moral and ethical standards.

2. Use of Corporate Assets

No corporate funds, assets, services or facilities (including, for the purposes hereof, without limitation, complimentary items, discounts and amenities), shall be used, directly or indirectly, for any unlawful or unethical purpose. Any question as to the legality or ethics of any contemplated use of corporate funds, assets, services or facilities shall be referred to Hyatt's general counsel.

3. Use of Corporate Assets for Political Purposes

No corporate funds, assets, services, or facilities shall be used, directly or indirectly, for the purpose of aiding, supporting or opposing any political party, association, organization or candidate where such use is illegal or improper under the laws or regulations of the relevant jurisdiction. This includes loans of corporate funds, assets, services or facilities and direct or indirect payments, including reimbursements of employees or third parties for political contributions or payments which they might personally have made. The use of corporate funds, assets, services or facilities for political purposes, in jurisdictions where the same are permitted by law shall not be prohibited if the use shall be with the specific prior written authorization of a senior officer of Hyatt and the advance written approval of Hyatt's general counsel after a determination by him that said use would be lawful and proper in all respects. Employees, may, of course, make personal political contributions as they choose, so long as such contribution is not in violation of any applicable laws, but no employee may be compensated or reimbursed, directly or indirectly, by the Corporation for any such personal contribution.

4. Use of Corporate Assets to Unlawfully Secure or Retain Business

No corporate funds, assets, services or facilities shall be used to secure or retain business where such use is in violation of any applicable law or regulation. Without limitation of the foregoing, no employee shall engage in any form of bribery or kickbacks and no corporate funds, assets, services or kickbacks and no corporate funds, assets, services or facilities shall be used to influence or corrupt the action of any government official, agent or employee, or of any private customer, supplier or other person. The foregoing includes direct and indirect payment (including payments through consultants, suppliers or other third parties) or use of corporate funds, assets, services or facilities in any form to or the benefit of governmental or non-governmental persons including the reimbursement of employees for payments or gifts which they might personally have made.

5. Use of Corporate Assets to Influence Decisions Affecting the Corporation

No corporate funds, assets, services or facilities shall be used in violation of any applicable law or regulation for the purpose of influencing any decision or action affecting the Corporation, including the performance or the timely performance of official duty or action or to ward off or postpone decisions on matters affecting the Corporation. The foregoing includes direct and indirect payments (including payments through consultants, suppliers or other third parties) or use of corporate funds, assets, services or facilities in any form to or for the benefit of governmental or non-governmental persons including the reimbursement of employees for payments or gifts which they might personally have made.

6. Use of Corporate Assets in Violation of Labor Laws

No corporate funds, assets, services or facilities shall be used in violation of any applicable law or regulation concerning labor unions. All labor unions must be dealt with as any normal customer and the extension of special courtesies outside the normal business context is illegal.

Figure 1.3 Corporate policy for Hyatt Hotels.
(Reprinted with permission)

7. Acceptance of Gifts, Payments, Fees or Privileges

Employees of the Corporation are not to solicit or accept gifts, payments, fees, services, special valuable privileges, pleasure or vacation trips or accommodations, loans (except on conventional terms from banks or loan institutions), or other special favors from any organization, person or group that does, or is seeking to do business with the Corporation without prior written approval of the President of Hyatt or the President of Hyatt Hotels Corporation. The foregoing shall not prohibit the acceptance of Christmas gifts (not in cash, bonds, or similar items) of nominal value (generally not exceeding \$150.00) where the giving and accepting of such gifts are a normal practice in the business involved and the same is known to and approved by the employee's supervisor. No employees shall accept anything of value in exchange for referral of third parties to any such person, organization or group.

8. Entertainment of Customers, Suppliers, Employees and Business Associates

It is recognized that reasonable and proper entertainment of selected customers, suppliers, prospective employees and business associates, is, at times, in the best interest of the Corporation and is generally proper. However, such entertainment must at all times be in accordance with all applicable laws and regulations and in accordance with the approvals and reporting procedures established by the Corporation. It is further recognized that the furnishing of nominal gifts or the furnishing of corporate services or facilities on a complimentary basis are often in the best interests of the Corporation and are reasonable and proper. However, employees of the Corporation may furnish gifts, services or facilities at company expense, only if the same shall meet all of the following conditions:

- a) Gifts in the form of cash, bonds (or similar items) shall not be given regardless of amount except for annual holiday gifts and the like where individual gifts do not exceed \$150.00 per year;
- b) The furnishing of gifts, services, or facilities are in accord with normally accepted business practices, and comply with the policies of the organization;
- c) The practice would be considered reasonable and in accord with generally accepted ethical practices in all governing jurisdictions;
- d) The subsequent public disclosure of all facts would not be embarrassing to the Corporation;
- e) The practice must be in accordance with all applicable laws and regulations.

9. Use and Disclosure of Company Assets

No undisclosed fund or asset of the Corporation shall be established for any purpose.

10. Accurate Reporting of Financial Statements

No false, artificial or misstated entry shall be made in any of the books, records or financial statements of the Corporation for any reason, and no employee shall engage in any arrangement that results in such prohibited act. All entries on the books and records of the Corporation shall reflect the real nature or purpose of the transaction reported, and no corporate funds, assets, services or facilities shall be used with the intention or understanding that such use, in whole or in part, is for any purpose other than that described by the documents supporting the use in question. In addition, no one should knowingly supply false or artificial or misstated information in any non-financial record of the company.

11. Ownership Interest in Competing Businesses

No employee or member of his or her immediate family who has a key position at Hyatt shall be engaged in or shall have any ownership interest in any firm or business which is in competition with or does business with Hyatt, directly or indirectly, or is otherwise substantially engaged in the business of travel and entertainment.

12. Ownership of Materials, Techniques, Manuals, Systems, Programs, or Information

Training materials, techniques operating manuals, data processing systems, programs, procedures, data-bases, sales and marketing information, marketing strategies, financial information, personnel information, discoveries and inventions including processes, data, lists, systems, products, training materials, operating manuals, and other matters conceived or put into practice while an employee works for Hyatt are the property of Hyatt and not the employee. In addition, this information is not common public knowledge and is therefore considered "Confidential Information." Unauthorized use or disclosure of Confidential Information to a third party may cause irreparable harm to Hyatt. By executing this Disclosure Statement, the employee agrees to maintain the confidentiality of such proprietary information during the period of his/her employment and thereafter. In addition, upon breach of this condition of employment, the employee agrees that he/she shall forfeit any claim that he/she might have to incentive-type compensation of any kind upon such employee's termination from Hyatt. All Hyatt materials and possessions relating to any Confidential Information must be promptly returned upon termination from Hyatt.

13. Statements to Auditors

No employee shall make a false or misleading statement to the Corporation's independent auditors or internal auditors, nor shall any employee conceal or fail to reveal any information necessary to make the statements made to such auditors not misleading. In addition, no employee shall make a false or misleading statement to any investigator or other third party representative hired by the Company to investigate any internal or external complaint or business discrepancy.

14. Reporting Requirements and Procedures

Any employee obtaining information of knowledge of any violation of any of the foregoing prohibitions shall promptly report such matter to Hyatt's General Counsel.

15. Policy Questions

Any employee, who has any question regarding the interpretation of or compliance with this policy statement, should discuss the matter with his superior and/or Hyatt's General Counsel.

16. Disciplinary Action

Any employee participating in any violation of this policy statement shall be subject to appropriate disciplinary action.

17. Approval

Any question relating to specific provisions of this policy or any requests for advance-approval decisions with respect to this policy or representations concerning the establishment of funds should be directed to the attention of Hyatt's General Counsel.

Discrimination

Hyatt is committed to providing a work environment that is free of discrimination. In keeping with this commitment, we maintain a strict policy prohibiting unlawful harassment, including sexual harassment. This policy applies to all employees of Hyatt, including supervisors and nonsupervisory employees. It prohibits harassment in any form, including verbal and physical harassment.

Sexual harassment is a behavior which undermines the integrity of the employment relationship. All employees must be allowed to work in an environment free from unsolicited and unwelcomed sexual overtures. Sexual harassment does not refer to occasional compliments. It refers to behavior which is not welcomed, which is personally offensive, which reduces morale, and which therefore interferes with employee effectiveness.

Sexual harassment may include actions such as:

- Unwelcomed or unwanted sexual advances. This could include any form of physical contact.
- Requests or demands for sexual favors. This could include subtle or blatant expectations. It also includes pressure or requests for any type of sexual favor accompanied by an implied or stated promise of preferential treatment or negative consequences concerning any aspect of one's employment status.
- Verbal abuse. Conversation that is sexually oriented and that may be expected to be unacceptable to another individual. This could include inappropriate comments about an individual's body or appearance where such comments go beyond a mere compliment; telling "dirty jokes" that may be expected to be offensive; or any other tasteless, sexually oriented comments, innuendoes or actions that offend others.
- Engaging in any type of sexually oriented conduct that interferes with another's work performance or the work environment. This includes extending unwanted sexual attention to someone.
- Creating a work environment that is intimidating, hostile or offensive because of sexually oriented conversation, suggestions, requests, demands, physical contacts or attention.

Normal, pleasant, courteous, mutually respectful and non-coercive interaction between employees is not considered to be sexual harassment. However, sexual harassment is an insidious practice which demeans individuals being treated in such a manner. Hyatt will not tolerate sexual harassment of its employees by anyone—supervisors, employees, clients and/or customers.

Employees who violate this policy are subject to termination. If you observe conduct which you believe is sexual harassment, or if you feel you have been the victim of sexual harassment, please advise you General Manager or Director of Human Resources or Divisional Director of Human Resources.

Figure 1.3 (Continued)

Employee Relations

Hyatt greatly appreciates the talent and dedication of employees. As thanks for your commitment, it is our daily practice to treat employees with dignity and respect. Hyatt's employee relations philosophy is extended by the following:

- Competitive wages and benefits
- A clean, pleasant and safe work environment
- A well-trained and knowledgeable management team to assure high quality supervision

We do not discriminate on the basis of race, color, creed, sex, national origin, age or handicap, or any other group protected by law.

To satisfy the diverse needs of our customers, we must function as a team whose goal is to provide our guests with the highest quality of service. As part of our teamwork philosophy, we have a policy of open communication at all times. We feel that it is the best way to effectively deal with the daily challenges and opportunities of our business.

I have read and understand this entire document containing the Hyatt Employee Relations Policy, Discrimination Policy and Corporate Ethics Policy Statement.

I understand that I am responsible as an employee to abide fully with all information contained herein.

If, at any time during my employment, I have a question about Hyatt's Ethics Policy or need to disclose knowledge of a violation or request an approval or waiver, I will promptly notify my General Manager.

Print Name

Signature

Title

Company Location

Date

Social Security Number

Questions, Conflicts of Interest, Requests for Approval or Waivers

Figure 1.3 (Continued)

Notice that in both the CMAA's code of ethics and in Hyatt's corporate policy, reference is made to the importance of following the law. Laws do not exist, however, to cover every situation that future hospitality managers will encounter. Society's view of acceptable behavior, as well as of specific laws, is constantly changing. Ethical behavior, however, is always important to the successful guidance of responsible and profitable hospitality organizations.

THE HOSPITALITY INDUSTRY IN COURT

At this point in the remainder of the book—Chapters 2 through 13—there are summaries of actual legal cases involving some component of the hospitality industry and the area of the law that is discussed in the chapter.

There are several ways that you can access the full cases:

1. Go to www.HospitalityLawyer.com and click on Resources, then Academics, then Referenced Cases; then search by case name.

2. Go to the John Wiley & Sons, Inc. (the publisher of this book) website, at www.wiley.com/college/Barth.
3. If you have access to Lexis/Nexus, an online research tool, search for the cases there.
4. If you have access to a law library, ask the librarian for assistance in locating a hard copy of the case.
5. Search other websites such as www.Findlaw.com to see if they host it.

As a manager, you will be called on to make many decisions that have legal consequences. It is unrealistic to expect a manager to know all of the laws that could potentially impact his or her operation. Because litigation is prolific in the hospitality industry and laws change frequently, it is imperative that you develop and practice a management philosophy of prevention, such as STEM.

Just because a law does not prohibit a particular activity does not make it the right thing to do. Accordingly, you should also follow a process that will assist you in determining the ethical implications of a decision, as well as the legal implications, such as the one described in the chapter.

WHAT DID YOU LEARN IN THIS CHAPTER?

After you have studied this chapter, you should be prepared to:

1. Prepare a five-minute training session for your staff that emphasizes the importance of preventing, rather than reacting to, legal liability. Give an example of a situation where this might arise.
2. Give an example, other than the one mentioned in the text, of a recent change in federal, state, or local law that has impacted the hospitality industry. Explain why you believe the law was enacted and whether you believe it was good legislation.
3. Give a hospitality example of the importance that “selection” makes in the STEM process.
4. Give a hospitality example of the importance of “teaching” in the STEM process.
5. Give a hospitality example of the importance of “education” in the STEM process.
6. Give a hospitality example of the importance of “managing” in the STEM process.
7. A vendor has agreed to clean your hotel carpets at a very competitive price. In a telephone conversation with you, the vendor states that if it gets the contract, members of its staff will “do your home carpets once a year” as a thank you. Apply the seven criteria for ethical behavior to this situation.
8. Using the World Wide Web, locate a state law of any type that relates to business operations. Use your search engine to help. Keywords to use include: “state,” “laws,” and “business.” Describe the law in a one-paragraph essay.

RAPID REVIEW

Draft a one-page code of conduct for an independent restaurant with 50 employees. Be prepared to justify your document to the rest of the class.

TEAM ACTIVITY

