

CHAPTER 4

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OKAY, LANCE DANI thought, as he hung up the telephone, *it's only 11:00 A.M. Nothing to get upset about . . . yet. I'm sure Ms. Sangus will know what to do.*

Lance was the new front office supervisor at the hotel managed by Trisha Sangus. Generally, he considered himself very good at resolving guest-related difficulties, but he knew that this one was not going to be easy. He had personally handled the room reservation for Tom and Sarah Barry because he knew how important it was. The Barrys' wedding had been

held in the hotel the previous night, and the food and beverage staff had performed flawlessly. The newlyweds had checked into the hotel's spectacular bridal suite around 11:30 P.M., and had even called down to the front desk to say thank you for the complimentary champagne Mr. Dani had arranged to be placed in their room. But that was yesterday. He hoped that they would be just as happy in a few hours.

Lance again reviewed the two room reservations facing him on his desk. He had asked that they both be printed in hard copy so he could study them carefully.

Mr. Tom Barry

Arrival: Friday, November 3; Departure Saturday, November 4

Room Type Reserved: Bridal Suite, #417

Confirmation Number: 458Y31

Mr. Patrick Farmer

Arrival: Saturday, November 4; Departure Sunday, November 5

Room Type Reserved: Bridal Suite, #417

Confirmation Number: 463Y75

"No problem," he had thought, but that was before the Barrys' call of a few minutes ago stating that Northeast Airlines had canceled all flights out of the city due to a severe snowstorm, and they would require their room for one more night. Lance reviewed the second reservation. No question about it, the Farmers would be arriving soon. Preparations were currently underway for their wedding, which was also to be held in the hotel. Two guests, both VIPs, only one spectacular bridal suite. Time to see the general manager.

As usual, Trisha took the news calmly, and began gathering the facts of the situation. "Do we have any unsold rooms for tonight?" she asked.

"We have 34 arrivals scheduled for tonight, with 26 available rooms," replied Lance. "Twenty reservations are credit card guaranteed, 14 have a 6:00 P.M. hold. With the storm, we may lose a few more arrivals than normal, but you can count on some unanticipated stay-overs also. I originally forecasted for 10 total no-shows."

"Did you confirm the Farmers' reservation for the bridal suite?"

"Yes," said Lance, "it's part of their group contract."

"How many members of the Farmers' group block have reserved?"

"They have picked up 90 percent of their 20-room block."

"Deposit?"

"One thousand dollars."

Trisha thought for a moment, then said, "We have a confirmed reservation for the Farmers, and remember that they have a contract with us to host their reception and dinner tonight. I'm meeting with the chef and the food and beverage director at noon to review the preparations. The reception and dinner have a value to the hotel of over \$10,000 in food and beverage sales. We certainly don't want to upset those guests. In addition, we have an extremely important stay-over guest in the bridal suite, which the Farmers also have reserved. It seems clear to me that we have only one choice. I'm sure you know what to do, Lance. Let's make sure we do it right."

As Lance left the general manager's office, he was not at all sure he knew what to do. He certainly was not sure how to avoid a serious difficulty with one or both of the hotel's two very important customers. All he knew for sure was that he wished he had a second bridal suite. What was most confusing, he thought, was exactly who had a right to the bridal suite. As he arrived back at his office, Jodi, his front desk agent, peeked her head around his door and knocked softly.

"Mr. Dani," she began. "There is a Mr. Farmer here. He knows he's early, but he has requested an early check-in. I told him I would need to get an okay from you. What should I tell him?"

IN THIS CHAPTER, YOU WILL LEARN:

1. The two basic types of valid business contracts.
2. The four essential components that must be present to create a valid contract.
3. The purpose of the Uniform Commercial Code (UCC).
4. The consequences of breaching an enforceable contract.
5. How to avoid legal difficulties related to contracts before they arise.

4.1 INTRODUCTION TO CONTRACTS

LEGALESE

Contract: An agreement or promise made between two or more parties that the courts will enforce.

In any society, the members of the society choose to abide by rules designed to enhance the quality of life of that group. Violations of the rules are typically met with some form of negative consequence imposed by group members. In some cases, rules of conduct are passed down to successive generations by societal customs and mores. In other cases, the rules are expressly stated in the written laws governing the society. One important job of the courts is the enforcement of societal laws. It is also the job of the courts to enforce *contracts*.

Business Contracts

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

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

Surprisingly, it can sometimes be perplexing for hospitality managers to know precisely what is expected of them when serving guests. It can also be just as difficult to know what should reasonably be expected of the vendors and suppliers with which the manager interacts. Business contracts, and the laws surrounding them, have been established so that both parties to an agreement can more clearly understand exactly what they have agreed or promised to do. This is important for many reasons; however, one of the most important, as the majority of participants in lawsuits (regardless of their outcome!) will attest, is avoiding legal difficulties, which is very much preferable to settling those difficulties in court.

Verbal and Written Contracts

Hospitality managers, in the course of their normal duties, make a great number of promises and enter into a multitude of agreements on a daily basis. Although effective managers enter into these agreements in good faith, any number of problems or misunderstandings can arise that may prevent promises from being fulfilled.

Valid contracts may be established either in writing or verbally. In most cases, written contracts are preferred over verbal contracts because it is easier to clearly establish the precise responsibilities of each party when those responsibilities are completely spelled out. In addition, time can cause memories to fade, businesspeople may change jobs or retire, and recollections, even among the most well-intentioned of parties, can differ. All of these factors can create discrepancies in verbal contracts.

» ANALYZE THE SITUATION 4.1

IN RESPONSE TO A telephone inquiry, Vincent's Tree Service offered to trim an apple tree on the lawn outside the front lobby of the Olde Tyme Prime Rib restaurant, for a fee of \$500. Mr. Wilbert, the restaurant's manager, agreed to the price and a start date of Monday. At noon on Monday, Vincent's informed Mr. Wilbert that the job was completed. The tree trimming went fine, but a large quantity of branches and leaves from the tree were left neatly piled near the tree's base. When Mr. Wilbert inquired about the removal of the debris, Vincent's stated that removing it had never been discussed and was not included in the quoted price. Mr. Wilbert agreed that the topic of removal was never discussed but stated that it is generally assumed that when a company trims a tree, it will remove the brush it generates; therefore, he refused to pay until the brush was removed.

1. Which party's position seems most valid to you? Why?
2. How would you suggest the issue be resolved between these two contracting parties?

LEGALESE

Plaintiff: The person or entity that initiates litigation against another. Sometimes referred to as the claimant, petitioner, or applicant.

LEGALESE

Defendant: The person or entity against which litigation is initiated. Sometimes referred to as the respondent.

Interestingly, despite the fact that written contracts have many distinct advantages over verbal agreements, in the hospitality industry, most transactions with guests are established orally, rather than in writing. For example, when a potential customer calls a restaurant to order a pizza for home delivery, a contract is established via telephone. The guest agrees to pay for the pizza when delivered, just as the restaurant agrees to prepare and deliver a high-quality product. It simply would not be practical to get such an agreement in writing. Likewise, the guest who calls a restaurant and makes a reservation for eight people at 7:30 P.M. on a Friday night does not usually get a written agreement from the restaurant stating that it accepts the responsibility to provide a table for that group. The guest simply makes a verbal request, and that request is either accepted or denied based on the space available at the restaurant.

There are many cases in which transactions with guests or other businesses are actually confirmed in writing. In Chapter 5, “Significant Hospitality Contracts,” you will review, in detail, some of the most important types of written contracts used in the hospitality industry.

Perhaps the most common example of a written, ordinarily enforceable, contract related to hospitality guests is the registration card, which is signed by guests when they stay at a lodging facility. Figure 4.1 shows such a card used by Holiday Inn. Note that, while most written contracts are actually signed by both contracting parties, only the guest signs this type of contract. Also, the responsibilities of the hotel are not clearly stated on the registration card, although they have been clearly established over time by common law. These responsibilities will, however, be discussed fully in Chapter 9, “Your Responsibilities as a Hospitality Operator.”

» ANALYZE THE SITUATION 4.2

JEREMY MOSS'S CREDIT CARD was billed \$450.00 by the Langford Inn.

The charge was a “no-show” charge that resulted from Mr. Moss not arriving at the hotel on a night that “he” had reserved, via the hotel’s website, two rooms (at \$225.00 each). The hotel had been sold out that night, and the rooms, in keeping with hotel policy, had been held for Mr. Moss until 4:00 A.M. the next morning.

Mr. Moss contacts the hotel when he receives his credit card statement and protests that he never made the reservations. The reservation data collected on the website lists Mr. Moss’s actual address and his home telephone number, as well as the credit card number billed by the hotel.

Mr. Moss, however, still maintains that he did not make the reservation, and thus demands that the “no-show” billing be removed from his card.

1. Do you believe the hotel is justified in charging Mr. Moss for the no-shows?
2. How could this hotel prevent such misunderstandings in the future?

Guest Name XXXXXXXXXXXXXXXXXXXXXXXXXXXX					
Room Number XXXX	Room Type XXXX	Room Status X	Arrival Date mm/dd/yy	Departure Date mm/dd/yy	
Room Rate XXXXXXXXXX	Second Rate XXXXXXXXXX	Mkt/Seg X-XXXX	# of Guests X	Sp. Svc. XXXXXX	ETA
Confirmation Number XXXXXXXXXX		Reservation Number XX-XXXXXX-X		ID XXX	Time XXXXXX
Company XXXXXXXXXXXXXXXXXXXXXXXXXXXX					
Address XXXXXXXXXXXXXXXXXXXXXXXXXXXX					
Address XXXXXXXXXXXXXXXXXXXXXXXXXXXX					
City XXXXXXXXXXXXXXXXXXXX		State XX	Zip XXXXXXXXXX		
Telephone Number (XXX) XXX-XXXX		Advanced Deposit			
Settlement Code X	Account XXXXX	Description			Approval
Alliance Code XXX	Alliance Number XXXXXXXXXXXXXXXXXXXX		Priority Club Level XXXXXXXXXXXXXXXXXXXX		
Comments XXXXXXXXXXXXXXXXXXXXXXXXXXXX					



HOLIDAY INN ANYTOWN
 123 MAIN STREET
 ANYTOWN, ZZ 12345-6789
 Phone: (000) 000-0000
 Fax: (000) 000-0000

Please notify a Guest Service Representative if there are any errors on this record of your registration. We want to make certain that your name and room number are correct so that your mail and messages can reach you promptly.

Independently owned by and operated by XXXX

**UPON CHECKING OUT,
MY ACCOUNT WILL BE SETTLED BY:**

- Visa
- MasterCard
- American Express
- Discover
- Diners / Carte Blanche
- CASH
- Other

NOTICE

LIABILITY FOR LOSS OF ANY MONEY, JEWELRY OR OTHER VALUABLES IS LIMITED BY LAW. IF YOU ARE NOT FAMILIAR WITH THE LAW IN THIS AREA, YOU SHOULD READ THE NOTICE POSTED AT THE DESK OR IN THE ROOMS.

I AGREE THAT MY LIABILITY FOR THIS BILL IS NOT WAIVED AND AGREE TO BE HELD PERSONALLY LIABLE IN THE EVENT THAT THE INDICATED PERSON OR COMPANY FAILS TO PAY FOR ANY PART OR THE FULL AMOUNT OF THESE CHARGES. I AGREE THAT IF AN ATTORNEY IS RETAINED TO COLLECT THESE CHARGES, I WILL PAY ALL REASONABLE ATTORNEY FEES AND COSTS INCURRED.

SIGNATURE

Please Note:

A safe deposit box is available for the protection of your valuables. The hotel's liability is limited pursuant to general business law.

TRANSPORTATION REQUEST

Guest Name / Contact _____
 Number of Persons _____ Group _____
 Date Service Required _____ Time Service Required _____

FROM Airport TO Airport

Airline _____ Airline _____
 Flight # _____ Flight # _____
 Terminal _____ Terminal _____

Special Instructions _____

Make of Auto / Color	License No.
Year	State

Figure 4.1 Guest registration card.
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When dealing with vendors, suppliers, and others who provide services to the hotel, verbal contracts are quite common. When a hospitality operation does business with a vendor that has an excellent reputation, a typical verbal contract can be established in as simple a manner as a telephone call. If, for example, the manager of a restaurant is required by state or local law to have the fire extinguisher system above the deep-fat fryers inspected twice a year, the agreement to do so may not be committed to writing each time an inspection is made. Perhaps the same company has been performing the inspection for several years. Indeed, it may be that in order to efficiently schedule its staff, the inspection company, rather than the restaurateur, decides on the exact day of inspection. In this case, the presence of the inspector, access provided to the facility, the invoice for services performed, and a written inspection report all serve as indications that a verbal agreement to inspect the restaurant was in existence, even if no written agreement exists.

4.2 COMPONENTS OF AN ENFORCEABLE CONTRACT

LEGALESE

Enforceable contract:

A contract recognized as valid by the courts and subject to the court's ability to compel compliance with its terms.

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

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

Capacity and Legality

Not all agreements or promises made between two or more parties are legally valid. If, for example, a child who is ten years old “agrees,” even in writing, to host 100 of his friends at the local amusement park, the park owner would have no recourse if the ten-year-old subsequently neglected to arrive with his friends and pay the admission fees. The reason, logically, is that society requires a party to a contract to be of a minimum age before he or she can legally commit to the promises made in the contract. In most cases, minors do not meet the minimum age requirement; therefore, any contract they enter into would be considered unenforceable by the courts. In addition, an individual who does not have the mental capacity to understand what the terms of the contract entail will not be able to enter into an enforceable contract. This incapacity could be due to a variety of reasons, from mental illness to inebriation.

Even if the parties to a contract are considered legally capable, the courts will not enforce a contract that requires the breaking of a law. If, for example, a gourmet restaurant contracts with a foreign supplier to provide an imported food product that has not entered the country with the proper inspections, the courts will not enforce the contract because the activity involved—that is, the selling of uninspected food products—is itself illegal. Agreements to perform illegal acts are not enforceable. Thus, to be considered legally enforceable, a contract must be made by parties who are legally able to contract, and the activities specified in the contract must not be in violation of the law.

Offer

Given that two or more parties are legally capable of entering into a contract, and that the contract involves a legal activity, the second component required in a legally enforceable contract is an offer.

The *offer* simply states, in as precise a manner as possible, exactly what the offering party is willing to do, and what he or she expects in return. The offer may include specific instructions for how, where, when, and to whom the offer is made. The offer

LEGALESE

Offer: A proposal to perform an act or to pay an amount that, if accepted, constitutes a legally valid contract.

may include time frames or deadlines for acceptance, which are either clearly stated or implied. In addition, the offer will generally include the price or terms of the offer.

When a guest enters a restaurant and reads the menu, he or she is reading a series of offers from the restaurant manager. While the menu may state, “16-Ounce Roast Prime Rib of Beef, \$22.95,” the contract offer could be stated as, “The restaurant will provide prime rib, if you, the guest, will agree to pay \$22.95 for it.”

When a school foodservice director places an order for produce with a vendor, the offer is similar. The foodservice director offers to buy the necessary products at a price quoted by the vendor. The reason that an offer is a required component of a contract is clear. The offer sets the term and responsibilities of both parties. The offer states, “I will promise to do this, if you will promise to do that.”

Returning to the tree-trimming case referred to in Analyze the Situation 4.1, you can see why the offer is so important in a contract. In that example, the restaurateur and the tree service had differing ideas on precisely what constituted the offer. In fact, a great deal of litigation today involves plaintiffs and defendants who seek the court’s help to define what is “fair” in regard to a legitimate offer, when those offers have not been clearly spelled out. It is important to note also that the courts will enforce contracts that have reasonably identifiable terms, even if those terms are heavily weighted in favor of one of the parties. Because of this, it is a good idea to clearly understand all of the terms of an offer prior to its acceptance. By doing so, the effective hospitality manager can help minimize his or her potential for litigation.

Consideration

An important part of the contract is *consideration*, which can best be viewed as something of value, such as the payment or cost of the promises of performance agreed to in a contract. For a contract to be valid, consideration must flow both ways. In the case of the prime rib dinner just mentioned, the consideration by the restaurant is the prime rib. The guest, by ordering the prime rib, is agreeing to pay \$22.95 as consideration. Similarly, an airline that offers to transport a passenger round trip does so for a specific fare, which, in this case, is the consideration. The airline provides the trip and the guest pays the fare.

Consideration may be something other than money. If a restaurant agrees to host an employee Christmas party for a professional decorating company in exchange for having the company decorate its restaurant for Christmas, the consideration paid by the restaurant would be the hosting of the employee Christmas party, while the consideration paid by the decorator would consist of the products and services required to decorate the restaurant.

Another type of consideration often employed in the hospitality industry is the temporary or permanent use of property. When a hotel advertises a specific rate for the rental of a room, that rate is the consideration to be exchanged for the overnight use of the room.

When that same hotel company purchases a piece of land to build a new property, it will likely exchange money for the right to build on or own the property.

Consideration can also be the promise to act or not act. When the board of directors of a country club agrees to employ a club manager for a certain annual salary, the club provides consideration in the form of money, while the club manager’s consideration consists of the work (acts) that he or she will do while managing the club. In some cases, consideration requires that one of the contracting parties does not act. Suppose that a couple buys an established restaurant from its current owner. The restaurant’s name, as well as the original restaurant owner, is well known in the local area. Consideration in the sales contract may well include language that prohibits the original owner from opening a restaurant with a similar name in the immediate vicinity for a specified period of time. In this case, the consideration requires the original owner not to act in a specific manner.

LEGALESE

Consideration: The payment/value exchanged for the promise(s) contained in a contract.

LEGALESE

Acceptance: Unconditional agreement to the precise terms and conditions of an offer.

LEGALESE

Counteroffer: Conditional agreement to the terms and conditions of an offer that includes a change to those terms, creating a new offer.

LEGALESE

Express contract: A contract in which the components of the agreement are explicitly stated, either orally or in writing.

A hotel may rent a room for \$25, \$250, or \$2,500 per night should it so choose. The guest has a right to agree or not agree to rent the room. As long as both parties to a legitimate contract are in agreement, the amount of the consideration is not generally disputable in court. Indeed, should an individual who is competent wish to sell a piece of land he or she owns for \$1 (perhaps to a charitable group), the courts will allow it, regardless of the appraised value of the land. The important point here is that the courts will ordinarily not deem a contract unenforceable simply because of the size of the consideration. It is the agreement to exchange value that establishes mutual consideration, and thus the contract's enforceability, not the magnitude of the value exchanged.

Acceptance

Because it takes at least two parties to create a contract, a legal offer and its consideration must be clearly accepted by a second party before the contract comes into existence. It is important to note that the *acceptance* must mirror exactly the terms of the offer in order for the acceptance to make the contract valid. If the acceptance does not mirror the offer, it is considered a *counteroffer* rather than an acceptance. When an acceptance that mirrors the offer is made, an *express contract* has been created.

An offer may be accepted orally or in writing, unless the offer itself specifies the manner of acceptance. In both cases, however, it must be clear that the terms of the offer were in fact accepted. It would not be fair, or ethical, for a wine steward to ask if a diner would like an expensive bottle of wine, and then, because the diner did not say no, assume that the lack of response indicated an acceptance of the offer. In that circumstance, the diner should not be required to pay for the wine. In the same manner, a contractor who offers to change the light bulbs on an outdoor sign for a restaurant cannot quote a price to the restaurant manager and then proceed to complete the job without a clear acceptance by the manager.

» ANALYZE THE SITUATION 4.3

JOANNA HART WAS OFFERED a position as director of foodservice for the independent school district of Laingsford. She received a written offer of employment on the first of the month, with a stipulation that the offer would be in effect until the 15th of the month. If Ms. Hart were to accept the employment offer, she would have to sign the employment contract and return it to the Laingsford superintendent of schools before the offer expired on the 15th. Upon reading the details of the contract, Ms. Hart felt that the salary identified in the letter was too low, and thus she adjusted it upward by \$5,000, initialing her change on the contract copy. She then returned the offer letter to the schools superintendent with a cover letter, stating she was pleased to accept the position as detailed in the contract. The contract arrived by mail in the office of the superintendent on the 14th of the month, at which time, the superintendent called Ms. Hart to express his regret that she had rejected the employment offer. During the telephone call, Ms. Hart realized that the superintendent would not accept her salary revision proposal, so instead she verbally accepted the position at the original rate of pay. The superintendent, however, declined her acceptance, stating that the original employment offer no longer existed.

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

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

1. Verbal or nonverbal agreement.

In its simplest form, acceptance of a contract offer can be done verbally, with a handshake or even with an affirmative nod of the head. If, for example, a guest in a cocktail lounge orders a round of drinks for his table, he is verbally agreeing to the hotel's unspoken, but valid, offer to sell drinks at a specific price. If, when the drinks are consumed, the guest is asked if he would like another round, and he nods his head in an affirmative way, he will be considered to have accepted the offer of a second round. Acceptance may also be implied by conduct. If a guest at a delicatessen stands in line to order coffee, and while doing so sees a display of breakfast muffins that are clearly marked for sale, unwraps a muffin and begins to eat it while waiting in line, her actions would imply the acceptance of the deli's offer to sell the muffin.

2. Acceptance of a deposit.

In some cases, a hospitality organization may require a deposit to accompany, and thus affirm, the acceptance of an offer. If, for example, a hotel is offering a two-night package over New Year's weekend, it may decide that the offer to rent a room for that period specifies an acceptance that must be made in the form of a nonrefundable guest deposit.

3. Acceptance of partial or full payment.

In some cases, full or partial prepayment may be required to demonstrate acceptance of an offer. This concept of payment prior to enjoying the benefits of the contract is not at all unusual. Theaters, amusement parks, and cinemas are all examples of contracts that are affirmed via prepayment. It is the right of hotels and restaurants to make full or partial prepayment a condition of their contracts. It is the right of the guests, however, to refuse this contract offer and take their business elsewhere should they wish to do so.

4. Agreement in writing.

In many cases, the best way to indicate acceptance of an offer is by agreeing to the offer in writing. As mentioned previously, a large number of management/guest contracts in the hospitality industry are made orally. Dinner reservations and hotel reservations made over the telephone are quite common. When the sum of money involved is substantial, however, even these reservation contracts should be confirmed in writing, if at all possible. In most cases, the confirmation of an offer in writing provides more than just proof of acceptance. Because most people are more cautious when their promises are committed to paper, a written contract acceptance is often accompanied by a summary of the terms of contract. This helps prevent confusion. For example, when a hotel guest asks the hotel to send written confirmation of a room reservation, that confirmation document would include such information as:

- Name of the guest
- Date of arrival
- Date of departure
- Room rate
- Type of room requested
- Smoking or nonsmoking preference
- Number of guests in room
- Type of payment agreed to (e.g., cash, credit card, and debit card)
- Hotel cancellation policy

It is generally one or more of the preceding elements of a reservation that are in dispute when guests claim that the hotel has made an error in their reservation. It is clear that the number of disputes over hotel-guest contract terms would be greatly reduced with the increased use of written documentation of acceptance.

In today's business environment, agreement in writing can take several forms. The fax machine allows rapid confirmation, and revision, of contract terms. This machine has become an indispensable component in the hospitality manager's effort to manage his or her legal environment. Electronic mail (email) is even more popular as a quick and effective way to accept contract terms in writing. Email has the advantage of allowing both parties to revise documents directly as they are passed back and forth. As well, a record (the email string) is maintained of changes and revisions as they occur. Last, the regular U.S. Postal Service has traditionally been recognized as a legally binding method of providing written acceptance of contracts.

To illustrate the importance of this concept, consider, for example, the food vendor that is promoting a special sale on boneless hams for the Christmas holidays. The vendor sends an email to all of its clients. In the email, an offer for the sale of the hams is made that includes a 20 percent price reduction if orders of the hams exceed \$100,000 and "payment is made by November 1."

A cafeteria chain's purchasing agent receives the email and decides to take advantage of the offer. The agent prints the email, fills in the email order form's blank spaces to indicate the amount of product to be purchased, and places it in an envelope, along with a check for the full purchase amount (including the discount). The printed email form and check are mailed, and the envelope is postmarked on November 1 by the postal service. The purchasing agent will be considered to have met the terms of the contract and to have responded within the prescribed time frame because the acceptance was postmarked on the first of the month. However, if the vendor had stated, "Acceptance must be received in our offices by November 1," then the acceptance would not have been in time. Again, this points out the importance of clarity and specificity when agreeing to any contract terms.

Search the Web 4.1

Go to www.yahoo.com.

1. Under Search, type: "hospitality contracts."
2. Search for stories related to contracts and contract negotiations that are making headlines in the news, nationally or in your area.
3. Print out one of the articles, and be prepared to summarize it in class.

4.3 THE UNIFORM COMMERCIAL CODE

Although hospitality managers encounter a wide variety of business contracts, two of the most common are those related to buying the goods and services needed to operate their businesses (purchase agreements) and those related to selling goods and services to their customers (sales contracts).

It is important that the hospitality manager become familiar with purchase agreements and sales contracts for two reasons: because they are used frequently in the industry, and because a very special code of laws exists to help facilitate business transactions that are carried out using sales contracts. The *Uniform Commercial Code (UCC)*

LEGALESE

Uniform Commercial Code

(UCC): A model statute covering such issues as the sale of goods, credit, and bank transactions.

was developed to simplify, modernize, and ensure consistency in the laws regulating the buying and selling of personal property (as opposed to land), any loans granted to expedite those sales, and the interests of sellers and lenders. The rules of the UCC, first developed in 1952, were designed to add fairness to the process of transferring property, to promote honesty in business transactions, and to balance the philosophy of *caveat emptor* by giving buyers, sellers, and lenders a measure of protection under the law.

The main purposes of the UCC are:

1. To simplify, clarify, and modernize the law governing commercial transactions.
2. To permit the continued expansion of commercial transactions.
3. To provide for consistency in the law regarding the sale and financing of personal property in the various jurisdictions (municipalities, counties, and states).

The UCC comprises 11 articles, or topic areas:

Article 1	General Provisions
Article 2	Sales Contracts
Article 2A	Leases
Article 3	Commercial Paper
Article 4	Bank Deposits and Collections
Article 4A	Funds Transfers
Article 5	Letters of Credit
Article 6	Bulk Transfers
Article 7	Warehouse Receipts, Bills of Lading, and Other Documents of Title
Article 8	Investment Securities
Article 9	Secured Transactions; Sales of Accounts and Chattel Paper

The UCC governs many aspects of the hospitality manager's work, including the selling of food and drink, the buying and selling of goods (personal property), and the borrowing and repayment of money. Accordingly, you need to become familiar with its basic concepts. For example, when purchasing goods under contract, the UCC has three basic requirements:

1. Sales of more than \$500 must be in writing and agreed to by both parties.
2. The seller has an obligation to provide goods that are not defective and that meet the criteria and terms set forth in the contract.
3. The buyer has an obligation to inspect the goods that were purchased, to make sure they conform to the terms of the contract, and to notify the seller immediately of any discrepancies.

The important thing to keep in mind about the UCC is that it is a law that requires you to fulfill any promises made in a purchasing or sales contract. If a restaurant enters into an agreement to buy 50 heads of lettuce from a food wholesaler on or before a specified date, then that wholesaler is obligated to deliver 50 heads of lettuce on time, and the restaurant is obligated to pay for it.

The UCC protects the interests of buyers by requiring that goods or products offered for sale be fit for use and free of any known defects. In other words, the food wholesaler cannot deliver 50 heads of spoiled lettuce to the restaurant, or it will not have fulfilled the terms of the sales contract. Likewise, the UCC also protects the interests of sellers by requiring that buyers inspect all goods after receiving them and inform the seller immediately of any defects. Thus, the restaurant cannot claim three months after the fact that the lettuce it received was spoiled, and then refuse to pay

LEGALESE

Caveat emptor: A Latin phrase meaning "let the buyer beware." The phrase implies that the burden of determining the relative quality and price of a product falls on the buyer, not the seller.

the outstanding bill. It must notify the food wholesaler immediately of the spoiled lettuce or live with the consequences.

The UCC is a very complex law with many requirements that hospitality managers must be aware of. In Chapter 6, “Legally Managing Property,” we will look closely at Articles 2 and 9 when we discuss the legal aspects of buying and selling property. Then, in Chapter 12, “Your Responsibilities When Serving Food and Beverages,” you will learn how the UCC regulates the wholesomeness of the food and beverages that are sold in restaurants and other hospitality operations.

» ANALYZE THE SITUATION 4.4

THE SMOKING BONES BBQ restaurant serves an excellent spinach salad as an accompaniment to its popular chicken and rib dishes. Michelle Brennan, the restaurant’s manager, purchases, from a local vendor, all of her produce, including fresh spinach used in the salads.

Unfortunately, one of Michelle’s guests becomes ill after eating at her restaurant. The source of the illness is traced directly to the fresh spinach used in the restaurant’s salads. In fact, upon further investigation, it is determined that the spinach, when delivered to the restaurant’s produce vendor, was already infected with *E. coli* bacteria that matched a strain identified in cattle manure used to fertilize the spinach field.

1. According to the UCC, a seller has a responsibility not to sell defective products. Who, in this example, is the seller?
2. Assume that you were the guest sickened by the bacteria. Who do you believe should be held responsible for the damages you incurred?
3. What specific steps could Michelle take to help prevent incidents such as the one described here from reoccurring in her restaurant?

LEGALESE

Breach of contract: Failure to keep the promises or agreements of a contract.

LEGALESE

Force majeure: Greater force; a natural or human-induced disaster, through no fault of the parties to the contract, that causes a contract to not be performed.

4.4 PREVENTATIVE LEGAL MANAGEMENT AND CONTRACTS

Breach of Contract

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

Sometimes, it is simply not possible to fulfill the obligations set forth in a contract. Guests who stay past their previously agreed-on departure dates may make it difficult for a hotel to honor upcoming room reservations. Diners who stay longer than anticipated may do the same to restaurant guests who hold dinner reservations. Events of *force majeure* such as acts of nature, or war, government regulations, disasters, strikes, civil disorder, the curtailment of transportation services, and other emergencies may

make keeping the promises of a hospitality contract impossible. This can happen to either party. A hotel that is closed because of a hurricane, as sometimes happens on the southern and eastern coasts of the United States, may well be unable to service the guests it had planned to host. Likewise, if an air traffic controllers' strike closes all major airports, guests flying to a convention in Las Vegas may be unable to arrive in time for their room reservations. Adding a force majeure clause to a contract allows the parties to both specify what will happen should a force majeure event occur and identify some types of force majeure events that will trigger the clause.

Voluntary breach of contract occurs when management elects to willfully violate the terms of the contract. In most cases, however, it is unwise to voluntarily breach a contract. When it is done, it usually means that the breaching party should not have agreed to the contract terms in the first place.

There can be a variety of reasons for breaching a contract, and the consequences of such a breach can be very serious, even if the breach was unavoidable. Consider the case of the hotel that contracts to cater a couple's wedding reception. The contract to provide dinner, a cash bar, and a room with a dance floor is agreed upon in January for a wedding that is to take place in early June. In late May, the hotel is sold, and the new owner immediately applies to the state liquor control board for a transfer of the liquor license. The control board requires a criminal background check of the new owner, which will take 60 days to complete. As a result, the hotel must operate for that period of time without a liquor license. The contract to provide a cash bar for the wedding is now breached, and the wedding party threatens litigation for the hotel's failure to keep its agreement. It may be that the breach just described could not have been avoided, but the negative effect on the wedding party is real, as is the threat of litigation and loss of customer goodwill.

Remedies and Consequences of Breaching an Enforceable Contract

If a contract's terms are broken, and the contract is enforceable, the consequences can be significant. The plaintiff can pursue a variety of options when it is clear that the other party has breached a contract.

Suit for Specific Performance

When this option is selected, the party that broke the contract is taken to court, with the plaintiff requesting that the court force the defendant to perform the specific contract terms that have not been performed, or to refrain from engaging in some activity that is prohibited by the contract. A simple example might be a franchisee who has met all the terms and conditions of a franchisor and has signed a franchise agreement but at the last minute is told that he or she will not be granted the franchise because the franchisors themselves wish to build and operate on the designated site. In this case, the potential franchisee could bring legal action to force the franchisor to keep its promise and grant the franchise.

Liquidated Damages

Often, the language of a contract will call for a specific penalty if the contract terms are not completed on an agreed-on date. If, for example, a building contractor has agreed to complete the repaving of an amusement park's parking lots by the beginning of the park's season, penalties may be built into the contract itself if the job is not finished on time. Indeed, the contractor may have offered the penalty option as an incentive to win the contract. Liquidated damages refer to these penalty payments. When a contract is breached, the liquidated *damages* could be imposed.

LEGALESE

Damages: Losses or costs incurred due to another's wrongful act.

Economic Loss

When damages have not been specifically agreed on in the terms of the contract, the party that has created the breach may still be held responsible for damages. Consider the plight of the travel agency that contracts with a hotel for 100 sleeping rooms during the Christmas season for a tour group traveling to Hawaii. Upon arrival, the group finds that the hotel is oversold and thus the reserved rooms are not available. Because the hotel has breached the contract, the travel agency may bring litigation against the hotel claiming that the reputation of the agency itself has been damaged due to the hotel's contract breach. In addition, the agency may be able to recover the costs required to provide alternative housing for its clients. Few would argue that angry vacationers are good for business, and thus the agency may stand a good chance of recovering significant economic damages. These damages, if awarded, would be the responsibility of the hotel to pay, as a direct result of the contract breach.

Alternative Dispute Resolution

Often, there is honest disagreement over the meaning of contract terms. When this is the case, it may be difficult to determine which, if either, of the parties is in breach of the contract. When that occurs, the parties, or in some cases the courts, will elect to use dispute resolution techniques aimed at clearing up confusion or resolving the situation. Dispute resolution may also be used in other controversies, such as those involved with personal injury, employment, or labor disputes.

The two most common types of dispute resolution techniques are *arbitration* and *mediation*. In arbitration, the arbitrator is an independent, unbiased individual who works with the contracting parties to understand their respective views of the contract terms. The arbitrator then makes a decision that is binding on each party. In mediation, the mediator, who is again an independent, unbiased reviewer of the facts, helps the two parties come to an agreement regarding the issues surrounding the contract terms. Although the mediation process is a voluntary one, and neither party is bound by the recommendations of the mediator, mediation can be an extremely effective way to bring a contract dispute to resolution.

LEGALESE

Arbitration: A process in which an agreed-on, independent, neutral third party (the arbitrator) renders a final and binding resolution to a dispute. The decision of the arbitrator is known as the "award."

LEGALESE

Mediation: A process in which an appointed, neutral third party (the mediator) assists those involved in a dispute with resolving their differences. The result of mediation, when successful, is known as the "settlement."

LEGALESE

Statute of limitations: Various laws that set maximum time periods in which lawsuits must be initiated. If the suit is not initiated (or filed) before the expiration of the maximum period allowed, then the law prohibits the use of the courts for recovery.

Statute of Limitations

It is important to understand that if you intend to use the courts to enforce a contract, you must do so in a timely manner. There are specific laws that set out maximum time periods in which the courts are legally permitted to enforce or settle contract disputes. These laws are normally referred to as *statutes of limitations*. Generally, the statute of limitations for written contracts is four years from the date of the breach; however, this is an area where exceptions apply and where state laws sometimes vary. As a hospitality manager, you should become familiar with your state's statute of limitations on contracts.

Preventing Breach of Contract

It is generally best to do all that is possible to avoid breaching an enforceable contract. As with any litigation, prevention is typically better than attempting to manage the negative consequences that may result from a contract breach. Preventing breach of contract may not always be possible. In most cases, however, the hospitality manager can avoid breaching contracts by following specific steps before and after entering into a contractual agreement. The steps listed below can help minimize the chance of litigation in the future.

LEGALLY MANAGING AT WORK:**Eight Steps to Follow When Entering into Contracts****1. Get it in writing.**

The single most important thing a hospitality manager can do to avoid contract breach is to get all contracts in writing whenever possible. Many hospitality contracts are, by their nature, verbal contracts. Generally speaking, however, the verbal contracts for dining reservations or food delivery tend to be rather simple ones. When the relationship between the contracting parties is more complex, it is nearly impossible to remember all the requirements of the contract unless the contract is committed to writing. For example, the standard contract for a hotel to provide sleeping rooms to airline crews staying overnight may run 50 typed pages or more. Obviously, it would not be possible to recall all the details of such an agreement without having that agreement in writing. A manager and his or her staff can only fulfill the terms of a contract if those terms are known and readily available for review.

Because many contracts are complex, it is sometimes advisable to have these contracts reviewed by an attorney before agreeing to their terms. This can best be done if the contract is a written one. Changes, corrections, and improvements can be made only if the attorney can see the terms of the agreement and read what will truly be required of the client.

Last, it is a simple fact that the representative parties to a contract may change, but the contract can still be used. For example, the contract between a waste hauler and a hospital to provide trash removal service to the hospital's foodservice facility will continue, even if the manager of that facility is transferred, quits, or retires. In such a situation, the terms of the trash removal contract need to be established in writing, both as a professional courtesy to the incoming manager and as a service to the foodservice facility itself.

2. Read the contract thoroughly.

The number of individuals and hospitality managers who sign contracts without thoroughly reading them is surprising, given that it simply is not possible for the managers or staff of a hospitality organization to fulfill all of their contractual responsibilities unless they know exactly what those responsibilities are. Just as important, it is not possible to hold vendors and suppliers accountable for the full value of their products and services unless contract language is known and understood.

Consider the case of the hotelier who plans a beach party during a spring break weekend. This manager contracts one year

in advance with a talent agency to provide a popular and expensive band that will play at the hotel during the two-day party. A fee is agreed on and the agent sends the hotelier a standard performance contract. Upon reading the contract carefully, the hotelier discovers the following paragraph:

The agent, on behalf of himself and the entertainers, hereby authorizes the hotel and its advertising agency to use all publicity information, including still pictures, and biographical sketches of any and all entertainers supplied by the agent. These pictures and information may be used in any media, including television, radio, newspapers, and the Internet, that is deemed appropriate by the hotel. Agent further agrees that all such publicity information will be made available to the hotel no later than 30 days before the first performance.

It is the hotelier's opinion that 30 days is not nearly long enough to advertise the event. In fact, at least six months of lead time is required to advertise in some of the spring break magazines that will be distributed on college campuses across the country. In this case, a single sentence in a much longer document could have a tremendous impact on the economic success of the entire spring break event. It is highly likely that the talent agent will, under the circumstances, agree to provide the publicity material in a time frame acceptable to the hotel. It is important to note, however, that it required a careful reading of the entire contract and the hotelier's experience in the field of advertising to detect this potential difficulty.

Reading a written contract thoroughly before signing it is an important activity that must be undertaken to prevent contract breach. If it is determined that the hospitality manager simply does not have the time to read a complex contract in its entirety, then the contract should be referred to an attorney for review. Many managers refer any contract that exceeds a specific dollar amount or length of time to an attorney. The important concept to remember, however, is that all contracts must be read carefully. It is the manager's responsibility to see that this is done.

3. Keep copies of all contract documents.

When agreements proceed as planned, contract language causes little difficulty. When there is disagreement or failure on the part of either party, however, contract language can be critical. It has been said, tongue in cheek, that "the large print giveth and the fine print taketh away." Because it is never possible to determine whether a contract will be trouble-free, it is a good idea to keep a copy of all contracts that are signed. If the contract is a verbal one, it is a good idea to make notes on the significant agreement points and then file these notes.

Many hospitality operators find that it is best to keep a separate section in their files devoted specifically to contracts. Others place contracts in individual customer or vendor files, and some do both. Regardless of the filing approach, if the contract is easily available for review when clarification is needed, the likelihood of contract breach will be reduced.

4. Use good faith when negotiating contracts.

Good faith is a term used to designate an individual's honest belief that what he or she is agreeing to do can, in fact, be done. In a hotel manager's case, this can be as simple a concept as deciding that the hotel will accept no contracts for room reservations unless it, in good faith, believes that guestrooms can be provided.

It is always best to carefully weigh the commitments of any contract. Many times, contracts are breached because one of the contracting parties finds it impossible to perform the obligations. While circumstances can change, and no one can be perfectly clear about the future, it is worth noting that a careful, realistic assessment of contract capability and capacity can go a long way in avoiding contract breach.

5. Note and calendar time deadlines for performance.

When a contract requires specific actions to be taken by or on designated dates, it is a good idea to list those dates in calendar form so that there can be no mistaking precisely when performance is required. It is especially helpful to create these timelines prior to signing a contract. In this way, any potential conflicts or impossibilities can be detected before it is too late. Many lawsuits involving contracts are initiated because one party did not do what he or she agreed to do in a timely manner. Noting and calendaring time deadlines can help prevent this from occurring.

6. Ensure the performance of third parties.

Many times in the hospitality industry, a manager must rely on others to fulfill some portion of a contract. Consider, for example, the hotel that hosts a meeting for a nonprofit organization of health-care workers. In order to secure the contract for the sleeping rooms and meeting space required by the group, the hotel agrees to provide audiovisual services for the meetings.

Like many hotels, this hotel uses a third-party vendor to provide the audiovisual equipment. Obviously, a failure on the part of this third-party vendor can result in a failure on the part of the hotel to keep its promises. While it is not possible to prevent such an occurrence, it is important to recognize that when the use of third parties will be required, contract language addressing the third party's possible failure to perform should be included.

7. Share contract information with those who need to know, and educate staff on the consequences of contract breach.

Often, managers negotiate contracts that their employees must fulfill. However, an employee's ability to honor contract terms is directly related to his or her knowledge of those terms. Consider, for example, the hotel sales department that works very hard to prepare a bid to house the flight crews of a major airline that must layover in the hotel's city. The contract is won, and the crews begin to stay in the hotel. A portion of the contract relates to the cashing of personal checks. While the hotel's normal policy prohibits cashing personal checks over \$25, the airline contract calls for the hotel to cash the personal checks of airline crew members for up to \$100. These checks are guaranteed by the airline itself. Unless every desk agent and night auditor, as well as the management team at the front desk, are aware of this variation in policy, problems can occur. All it would take is the refusal by one uninformed or newly hired desk agent to cash a check, and the hard work of the sales department could be severely compromised.

8. Resolve ambiguities as quickly and fairly as possible.

Despite the best of intentions of both parties, contractual problems can arise. When they do, it is important that they be dealt with promptly and in an ethical manner. By doing so, a potentially damaging situation may be resolved quickly and amicably.

Consider the case of a tour bus company that contracts to stop at a midpriced downtown hotel on its way to Florida. The tour operator has a contract for rooms and meals; it is in writing, and the conditions are clearly spelled out. Upon check-out, however, the tour operator is surprised to find that the hotel has added a parking charge for the bus to the operator's bill. The tour operator protests that no such charge was part of the contract, and thus they should not have to pay it. The hotel points out that nothing in the contract states that parking would be provided free of charge, and thus the bill is owed. In a case like this, honest people can agree to disagree about the intent of the original contracting parties. Had the issue come up prior to signing the contract, the matter might have been quickly resolved. At this point in the process, resolution is important because the reputation of the hotel and its integrity may well be more important than the small amount involved in the parking charge. It is the responsibility of management to weigh the costs of litigation in both time and money, before making a decision to fairly resolve a contract dispute.

By attempting to put himself or herself in the position of the other party and trying to understand that party's concerns, the manager may be able to find a compromise that is fair to all concerned and that will help reduce the possibility of litigation.

Forecasting Contract Capacity

You have learned that contracts, whether verbal or written, commit the parties to the contract to very specific legal obligations. As a result, managers must carefully consider the implications before they agree to enter into contracts. One of the most difficult tasks facing the hospitality manager is that of forecasting contract capacity; in other words, knowing exactly how many contracts for products and services to accept on any given day or night. It is important to remember that a guestroom or dinner reservation, even if made orally, could be a valid contract. While some legal experts would argue that a contract does not exist until a deposit or form of payment has been supplied, the majority of legal scholars would agree that a contract is established when the guest makes a reservation and the restaurant or hotel accepts that reservation in a manner consistent with its own policies. Therefore, if a hotel or restaurant accepts only reservations that are guaranteed with either a deposit or a credit card number, at that facility, the contract will not be said to exist until that deposit is received or the credit card number is supplied. If, on the other hand, the hospitality facility regularly accepts reservations on an exchange of promise basis (i.e., the guest agrees to show up and the facility agrees to provide space), a contract does indeed exist at the time the reservation is made, and the hospitality facility can be held accountable if it does not honor its part of the contract.

To illustrate the difficulty encountered by hospitality professionals, consider the situation facing the food and beverage director of a large public golf course and country club. At that club, Mother's Day brunch is the busiest meal of the year. The club dining room seats 300. The average party stays 90 minutes while eating. The club will serve its traditional Mother's Day buffet from 11:00 A.M. to 2:00 P.M. Reservations are required, and historical records indicate that, on average, 15 percent of those making reservations will not show up (are no-shows), for a variety of reasons. The club does not require either a deposit or a credit card number to hold a reservation. The challenge for the food and beverage director is to know just how many reservation contracts to accept. If too few contracts are accepted, guests will be told the facility has sold out, yet the club's revenue will not have been maximized because more guests could have been served. If too many contracts are accepted, guests may not be able to be served at the time they have reserved or, possibly, may not be served at all, because there is no place to seat them. In the former situation, the club has not maximized its profit potential; in the latter, it may not be able to fulfill its contractual promises.

Some segments of the hospitality industry are very different from many other businesses because of the highly perishable nature of their products. For example, a hotel room that goes unsold on a given night can never be sold, on that night, again. An unoccupied cruise ship's berth on the day the ship is set to sail could also never be sold in the future. The same is true of unoccupied airline seats at the time a plane takes off.

In a like manner, in the restaurant segment of the hospitality industry, a table for five at a Mother's Day brunch can likely be sold only once or twice on that day. If the table goes unsold, the revenue lost cannot be easily recouped. This is different from most retail environments, where excess inventory can be discounted if management so desires. Obviously, the cost of no-shows at the hotel, cruise ship company, airline or country club would be passed on to other guests in the form of higher room rates, travel costs, or menu prices. Clearly, this is a difficult situation for both the hospitality operators and their guests.

Years ago, the airline industry tried to address the problem of no-shows by over-forecasting its contract capacity. Air carriers would accept far more reservations for seats on its flights than actually existed. In a precedent-setting piece of litigation, Ralph Nader sued Allegheny Airlines in 1973 for intentionally over-booking a flight on which he had reserved a seat.¹ Nader won the lawsuit; and due in part to his

¹*Nader v. Allegheny Airlines, Inc.* 365 F. Supp. 128 (1973); reversed 512 F.2d 527; cert. Granted 96 S.C. 355.

litigation, in 1997, the Civil Aeronautics Board required the airline industry to inform consumers of their rights whenever an airline must “bump,” or deny seating to, a passenger on its reserved and ticketed flights. The lesson for the hospitality industry is quite clear: If widespread overforecasting of contract capacity takes place, and consumers suffer, the federal or state government may step in with mandated remedies for guests and regulated operational procedures for the hospitality industry.

Establishing an Effective Reservation Policy

LEGALESE

Confirmed reservation:

A contract to provide a reservation in which the provider guarantees the guest’s reservation will be honored until a mutually agreeable time.

A confirmed reservation may be either guaranteed or nonguaranteed.

LEGALESE

Nonguaranteed reservation:

A contract to provide a confirmed reservation where no prepayment or authorization is required.

LEGALESE

Guaranteed reservation:

A contract to provide a confirmed reservation in which the provider guarantees the guest’s reservation will be honored regardless of time of arrival, but stating that the guest will be charged if he or she no-shows the reservation. Prepayment or payment authorization is required.

The solution to the problem of forecasting contract capacity in the hospitality industry is to make a clear distinction among reservations that are confirmed, guaranteed, and nonguaranteed, and to take reasonable steps to reduce no-show reservations. In some facilities, the no-show rate for reservations made is as high as 50 percent. In an effort to address this issue in a legally responsible and morally ethical way, future hospitality managers and the entire industry should begin adopting and educating consumers about the precise definition of a *confirmed reservation*.

A confirmed reservation can be made orally or in writing. In the restaurant business, it is common to hold a reservation for 15 to 20 minutes past the originally agreed-on time. Thus, if a dinner reservation is made for 8:00 P.M., the manager will hold space for the dinner party until 8:15 P.M. or 8:30 P.M., depending on the restaurant’s policy. If the guests do not arrive by that time, they will have breached the reservation contract and be considered a no-show. In the hotel business, confirmed rooms are generally held until 4:00 P.M. or 6:00 P.M., after which the guest, if he or she has not arrived, is considered a no-show.

The difficulty involved in collecting monies due when a guest no-shows a confirmed but *nonguaranteed reservation* is significant. As a practical matter, collections on nonguaranteed reservations are almost never undertaken. On the one hand, there is no doubt that the guest who verbally reserves a table for dinner on a Friday night and then no-shows the reservation has broken a contract promise. The problem, however, is that initiating a lawsuit for a sum as small as a party of five’s dinner bill is truly prohibitive in both time and money. On the other hand, guests also find that they have little recourse when a restaurant denies their confirmed but nonguaranteed reservations. The courts have been hesitant to force restaurants to pay heavy penalties if they refuse to honor a nonguaranteed reservation, even when there is clear evidence that the reservation was the result of a legitimate contract.

To prevent these types of problems, hotels and restaurants should strive to accept all or nearly all of their reservations as *guaranteed reservations*, and accept nonguaranteed reservations only on an as-needed basis. For example, a popular restaurant may accept dinner reservations on a busy weekend only if the reservations are accompanied by a credit card number that will be billed if a guest should no-show. Similarly, while it is easy to understand that a hotel in Indianapolis could likely require payment in full to reserve a room during the busy Indianapolis 500 race weekend, all hotels have the legitimate option of insisting that all guestroom reservations include billing information (i.e., valid credit or debit card numbers) that would allow for the guest’s billing in the event the guest no-shows his or her reservation.

What is called for is a reasoned response on the part of both parties. Guests must understand that a reservation requires the setting aside of space that could be sold to another. Hospitality managers should train their reservation agents to explain that guests will be given a confirmed reservation only if they agree, in advance, to guarantee that reservation.

Three major points should be clearly explained to the guest before agreeing to the guaranteed reservation contract:

1. The hotel or restaurant will honor the reservation and will never knowingly offer to rent space for which it already has valid, guaranteed reservations.
2. The cancellation policy of the hospitality facility will be explained at the time of the confirmed reservation so that it is clearly understood by the guest.

3. Payment in accordance with the reservation contract will be made by the guests in the event that they no-show the reservation.

It is interesting to note that the state of Florida passed a law that says hotels will be fined if they deny space to any guest who has guaranteed a reservation by paying a deposit (as set by the hotel). Because most people would agree that knowingly accepting more guaranteed reservations than can be accommodated is ethically questionable, it is important that those in the hospitality industry work hard to ensure that a reservation, once confirmed, is honored.

Even when reservations are guaranteed with a deposit, no-shows can present a legal challenge in the hospitality industry. For customer relations purposes, few hospitality managers are willing to take a no-show guest to court to recover the money lost from holding a reservation. The time and legal expense, as well as the possible loss of goodwill, is simply too great. Naturally, guests do not like to be billed for services they did not use, even if they have contracted for them. Differences of opinion and possible litigation can arise, especially when a hospitality manager takes an aggressive stance in billing no-show guests for their confirmed reservations.

It might appear that the billing of guaranteed no-show reservations would be fairly straightforward. It is not. Even when policies on billing no-shows are clearly explained, difficulties will arise and judgment calls will have to be made. Consider the following situations in which the front office manager of a midscale corporate hotel must decide whether to bill guaranteed reservations that have been designated as no-shows by her automated front office property management system (PMS):

- Francine Dulmage arrived one day early for her confirmed guaranteed reservation, but since she was already in the hotel, she did not think to cancel her original reservation. The property management system listed Francine as a no-show the following night.
- A guest, Ryan Thomas, arrived at the hotel, claiming he had a reservation, but none was found under his name. The guest was checked in as a “walk-in,” that is, a guest with no prior confirmed reservation. That evening, the property management system identified the reservation of Thomas Ryan as a no-show.
- Peggy Richards, who had guaranteed her reservation with a credit card, was told that in order to avoid a charge to her card, she would need to cancel her reservation by 4:00 P.M. on the day of arrival. She canceled at 4:20 P.M., because her cell phone was out of range at 4:00 P.M. Her company is the hotel’s largest client.
- Bart Stephens, a regular at the hotel, checks in with a reservation he made for himself. That night, the property management system identifies a Mr. Stevens as a no-show. On further investigation, the front office manager finds that the hotel reservationist had misspelled the name on a second reservation made by Mr. Stephens’s secretary, who could not recall whether she or Mr. Stephens was supposed to have reserved his room. The credit card number used to reserve the room for Mr. Stevens belongs to Mr. Stephens.
- For the past ten years, the Scotts family of Tennessee has held its annual reunion in the same hotel. This year, 18 rooms have been reserved by Mr. and Mrs. Scotts. All of the rooms are confirmed reservations, guaranteed with Mr. Scotts’s credit card. When Mr. and Mrs. Scotts check into the hotel, their group totals 17, not 18, different parties. When asked if they will need the eighteenth room, Mr. Scotts says no, a death in the family has reduced their need to 17 rooms this year, and unfortunately in future years as well. He apologizes for not contacting the hotel prior to his arrival. That night, the property management system identifies one room for Mr. Scotts as a no-show.

As these examples illustrate, it may be difficult or even impossible to eliminate all no-shows. They are an inevitable part of the hospitality industry. However, it is in the best interest of any hospitality facility that must forecast contract capacity to do so as effectively as possible.

LEGALLY MANAGING AT WORK:**Reducing No-Show Reservations**

The following steps can help improve managerial accuracy in the forecasting process. In addition, they will help reduce the chance of litigation when contractual obligations related to reservations cannot be fulfilled.

1. Become known as a facility that honors its confirmed reservations. If you choose to overbook, advise your guests of the practice and the potential consequences to them. Establish a consistent policy for placing guests in other comparable properties in the event it is not possible to honor a confirmed reservation.
2. Whenever possible, document all reservations in writing.
3. Put all policies related to making guaranteed reservations and the billing of no-shows in writing. Follow these written policies. For more ways to protect your operation from no-show reservations, review the recommended practices in Figure 4.2, which MasterCard distributes to hospitality operators.

MasterCard Guaranteed Reservations Best Practices

1. Take the cardholder's account number, card expiration date, name embossed on the card, and address.
2. Confirm the room rate and location.
3. Issue the cardholder a reservation confirmation number, and advise the cardholder to retain it.
4. Explain the hotel's no-show policy.
5. Confirm the details of the reservation in writing/by fax, including your guarantee policy, cancellation procedure, and billing statement for no-shows.
6. Explain to cardholders that if they fail to cancel by the agreed-upon time, their MasterCard will be charged for the night, plus applicable tax.
7. Upon cancellation of a reservation, retain the cancellation number.
8. Communicate to cardholders in writing that you have initiated a billing to their credit card for their no-show, including all pertinent information, a copy of the sales draft, and the hotel's reservation policy.
9. In the event of a no-show, the hotel must complete a sales ticket filling in the cardholder's name, account number, expiration date, date of no-show, assigned room number, and merchant ID number; and must write "guaranteed reservation/no-show" in place of the cardholder's signature; and follow the usual authorization procedures.
10. Remember, that if a cardholder who has guaranteed a reservation by use of a MasterCard arrives within the specified period (until check-out time the next day), the lodging facility is obligated to provide a room.

Figure 4.2 MasterCard guaranteed reservations best practices.



INTERNATIONAL SNAPSHOT

International Contracts

With the increasing number of hotels and restaurants expanding outside of the United States and the number of non-U.S. vendors that are transacting with those hotels and restaurants, there is an increasing need for managers to be aware of issues that arise in transborder transactions.

In addition to the “normal” contractual provisions otherwise identified in this section of this chapter, a manager should keep certain issues in mind when contracting with a non-U.S. party or for performance of work or services outside of the United States. Although each jurisdiction is different and has its own requirements, the following checklist can be used to identify potential areas that require additional thought:

1. *Clarity:* Take care to fully and accurately describe the performance required under the agreement. Carefully record any discussion in writing. Keep all prior correspondences to ensure that there is a record of what was discussed. Also, do not take anything for granted, and remember that there may be cultural and language variances that contribute to the need for more specificity. Make sure that both parties have a clear expectation of performance, and specify the language to be used for the agreement.
2. *Currency risk issues:* Specify in the agreement the type of currency used to pay for the transaction in question. Give preference to the currencies that are stable. And in long-term contracts (or contracts that are performed over time), it is advisable to agree on a specific exchange rate if the agreement contemplates the use of local currency as part of the business activity (e.g., guests at a hotel in a non-U.S. country pay in the currency of that country).
3. *Local law issues:* Consult a local lawyer on issues of local law. This is particularly important when business activities are being performed in countries other than the United States. Certain activities and practices that are otherwise permitted in the United States may be specifically prohibited in other countries. For example, there may be certain foreign exchange restrictions prohibiting transfers of certain amounts out of a country without first complying with notification or permit requirements.
4. *Dispute resolution:* As there are no international courts to resolve transborder business and commercial issues, and because litigation is quite costly, it is important that any international contracts contain provisions that provide for a mechanism to resolve matters in case of a dispute. This avoids confusion in the event of default. More and more often, parties rely on the resolution by senior executives of the contracting parties as a first step. If no resolution can be reached at that step, then the dispute resolution provision may call for arbitration by the International Chamber of Commerce or mediation by an expert familiar with the industry of the contracting parties. The key is that the terms of the arbitration and mediation must be spelled out. To ensure the clarity of such terms, a lawyer familiar with international dispute resolution should be consulted.
5. *Choice of law/venue:* Make sure that the agreement clearly states which laws govern the transaction. Will it be the laws of one of the parties or of a neutral location? Note that on certain issues, such as real estate, labor, or foreign exchange control issues, you may need to rely on local law. The laws of another jurisdiction, however, can still be elected to govern the other parts of the transaction or the agreement reached between the parties. Also, in case arbitration fails, it is important to agree on the venue of the lawsuit. Because of the transborder nature of transactions, parties often agree in the agreement to a location (often neutral) where the litigation can be initiated and carried out. One word of caution: Make sure that the courts of the venue chosen have the capability to apply the laws specified in the agreement.

The foregoing is only a representative list of issues to consider in the context of an international contract. As always, local laws and customs should be reviewed and consulted, along with the fundamental contract principles otherwise discussed in this chapter and other parts of the book.

WHAT WOULD YOU DO?

Assume that you manage a 300-room hotel. Your local university football team is playing a home game on Saturday, and the demand for rooms far exceeds supply.

Your no-show rate on reservations for the past three football games has been 8, 12, and 9 percent, respectively. Currently, you have 100 nonreserved rooms.

Prepare a brief (half-page) report describing how you would answer the following questions.

1. How many room reservation contracts are you willing to accept?
2. Should you require that all reservations be confirmed?
3. What factors will you consider as you make your decision? What strategies will you employ to reduce no-shows? Write a short (half-page) essay answering questions 4 and 5 that follow, drawing from your personal perspective.
4. You and your family are traveling out of state to attend one of your school team's away football games. Upon arrival, the hotel where you have a confirmed reservation denies you a room because it has none available. What do you think the hotel should do for you?
5. What if no other rooms were available within a 50-mile radius of the hotel you originally booked?

THE HOSPITALITY INDUSTRY IN COURT

To see how courts typically treat exculpatory clauses, consider the case of *Hanks v. Powder Ridge Restaurant Corp.*, 276 Conn. 314, 885 A.2d 734 (Conn. Sup. Ct., 2005).

FACTUAL SUMMARY

Plaintiff Gregory Hanks traveled to Powder Ridge Ski Resort to snowtube. Prior to snowtubing, Powder Ridge patrons are required to sign a “Waiver, Defense, Indemnity and Hold Harmless Agreement, and Release of Liability” (“Agreement”). The Agreement stated that by signing the Agreement, the patron acknowledged the inherent risks of snowtubing and that he assumed all risks associated with snowtubing. The Agreement further stated that the patron would defend, indemnify, and hold harmless the Defendants from any claims or lawsuits, including negligence claims.

Plaintiff signed the Agreement on behalf of himself and four children he brought with him. While snowtubing, Plaintiff suffered injuries when his foot became caught between the snowtube and the manmade bank of the snowtubing run. Plaintiff underwent multiple surgeries to repair his injuries.

Plaintiff thereafter filed suit against Defendant Powder Ridge alleging that Defendants negligently caused his injuries.

QUESTION FOR THE COURT

The question for the court was whether the enforcement of the exculpatory Agreement, which would release a snowtube operator from liability for personal injuries sustained as a result of the operator's negligent conduct, would violate public policy. The court examined several factors, including whether Plaintiffs and Defendants enjoyed similar bargaining power. Defendants argued that they did not enjoy a superior bargaining power because snowtubing is a voluntary activity and not an essential public service. Therefore, Plaintiff did not have to participate in snowtubing.

DECISION

Even though the court found that the Defendants had a “well-drafted” Agreement, the court held that the Agreement violated public policy. Therefore, Defendants' argument that the Agreement released them from liability failed.

MESSAGE TO MANAGEMENT

Even a “well-drafted” Agreement with an exculpatory clause may not insulate you from liability.

Contracts are used in the hospitality industry to govern the many different promises and business transactions entered into on a daily basis. Contracts can take one of two forms, verbal or written. To be enforceable in a court of law, a contract must be for a legal purpose, entered into by competent parties, and include an offer, consideration, and acceptance.

The Uniform Commercial Code (UCC) is the law regulating contracts related to buying and selling. This code gives protection to buyers, sellers, and financial lenders when goods are purchased under contract. Because reservations are considered to be a type of contract, it is important that hospitality managers develop reservation policies that will allow them to fulfill the promises made to their guests, while maximizing their own revenue in the event that guests do not honor their reservations.

A breach of contract occurs when one of the parties is unable to fulfill the obligations set forth in a contract. When this occurs, the injured party may go to court and receive damages or some other type of remedy. The best way for managers to prevent a breach of contract is by thoroughly understanding their rights and obligations under the contracts they agree to, and by taking the necessary steps to fulfill those requirements.

WHAT DID YOU
LEARN IN THIS
CHAPTER?

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

1. Describe two hospitality situations in which a verbal contract is superior to a written contract, and explain why you believe it to be so.
2. Discuss “legality” as a major component required of an enforceable contract. Give a hospitality example where legality comes into question.
3. Using the Internet, go to the home page of a national hotel chain. Evaluate the hotel chain’s reservation-booking system from a legal perspective. Address specifically the concept of consideration.
4. You are the general manager of a midsized hotel. Draft a memo for your front desk staff describing the rationale and policy for billing guests with a confirmed reservation who do not arrive at the hotel to use their rooms.
5. Give a hospitality example that illustrates why it is so important to establish acceptance of an offer prior to the formation of a contract.
6. On a busy weekend, you have forecasted that 10 percent of your dining room reservations will no-show. Create notes that you would use to explain to your reservationist why he or she should continue to book reservations when you are past capacity.
7. Consider the concept of “statute of limitations,” as it relates to a guest who has experienced an unsatisfactory meal in your restaurant. At what point do you believe the guest would lose his or her right to protest the quality of products (menu items) purchased from you. Defend your answer.
8. You purchased a warranty for your telephone system that provides 24-hour response time from the vendor. Draft a letter to the vendor protesting the breach of contract that resulted when it took three days for you to get service. Remember that your goal is to have a professional relationship with the vendor, as well as a working telephone system.

RAPID REVIEW

TEAM ACTIVITY

Divide into three teams, with each team assigned to one of the following roles:

Hotel
Guest
Judge

Have each team read the following scenario, then answer their individual questions below:

The sales department at the Remington Hotel made a mistake. It booked two weddings, for the same night, in the Grand Ballroom. The error was not uncovered until six weeks prior to the weddings. A clerical error in the sales office resulted in the overbooking. The second party booked in the ballroom has now been informed that there is no acceptable, alternative space available in the hotel. The estimated revenue that would have been generated from the second wedding was approximately \$30,000 (300 guests @ \$100.00 each).

For the Hotel's team:

1. What level of compensation for the guest do you feel is appropriate due to your hotel's contract breach?
2. Assume that the only available, comparable, and alternative site for the overbooked guest's wedding reception would cost the guest \$40,000. What level of compensation for the guest do you now feel would be appropriate due to the hotel's contract breach?

For the Guest's team:

1. What are some expenses you will incur (in addition to the alternative hotel's actual charges) because of the wedding's venue change (i.e., additional printing costs for new invitations, guest relocation costs, and the like)?
2. Assume that the only available, comparable, and alternative site for your wedding reception would cost you \$40,000. What level of total compensation do you now feel is appropriate due to the hotel's contract breach?

For the Judge's team:

1. Assume that the only available, comparable, and alternative site for the overbooked guest's wedding reception would cost that guest \$40,000. Assume that the contracting wedding party also indicates that they would spend an additional \$5,000 for reasons directly related to the wedding's venue change. What level of compensation for the guest do you feel would be appropriate due to the hotel's contract breach?
2. In addition to the costs indicated in #1 above, assume that the guests also made a claim for an extra \$25,000 to compensate them for the time, effort, and embarrassment related to the wedding's venue change. What level of compensation for the guest do you feel would be appropriate due to the hotel's contract breach?