

# CHAPTER 13

## LEGAL RESPONSIBILITIES IN TRAVEL AND TOURISM

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“YES, I TRULY do understand how unsettling it can be not to get what you expected,” said Trisha Sangus politely as she listened patiently to the guest who had identified herself as Ms. Hamilton. Trisha, the general manager, had been walking through the lobby of her hotel moments earlier and had overheard Ms. Hamilton complaining, very loudly, that her room was not at all what she had been promised when she had made her reservation.

Trisha had intervened when she heard Mr. Dani, the hotel’s front office manager, explain to the guest that the room types reserved by Tours Deluxe, the bus tour operator managing the trip Ms. Hamilton was taking, were only rooms with king-sized beds, not rooms with two double beds.

“It’s not our fault,” Mr. Dani had stated to the guest. It was clear from her reaction, however, that Mr. Dani’s explanation, though technically accurate, was not being taken well by Ms. Hamilton.

As she continued listening to Ms. Hamilton, the problem this guest was experiencing became clear to Trisha. Trisha also knew Ms. Hamilton’s problem would be a difficult one to solve because the hotel was almost fully occupied with a large youth convention, and as a result, the only vacant rooms in the hotel were, undoubtedly, rooms with a king-sized bed. She also knew, as Mr. Dani had stated to the guest, that Tours Deluxe, one of the hotel’s best high-volume customers, had, in fact, reserved only king-sized bedded rooms for their Single Seniors tour group, of which Ms. Hamilton was a part. Tours Deluxe had been an account that Trisha and the hotel’s director of sales and marketing had worked very hard to land, and the relationship between this tour operator and the hotel had been, up to now, outstanding.

“It’s very simple,” said Ms. Hamilton, “but you people don’t seem to understand. I booked this tour to get away and relax. I specifically told my travel agent that I wanted a room with two double beds because I like to lay my suitcase out on the second

bed when I stay in a hotel. That’s what I reserved with the Buckeye Travel Agency and that’s what I paid them for. Your desk clerk,” continued Ms. Hamilton, looking accusingly at Mr. Dani, “claims I have to take a room with a king-sized bed. That’s simply not acceptable. I demand that you call my travel agent immediately and get this straightened out!”

“Let me see what I can do to help,” replied Trisha, as she motioned for Mr. Dani to join her in the back office.

“Deluxe screwed up,” began Mr. Dani as soon as he and Trisha were alone in the office. “It always reserves kings for its single’s groups. Always.” “This lady,” he continued, referring to Ms. Hamilton, “really has a right to be upset—Deluxe misinformed her and sold her a room type she didn’t want.”

“That’s where you’re wrong,” replied Trisha. “Deluxe doesn’t sell directly to guests; it brokers tours through individual travel agencies. In this case, it sounds like Buckeye Travel is at fault. Besides, Deluxe does three tours a month with us; that’s over 2,000 room nights per year. I’m not sure it is in this hotel’s best interest, or Deluxe’s for that matter, to tell this guest its tour operator ‘screwed up.’ What’s the number to the tour coordinator’s room?” asked Trisha as she reached for a telephone.

“Six-one-seven,” replied Mr. Dani.

“This is Trisha Sangus,” said Trisha as the Deluxe representative accompanying the tour group answered. “I think we are going to need your assistance down here at the desk. It concerns a member of your tour group. Thank you—that’s great,” said Trisha as she hung up the telephone.

Trisha then turned to Mr. Dani. “We will not, at this time,” she said pointedly, “refer to anyone screwing up.” “We will,” she continued, “deal with this guest’s issues and then talk with one of our best customers about how they would like to work with us to handle situations like this one in the future. Let’s go see Ms. Hamilton.”

## IN THIS CHAPTER, YOU WILL LEARN:

1. To identify the components of the travel industry, how they interact, and the complex legal issues that surround this huge industry.
2. To understand fully the roles and potential liabilities of travel agents and tour operators as each fulfills its unique role in marketing and providing travel services.
3. To identify those common carriers typically utilized by the travel industry, as well as the recurrent areas of potential liability inherent in each of them.
4. To evaluate tourism as it relates to gaming, resorts, and timeshares, and theme park operations, based, in part, on the unique liability issues and managerial responsibilities inherent in each of these growing areas.
5. How, from a legal perspective, the unique characteristics of the Internet can impact restaurant and hotel managers’ efforts to integrate the power of the Web into their own operations.

## 13.1 TRAVEL

The word *travel*, which means “to make a journey,” is an English variation of the old French word *travailler*, which meant “to labor long and hard in dangerous conditions.” In fact, in the earliest days of travel, transportation from place to place was expensive and difficult, dangers to life and limb were plentiful, and risks to personal health were significant. Despite this history, the travel and tourism industry is now, according to the World Travel and Tourism Council (WTTC), the world’s largest industry, with an estimated economic value of 3.5 trillion dollars in gross domestic product (GDP); moreover, it employs 1 out of every 12 workers worldwide.<sup>1</sup>

As the global economy continues to make the world smaller, and as declining transportation costs (relative to income) make in-country and international travel available to larger and more diverse segments of society, it is not surprising that the legal issues raised by travel and travelers are significant. Recall that “law” was defined in Chapter 1 of this text, as “the rules of conduct and responsibility established and enforced by society.” When members of two very different societies make contact through travel, the possibility that their “rules of conduct” will vary, and even come into direct conflict, can be very high indeed. As a professional hospitality manager, part of your job is to understand which rules of conduct (laws) should be followed. This is, of course, extremely difficult in a world with so many law-making countries, states, regions, regulatory agencies, and international governing bodies to consider.

### The Travel Industry

In many parts of the world, the travel industry is referred to as the travel and tourism industry, or even simply the tourism industry. In the United States, few observers would identify businesspeople traveling across their home states to attend a company sales conference as tourists, yet such a journey certainly would expose those travelers to many features and conveniences used by tourists. For purposes of this text, the term *travel industry* will refer to those transportation services (airlines, trains, cruise ships, buses, and rental cars), lodging facilities (hotels, motels, resorts, etc.), eating and drinking places, sightseeing venues, and amusement and recreation activities used by all travelers; as well as to those travel professionals who market these products and services to travelers.

The number of laws, regulations, and standardized procedures used in all of the individual industries that, collectively, make up the travel industry are large indeed. *Travel law* refers to those laws that directly impact the travel industry. The field is so extensive that some attorneys specialize in this field of law. *International travel law* combines aspects of contract law, employment law, tourism and hospitality procedures, antitrust rules, regulatory and agency compliance, and knowledge of certain international agreements and treaties into a comprehensive set of guidelines for the travel industry.

### Industry Components

The travel industry is composed of many segments. Consider the case of Benny and June, two American college students who wish to spend their summer break traveling throughout Europe. To examine their entire travel experience, as well as to identify those travel-oriented industries that the students are likely to encounter during their trip, it is useful to view travel as consisting of five key components, as listed in Figure 13.1.

#### LEGALESE

**Travel law:** The laws regulating business and individual behavior in the travel industry.

#### LEGALESE

**International travel law:** The ordinances, rules, treaties, and agreements used to regulate the international travel industry.

<sup>1</sup>WTTC Research Report, March 2003.

**Figure 13.1** Five key components of the travel industry.

1. Preplanning Services
2. Transportation
3. Lodging
4. Foodservices
5. Attractions and Activities

### ***Preplanning Services***

To plan their trip, Benny and June may enlist the assistance of a travel agent, a professional whose job is to plan and sell travel-related products and services. Travel agents work, directly and indirectly, with travel service providers and tour operators. Tour operators actually purchase travel services, then market these services directly to travelers or offer them to travel agents, who, in turn, sell them to travelers such as Benny and June.

#### Search the Web 13.1

Despite the popularity of the Internet as a way to plan your own travel, the services of professional travel agents continue to be in high demand. To view the website of the largest of the travel agent associations, go to [www.astanet.com](http://www.astanet.com). This is the website of the American Society of Travel Agents (ASTA). When you arrive, click on About ASTA. Select "Who We Are," and then explore the sidebar subcategories to read about the goals of this effective organization.

In addition to selling tours, travel agents also work with transportation providers and those who sell lodging services, as well as those who market attractions and recreational activities.

### ***Transportation***

If Benny and June indeed travel to Europe from the United States, the number of transportation services they will use are likely to be extensive. Starting with a taxi cab to the airport, continuing across the Atlantic with an international airline flight or cruise, and culminating, perhaps, in a car rental, bus ride, or trip by rail to their destination of choice, most journeys normally rely, in part, on the services of the very large segment of the travel industry related to transportation.

### ***Lodging***

Although Benny and June may decide, as they travel, to stay at traditional hotels, the choices they will encounter as they plan their overnight accommodations will be many. On one extreme, they may choose an extravagant destination resort in a desirable location that, in addition to their sleeping rooms, offers many recreational alternatives, gourmet food and beverage outlets, and numerous other free amenities and activities. Alternatively, they may select a more modestly priced lodging choice housed in a private home that simply provides them with their sleeping rooms and, perhaps, a limited breakfast in the morning.

The lodging segment of the travel industry is sizable and offers travelers a wide range of accommodation choices. In addition to traditional hotels, many private clubs, casinos, cruise ships, timeshare condominiums, and campground sites provide overnight alternatives to travelers. Most of these facilities are open to all of the traveling public. Some other types of facilities offer overnight accommodations for people away from their homes for other reasons. These include schools, colleges and universities offering residential services, health-care (hospital and nursing homes) facilities, correctional institutions (prisons), and military bases.

### ***Foodservices***

One of the greatest joys, as well as sometimes one of the most daunting aspects, of traveling is the ability to sample local foods prepared in ways and combinations that are different from those typically found “back home.” From the leisurely meal to the hurried snack, the traveling public can choose from a wide variety of food venues. It is likely that Benny and June will find exploring the various cuisines and beverages of Europe one of the most talked-about features of their trip when they return.

Internationally, as well as in the United States, the foodservice industry consists of a plethora of food and beverage outlets that range from the exquisite and expensive to the very modestly priced “eat on the street” meals offered by vendors in most larger cities.

### ***Attractions and Activities***

For many travelers, the food and lodging experiences they will encounter are substantially less important than are the sites these travelers will see and the things they will do on their trips. For Benny and June, a walk through Heidelberg Castle in central Germany, a chance to see the masterpieces contained in the famous Louvre museum in Paris, or renting bikes to cycle through the mountains of Switzerland may be the actual reasons for traveling to their chosen destinations.

In well-developed countries, the number of things a traveler can see and do can be extensive. The traveler to New York City, for example, can spend days exploring the sights, sounds, and activities available. In less-developed countries and areas, the natural attractions of beaches, mountains, or forests may be enough to attract significant numbers of travelers. In all cases, however, the attractions and activities offered are likely managed and staffed by local employees, and operated according to the prevailing culture and customs of the area hosting the traveler. This will likely be the case regardless of whether the activity selected involves attending a concert, sporting event, or the theater; visiting a museum, art gallery, or historical site; gambling in a casino; visiting an amusement park; or simply enjoying the area’s natural physical setting.

Each of the five major components of the travel industry has developed, over time, its own set of rules, regulations, customs, and laws related to how it does business. Most travelers will not be as aware of how these operational procedures affect their travel experience, as will the managers working in the areas. As a result, an important part of many travel industry managers’ jobs is to communicate these specific procedures to the individual travelers they encounter.

## **Economic Breadth and Impact**

The travel industry is big business. In 2010, U.S. Travel Association reported that travel and tourism is the nation’s largest services export industry, with a \$32 billion balance of trade surplus for the United States. In 2010, the U.S. travel

Total Domestic U.S. Person-Trips	704.4 Billion
<b>Purpose of Trip</b>	
Leisure Travel	489.7 Billion
Business/Convention	214.7 Billion
Combined Business and Pleasure	704.4 Billion
<b>Sources of Travel Spending</b>	
Food Services	179.4 Billion
Lodging	126.6 Billion
Public Transportation	124.6 Billion
Auto Transportation	113.2 Billion
Recreation/Amusement	82.9 Billion
Retail	77.7 Billion
Person-trip is defined as one person on a trip away from home overnight in paid accommodations or on a day or overnight trip to places 50 miles or more [one-way] away from home. <i>Source: U.S. Travel Association</i>	

**Figure 13.2** U.S. domestic travel in 2009.

industry generated sales of more than \$750 billion, including airfares from domestic and international travelers. These travel expenditures, in turn, supported more than 14 million jobs for Americans (7.4 million directly in the travel industry), with nearly \$188 billion in payroll income. Approximately 1 out of 9 jobs in the United States depend on travel and tourism.<sup>2</sup>

Travel is popular. As shown in Figure 13.2, in 2009, domestic travelers took over 1 billion trips on which they traveled more than 50 miles from home.

The financial impact of international travelers is also great. In 2001, international visitors to the United States spent \$260 billion traveling in the country, including international passenger fares. Just as the travel professionals in the United States recognize the magnitude and impact of travel on the national economy, so do travel professionals worldwide. The World Travel and Tourism Council (WTTC) is the association created by global business leaders in travel and tourism. Its members are chairs and chief executive officers from 100 of the industry's foremost companies, including airlines and other passenger transport, hospitality, manufacturing, entertainment, tour operators, car rental, and other travel-related services. Founded in 1990, the WTTC is headquartered in London. Its mission is to raise awareness of the impact of travel and tourism, and to persuade governments to make it an economic and job-creating priority. Travel and tourism helps local economies in many ways:

- *Export earnings:* Currency earned by tourism results in the addition of “new” money in a local economy. For many countries and geographic areas, especially those that are not rich in natural resources, tourism dollars may be the single largest source of new income.

<sup>2</sup>U.S. Travel Association, “Talking Points and Facts,” April 2011. [www.ustravel.org/marketing/national-travel-and-tourism-week/talking-points-and-facts](http://www.ustravel.org/marketing/national-travel-and-tourism-week/talking-points-and-facts). Accessed June 2011.

**Search the Web 13.2**

The U.S. Travel Association helps connect, promote, advocate, and research all aspects of travel; including foreign and domestic. To view its website, go to [www.ustravel.org](http://www.ustravel.org). When you arrive at the site, click on About U.S. Travel to read about its goals and activities.

- *Enhancement of rural areas:* Tourism jobs and businesses are usually created in the most underdeveloped regions of a country, helping to equalize economic opportunities throughout a nation and providing an incentive for residents to remain in rural areas, rather than move to cities that may already be overcrowded and unable to easily support additions to the population.
- *Employment:* Travel and tourism is an important job creator. In addition, it is essential to understand that the vast majority of tourism jobs are in small or medium-sized, family-owned enterprises such as restaurants, shops, and the management/provision of tourism-related leisure activities.
- *Development of infrastructure:* Travel and tourism encourages enormous investments in new infrastructure, most of which helps to improve the living conditions of local residents, as well as the enjoyment of the tourists. Tourism development projects include airports, roads, sewage systems, water treatment plants, restoration of cultural monuments, and the creation or expansion of museums.
- *Tax collections:* The tourism industry provides local governments with hundreds of millions of dollars in tax revenues each year through hotel occupancy and restaurant taxes, airport users' fees, sales taxes, park entrance fees, and employee income taxes.

## Complexity of Legal Issues

The travel industry is large and complex; thus, its legal issues are as well. Travel law is unique, in that it encompasses many countries, industries, regulatory agencies, and even traditions. Returning to the example of Benny and June, and given your understanding of sources of potential liability, imagine the complications that might arise if these two travelers bought a 21-day package tour of Europe (operated by a tour company based in Amsterdam) and that the tour company then sub-contracted meals and accommodations for the tour with hotels and restaurants in a variety of European cities. Assume further that they purchased the tour from a New York state travel agent and that the two travelers took an Amtrak train to get to their departure city, where they stayed in a hotel that they reserved through an Internet booking site operated by a travel wholesaler located in Atlanta, and the next day, they flew on a transatlantic airline (operated by a non-U.S. company) to reach their destination. Finally, assume that their plane arrived late, and they missed the assigned departure time for their tour. No doubt you can begin to see the potential difficulties faced by consumers, as well as those who do business in a specific travel segment.

Travel law is complicated for a variety of reasons, including:

- *Interconnectivity*: When one travel-related business controls the sale and delivery of a complete travel product or service, the liability for poor or nonperformance may be easily assessed. When one business is dependent on the performance of another business, however, liability for poor performance is more difficult to determine. For example, assume that a travel services seller, relying on the promise made by a resort developer that a new resort would be ready to accept business on January 1 of a given year, sells a three-night stay at the resort; but upon the guests' arrival, the swimming pools, tennis courts, and golf course are not yet fully operational. Is fault to be assigned to the travel seller, the resort operator, or both? The interconnectivity of travel services makes it critical for hospitality managers to understand travel law.
- *Jurisdiction*: By its very nature, much of the activity in the travel industry occurs in a variety of legal settings. Does a New Jersey traveler who books a night's stay at a hotel in Dallas, via an Internet site operating out of Florida, and who ultimately feels that the hotel did not deliver the services promised, seek relief through the New Jersey, Texas, or Florida courts? Where many travel-related legal issues are concerned, the question of precisely which court has *jurisdiction* is crucial to understanding the applicable law.
- *Variation in terminology and resulting expectations*: In the United States, the term *first class* has a specific meaning to most travelers. But is it realistic for American travelers to assume that the rest of the world is bound by the same expectations when the term *first class* is used? Clearly, everyone in the world is not required to think exactly as Americans do. Alternatively, what if unscrupulous travel salespeople, knowing the ambiguity of the term *first class*, seek to defraud unwitting travelers? The question of honest differences in terminology and resulting expectation is complicated by multiple languages and multiple translations of travel-related words, phrases, and concepts.
- *Identity of the actual service provider*: Travel services are often packaged; that is, travelers will, in many cases, buy a complete travel experience that includes transportation, meals, and lodging, as well as leisure activities. When a component part of that travel experience is defective, it may be very challenging to determine exactly who is responsible to the traveler. For example, if a company that puts tours together purchases, at a discount, 100 sleeping rooms from a hotel and then uses those rooms to lodge a tour group, is the hotel's customer the tour company or the individual traveler? If the hotel does not operate in the manner the tour company promised the travelers purchasing the tour, and if monetary compensation is due for that poor hotel service, is the compensation more appropriately refunded to the tour operator that purchased the rooms, or the guest who stayed in the room? In complicated cases, it may well require a court to sort out a resolution.
- *Uncontrollable forces*: Travel is affected by many factors beyond the control of travel services providers. Severe weather, civil unrest, war, disease, and a variety of other variables can serve to make travel either unpleasant or impossible. Most observers would say that these forces should not generally be used to hold a travel services provider responsible for nonperformance of a contract. But what is the responsibility of the travel services provider that knowingly subjects travelers to these forces? For example, if a cruise ship captain knowingly sails his or her ship into waters that are in the direct path of a hurricane, that captain will likely, in most traveler's opinions, assume some level of liability for the potential outcome. A jury may be required to determine the actual degree of the cruise operator's responsibility.

## LEGALESE

**Jurisdiction:** The authority given by law or treaty to a court to try cases and make decisions about legal matters within a particular geographic area and/or over certain types of cases.

In the remaining sections of this chapter, you will learn about some of the governmental and quasigovernmental groups that help regulate and set national and worldwide policy for the travel industry. You will also become familiar with the travel agents, wholesalers, and tour group operators that make up the distribution segment of the travel industry. In addition, we will examine those industries that provide the means of passenger transportation, (i.e., buses, trains, planes, etc.) for their unique regulation and liability issues. The intent is to demonstrate the interconnectivity of the travel industry, and to direct you to sources of further information in those areas that entail specialized legal knowledge appropriate for hospitality managers.

## 13.2 TRAVEL AGENTS AND TOUR OPERATORS

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Not all travelers need the help of travel professionals when they decide to take a trip. For many, however, the knowledge and skills of such professionals are extremely important to the success of their trip. As a result, travel agents, tour companies, and travel wholesalers are essential components of today's travel industry, making it critical to understand how each operates and how travel law relates to them individually, and to the hospitality industry as a whole.

### Travel Agents

Historically, and despite the increased popularity of the Internet, individual and corporate travel agents remain the primary distributors of travel services. They offer customers packages or services provided by tour companies, organize tailor-made travel on request, and sell services such as vacation packages, air tickets, train tickets, cruises, hotel bookings, car rentals, and other services. Whether individual or corporate, as travel experts, their job is to inform and advise travelers. In the hospitality industry, hotel managers interact with travel agents on a daily basis because, in most hotels, a high percentage of the reservations made in the hotel will be booked by travel agents via the global distribution system (GDS) that electronically links travel agents worldwide to individual hotel reservation systems.

#### Search the Web 13.3

Important travel-related news affects travel agents throughout the world. Log on to the Internet and enter [www.travelagents.com](http://www.travelagents.com).

1. Select: Travel News from an area of the world in which you have an interest.

### Compensation

Travel agents contract for travel services on behalf of their clients. Accordingly, they have a *fiduciary* responsibility to those clients. This is an important concept because travel agents are expected to act in the best interests of their clients, not those of the hotels, airlines, or other travel organizations that may actually compensate the travel agent.

### LEGALESE

**Fiduciary:** A relationship based on trust and the responsibility to act in the best interest of another when performing tasks.

Travel agents are expected to be knowledgeable about the products they sell and to exhibit reasonable care in their dealings with clients. When they do not, they risk assuming liability for their own actions, as well as for the service levels and behavior of the third-party travel services suppliers with which they affiliate. For example, assume that a travel agent books a room for a client at a hotel in a large city. The agent represents to the client that the hotel is of “four-star” quality in a “safe” part of the city. In fact, the agent knows that the hotel is a “two-star” hotel in a high-crime area of the city. In this case, the travel agent’s client is likely to have cause for legal action against the travel agent because of misrepresentation, even if the travel agent was compensated for the booking by the hotel, not the agent’s actual client.

Travel agents have historically worked on a commission basis for the hotels, airlines, and other travel suppliers with which they do business. Even when travel agents are paid their commission by a third party, a hotel, or airline, they still owe a fiduciary responsibility to their client, the traveler. More recently, as airlines have reduced travel agent commissions, and as the Internet has made it increasingly popular to book travel without the assistance of a travel agent, some agents are directly charging their clients fees for services provided. When a travel agent charges to a client a fee for booking a hotel or airline reservation, it is clear that the travel agent has a fiduciary responsibility to that client.

### ***Responsibilities***

Travel agents routinely perform a variety of tasks. Essentially, however, a manager in the travel agent industry has a duty to train and inform his or her in-office and outside sales staff on all phases of travel offered to the public so that these individuals are in a position to provide professional travel advice, and to secure the most appropriate travel services available for each client. To that end, travel agents should make every effort to provide accurate information so that their clients can make an informed choice as to travel services. In particular, travel agents who work with clients wishing to travel internationally have a responsibility to advise their clients of the necessary passport and visa requirements for the trip to be undertaken. In addition, travel agents are required, at the time of booking any travel service on behalf of a client, to inform that client about any cancellation fee, revision fee, supplier service charge, or other administration charges, and the amount of these fees. When possible, agents must also inform clients of the existence of cancellation protection and/or insurance.

### ***Regulatory Structure***

Travel agents and their actions are, of course, subject to the same rules of law as any other business; at this time, there is no federal licensing requirements specifically for travel agents. State regulation does vary, however; currently, 14 states have regulations that mention travel sellers specifically. And because different departments and agencies are responsible for the oversight of these agents in these states, regulations may vary widely indeed, as shown in Figure 13.3.

For those states not listed in Figure 13.3, the individual state’s office of attorney general or the Department of Commerce is the most likely source of information regarding specialized state laws affecting travel agents.

Like professionals in many other businesses, travel agents have traditionally been primarily responsible for the regulation of their own industry and its members. And though the American Society of Travel Agents (ASTS), in conjunction with the Institute of Certified Travel Agents (ICTA), administers the Travel Agent Proficiency (TAP) test, there are not, at this time, any educational or experiential requirements that agents must meet before registering to take the exam, nor must they complete the TAP before being allowed to sell travel services.

State	Agency with Regulations Related to Travel Sellers
California	Department of Justice
Delaware	Division of Revenue
Florida	Division of Consumer Services
Hawaii	Department of Commerce and Consumer Affairs
Illinois	Attorney General
Iowa	Office of the Secretary of State; Corporations Division
Massachusetts	Attorney General, Anti-Trust and Consumer Protection Division
New York	Office of the Attorney General
Ohio	State Fire Marshall
Oregon	Department of Consumer and Business Services
Pennsylvania	Bureau of Transportation and Safety
Rhode Island	Department of Business Regulation
Virginia	Department of Agricultural and Consumer Service, Consumers Affairs Office
Washington	Department of Licensing

**Figure 13.3** Travel-regulation agencies for various states.

### ***Potential Liability Issues***

Constantly changing airfares and schedules, literally thousands of available vacation packages, and a vast amount of travel information on the Internet can make travel planning frustrating and time-consuming for travelers. To sort out their options, tourists and businesspeople often turn to travel agents. These professionals are truly “agents” in the agent/principal relationship defined in Chapter 3; that is, they act on behalf of a principal. For example, when a travel agent acts on behalf of a tour company (the principal) when selling a tour to the travel agent’s client, the principal will be bound by the actions of the travel agent. In turn, the travel agent will be responsible for informing the client about the identity of the tour company.

Travel agents routinely act as agents for airlines, hotels, car rental agencies, and others. Thus, they have a duty to both their clients and their principals. Common areas of potential travel agent liability, and, as a result, possible litigation, have revolved around five issues:

1. *Failure to provide promised services.* When a travel agent books a service for its client (the traveler) from a travel services provider, the agent should be confident about the ability of the provider to deliver as promised. That said, not all failures to provide services result in travel agent liability. For example, if a travel agent, in good faith, books a client at a Hilton hotel that normally operates a swimming pool, yet at check-in the guest discovers that the pool is closed for repairs, the agent is unlikely to be held responsible for this event because the client could reasonably foresee that such events happen at hotels. If, on the other hand, the travel agent booked, for the same client, a whirlpool suite at the hotel knowing that the hotel did not have whirlpool suites, the travel agent would likely be held liable for the inability of the hotel to provide

the promised services. Travel agents have a duty to exercise reasonable care when promising specific travel services will be available from specific travel service providers.

2. *Failure to honor agreed-upon pricing.* The ability of a travel agent in one part of the world to control the pricing behavior of a travel service provider in another part of the world is often quite limited. As a result, the traveler who paid a travel agent \$100 to secure a hotel room reservation in a foreign country could, upon arrival at the hotel, be forced to pay additional monies before the hotel will actually honor the reservation. In such a situation, the traveler might have no immediate option except to pay the additional amount. He or she would likely, however, have a claim against the travel agent for failure to secure the services purchased at the agreed-on price. To avoid such situations, travel agents should deal only with reputable hotels, as well as any other providers of travel services.
3. *Misrepresentation.* Travel agents generally are paid only upon the sale of a travel service. Unfortunately, this causes unscrupulous travel agents to intentionally misrepresent the services they market in order to make more sales, and thus more personal income. When they do so and are caught, they face potential liability. However, actual liability in this area is not always easy to determine. For example, Florida is known worldwide as the sunshine state, yet it rains there in some months more than in others. If a travel agent represents to a client living in Vermont that a vacation to Florida during one of the rainy months, would be a chance to “escape to the sunshine,” it might be unclear as to whether this statement constituted actual misrepresentation on the agent’s part or was in fact a legal marketing effort designed to generate vacation sales, and thus agent commissions. It is highly unlikely that a jury would hold a travel agent responsible for the weather in Florida, but that same agent might be held responsible if it could be established that the agent willfully misrepresented the facts about Florida weather during a specific time period in order to sell more Florida tours.
4. *Failure to discover and disclose.* Travel agents generally are not held liable for the negligent acts of the hotels, restaurants, airlines, and other travel service providers they represent, but they are responsible for informing clients about known hazards and risks. Thus, the travel agent who sells an excursion package for a rafting trip down a river would be required to disclose, if it were known, that, typically, several couples, per rafting season, drown on the same trip. The failure to discover and disclose such information puts the travel agent (as well as the clients!) at risk. To avoid this risk, travel agents must become knowledgeable about the products they sell, then they must be forthright with their clients about what they know. In addition, travel agents are liable for disclosing information that could be interpreted as creating a conflict of interest, which could be detrimental to the interests of their client. For example, if the travel agent is also acting as a tour operator selling its own packages to its travel agent clients, it must disclose this fact.
5. *Negligence.* Faced with the difficulties involved with relying on other parties to provide the services they sell, travel agents have, commonly, sought to limit their liability exposure through the use of contracts that include exculpatory clauses or disclaimers. As noted in Chapter 2, however, the courts are not likely to limit a travel agent’s liability via the use of exculpatory clauses or disclaimers when it can be proved that the agent exhibited negligence or gross negligence when interacting with his or her clients.

Of course, consumers who feel they have been treated unfairly by a travel agent have the ability to file a lawsuit against the agent. When large numbers of consumers experience the same alleged breach of law, it is often to their advantage to combine their complaints into a *class action lawsuit*. This is frequently the case when the same incident affects many potential plaintiffs in the same manner. If a class action lawsuit is successful, a period of time is generally established by the court to allow people who can prove they fit the class (suffered the same or similar damages due to the same or similar treatment) to file claims to share in any judgment amounts.

To illustrate, assume that a cruise ship returns to port after four days of what was to be a seven-day cruise. The ship does so because 300 of the 1,500 passengers became ill with a Norwalk-type virus. In this case, all 300 passengers, as well as the 1,200 who had their cruise cut short, may be able to file a successful class action lawsuit if it is determined that there was negligence on the part of the cruise ship's owners or operators that contributed to the viral outbreak.

## LEGALESE

**Class action lawsuit:** A lawsuit filed by one or more people on behalf of themselves and a larger group of people who were similarly affected by an event.

### Search the Web 13.4

The world's oldest travel agency is the Thomas Cook Agency. Log on to the Internet, and enter [www.thomascook.com](http://www.thomascook.com).

1. When you arrive, scroll almost all the way down, and click on About Us.
2. Next select Thomas Cook History.
3. Read about Cook's international operations and development.

## Tour Operators

Tour operators are an important part of the travel industry, and while they often work closely with travel agencies, they are, from a legal perspective, distinctly different. Hospitality managers will generally encounter both travel agents and tour operators in their normal course of work.

*Tour operator* is the broad term used to identify those varied companies that purchase travel services in large quantity and then market those same services to individual travelers. In many cases, tour operators, because they purchase travel services in bulk, are able to buy them at a significant discount, add a mark-up that represents the tour operator's profit margin, and still offer travelers lower prices for these travel services than the individual traveler could negotiate on his or her own.

Sometimes travel agencies serve a dual role and also function as tour operators. Legally, however, a tour operator is not an agent, but rather is the principal in the provision of travel services. As a result, the tour operator is directly responsible for the delivery of the travel services they have marketed and sold. This distinction is an important one because principals are responsible for the failure to deliver services as promised, while agents are generally not held responsible, unless they knew or should have known at the time of the booking that services could not be delivered as promised.

Another difference between travel agents and tour operators is the way they earn their income. Tour operators do not work on commission; travel agents do. The tour operator's profit must come from the sale of travel services they

## LEGALESE

**Tour operator:** A company whose primary activity is the planning, packaging, and marketing of travel services, including transportation, meals, accommodations, and activities.

themselves have previously purchased. For example, if a tour operator purchases 100 tickets to the Super Bowl, with the intention of packaging those tickets with airfare and overnight accommodations to create a “Super Bowl Extravaganza” vacation package, the tour operator will have incurred the cost of the football tickets, whether the sale of the vacation packages is successful or not. Thus, while travel agents may lose an unearned commission when a vacation package they offer for sale does not sell, the tour operator will likely face an out-of-pocket monetary loss.

Tour operating companies can offer either a limited or a large number of services. Thus, one tour operator may simply market self-guided trips, relying on selected transportation, hotels, and attractions to make up the trip’s itinerary. For example, a tour package from such an operator might consist of airline tickets to a large city, hotel reservations, and tickets to the theater. In this case, the tour itself is not guided or managed by the tour operator. Other tour operators elect to offer full-service tours that include transportation, accommodations, meals, attractions, and the actual tour guides or leaders who serve as escorts. Of course, from a legal perspective, the potential for misunderstandings and litigation increases as the number of services offered by the tour operator increases.

### ***Regulatory Structure***

Just as travel agents are regulated primarily at the state level, so too are tour operators. In most cases, the states are concerned about the financial stability of the tour operator. Since tour operators must generally purchase travel services ahead of their actual use, the financial risk taken by tour operators can be great. Some tour operators overextend themselves and then face financial difficulties that result in nonperformance or nondelivery of promised services for which they have previously received client monies. The state statutes that seek to protect consumers in these situations are varied, but all contain provisions designed to ensure that tour operators can provide the services promised, or that consumers can recover money they have paid when the contracted-for services are not provided. Figure 13.4 is an example of this type of law in Hawaii. Note that Hawaiian travel agencies, as well as tour operators, are affected by this statute.

#### Trust Account. §§468L-5, 468L-23

Travel agencies and charter tour operators must maintain a trust account in a federally insured financial institution located in Hawaii. The account will be established and maintained for the benefit of those paying money to the seller. Payments received for travel services must be deposited in the trust account within five business days.

Withdrawals from the account are permitted for:

- Payments to the entity directly providing the travel services;
- Refunds as required by this law;
- Sales commission;
- Interest earned and credited to the account;
- Remaining funds of a purchaser once all travel services have been provided or once tickets or other similar documentation binding upon the ultimate provider of the travel services have been provided.

#### Charter Tour Operator - Additional Security §468L-22

In addition to the trust account, charter tour operators offering seven or more air charters per year must provide a bond or letter of credit of \$300,000-\$1,000,000

**Figure 13.4** Hawaii Revised Statutes, Chapter 468L.

Generally, when a person agrees to buy from a tour operator services or products that include transportation, lodging, an interest or investment in a timeshare plan, travel investments, or other travel services, the travel operator must provide the buyer with written disclosure of all terms of the purchase within five business days. After receiving full written disclosure, typically the buyer may cancel such an agreement until midnight of the third business day after the disclosure is received.

Contracts made between tour operators and hospitality services suppliers such as hotels or restaurants will generally be governed by basic contract law. As a result, hospitality managers who do business with tour operators should become familiar with the laws and regulatory requirements that affect their own operations and those of tour operators. One such source of information is the National Tour Association, (NTA), a 4,000-member group consisting of travel professionals working in the packaged travel and tour segment of the industry. The association membership includes tour operators, travel suppliers, and individuals representing destinations and attractions.

#### Search the Web 13.5

The National Tour Association (NTA) monitors travel law related to tour operators. Go to [www.ntaonline.com](http://www.ntaonline.com).

1. When you arrive, click on the For Members tab.
2. Under the Government Relations category (left margin), select Seller of Travel laws.
3. Select: Guide to U.S. and Canadian Seller of Travel Laws.
4. Read the Travel Sellers law in the state that is closest to you.

### ***Potential Liability Issues***

Tour operators have specific responsibilities to those from whom they purchase travel services, as well as to those persons actually using the services. Common areas of potential tour operator liability and, as a result, possible litigation, have revolved around five issues:

1. *Nonpayment for prearranged services.* As a hospitality manager, you are most likely to interact with tour operators when they contract with you for food or lodging services. In most cases, the terms of such agreements are subject to the traditional tenets of contract law. Nevertheless, disagreements can arise, so the best practice for restaurant and hotel managers is to seek payment from tour operators for the services they are to render before those services are supplied. Clearly, it is more difficult for a hotel or restaurant to collect payments due to them after services have been provided than it would be if payment were required in advance. Payment terms of contracts with tour operators should be clearly spelled out in any agreements made.
2. *Nondelivery of promised services.* Most travel supplier and consumer-oriented complaints about tour operators revolve around the question of whether the travel services supplied were, in fact, those promised. Honest differences of opinion can easily exist in this area. As noted, tour operators usually concentrate on selling travel services—they rarely provide them.

Thus, these businesses rely on others to transport, feed, and house their travelers. Inevitably, disputes can arise when promised services are not delivered. For example, did a restaurant selected by a tour operator actually provide tour participants “delicious” meals, as promised in a travel advertisement? Was a rafting trip “exciting”? Was a tour guide “qualified”? Often, the courts are asked to decide these issues because the actual written contracts including such terms are difficult to interpret and quantify.

### LEGALESE

**Adhesion contract:** A contract whose terms were not truly negotiated or bargained and, as a result, may be so one-sided in favor of the stronger party that the contract is often deemed unenforceable by the courts.

3. *Adhesion contracts.* An *adhesion contract* exists when one party to the contract dictates its nonnegotiable terms to the other party. If the terms of the contract are so one-sided as to be deemed unconscionable by the courts, the offending portion—or, in some cases, all of the contract terms—will be set aside, and the contract interpreted as the court sees appropriate. Because a tour operator’s booking conditions often fit the profile of an adhesion contract—that is, tour buyers are often offered a “take it or leave it” form to sign when selecting a tour—it is important that tour operators offer contracts that will be deemed by the courts to be fair to both parties. Thus, excessive cancellation or change fees, broad liability disclaimers, and unreadable fine print (so small it can be assumed to have been used to put off buyers) should be avoided in tour operator contracts.
4. *Liability for injury or accident.* Despite all the advances made by the travel industry, travel can still be dangerous. This is especially true in this day of worldwide terrorist activities that are purportedly directed toward specific governments, but inevitably strike individual travelers on a random basis. In addition, many tour activities such as rock or mountain climbing, skiing, motorized sports, or hunting are all inherently risky, regardless of the safety precautions taken. In cases such as these, and even in tours that involve no more strenuous or dangerous an activity than walking, accidents will happen, dangerous unforeseen as well as foreseen events will occur, and even the weather may cause injury or accident. All these raise the question of liability, especially for tour operators who, in most cases, contract for, rather than directly provide, the services they sell. Generally, the courts will not hold tour operators liable for the negligent actions of travel services suppliers unless they are owned by the tour operator. Tour operators will be held liable, however, for their own negligence.
5. *Misrepresentation.* Most tour operators are honest, but some are not. Misrepresentation can occur whenever a tour operator knowingly misrepresents the fares and charges for their services, knowingly sells transportation when the tour operator has not made a binding commitment with the carrier designated in the agreement sold to the buyer, or knowingly misrepresents other travel services to be provided in an unscrupulous effort to entice buyers to buy. Unfortunately, misrepresentation can be difficult to prove. Therefore, as a hospitality manager doing business with a tour operator, you should strive to understand exactly what you have been contracted to supply, as well as how your company will be presented in the marketing efforts of the tour operator.

## Corporate and Government Travel

Many legal issues arise during the domestic and international travel of corporate and government employees. When employees who travel domestically or internationally are faced with a volatile situation, employers need to be aware of their responsibility to extract their employees from the volatile or unsafe situation. Specifically, corporations and governments have a duty of care to their employees when they travel, and have been found liable for the injuries, medical evacuation, and medical treatment

when employees are working either domestically or overseas. This duty of care is similar to that of a negligence standard, and it is assessed by asking whether the actions taken by the corporation or government were reasonable—a sort of reasonable person standard for corporate managers.

To keep employees safe and secure and to reduce liability, as well as further injury to employees, corporate managers and government travel managers should enact internal protocols for mobile employees and specify the steps to be taken when an emergency happens that affects an employee while traveling. There are many organizations that offer education and assistance to corporations and government travel managers in the area of employee travel. A few of these are the Association of Corporate Travel Executives, the Global Business Travel Association, and the Society of Government Travel Professionals. You can learn more about these groups by accessing their websites at [www.acte.org](http://www.acte.org), [www.gbta.org](http://www.gbta.org), and [www.shtp.org](http://www.shtp.org), respectively.

### Search the Web 13.6

The Global Congress on Legal, Safety, and Security Solutions in Travel is an annual event where professionals from all aspects of the travel industry can come together to discuss their legal, safety, and security experiences and best practices. To learn more about the Global Congress's mission, and learn how to participate, visit its website at [www.globalcongressontravel.com](http://www.globalcongressontravel.com).

## » ANALYZE THE SITUATION 13.1

AS PART OF A three-day "Mystery Tour," Joan Larson of Apex Travel, Inc., a Wisconsin-based tour operator, contacted the Ragin Cajun restaurant in Illinois, for the purpose of reserving 120 seats for dinner on a Friday night in September. The tour group arrived, and one male group member, after three drinks, began making rude and suggestive comments to one of the restaurant's female servers. When Steve, the restaurant manager approached Gene, the Apex tour leader, about the situation, Gene maintained the comments were probably made in harmless fun and should be overlooked by the restaurant. "Besides," stated Gene, "our bus is leaving to go back to our hotel in one hour and that particular tour group member lives several hundred miles away and is unlikely to ever see that server again." As the Ragin Cajun's restaurant manager:

1. What are your legal responsibilities to your server?
2. Who is responsible for controlling this guest's behavior?
3. How would you respond to Gene, the tour operator?
4. What potential liability does Apex face in this situation?

## 13.3 TRANSPORTATION AND COMMON CARRIERS

### LEGALESE

#### Common carrier:

A company or individual that is in the regular business of transporting people and/or freight for a fee. Examples include airlines, cruise lines, trains, and buses.

The method of transportation travelers select for their trip is typically one of the most important decisions they make. Speed, comfort and safety, and cost are all factors that determine which method of transportation they will choose. Of those, the reduction in the cost of transportation is a primary factor contributing to the total amount of world travel and, subsequently, to the rise in the number of *common carriers*.

Travel-related common carriers have a responsibility to service the transportation needs of most any passenger who wishes to travel. Generally, these carriers have no more right to refuse a passenger, if they have sufficient room, than an innkeeper has to refuse a guest (see Chapter 10). A common carrier has a special duty to its passengers to see that they arrive at their destination safely, which includes using the highest degree of care to protect them against physical harm. This is so important that the quality of a country or region's common carriers determines, in large part, the amount of tourism activity in that area, as well as how much others in the travel industry want to invest in and develop the area's tourism infrastructure.

### The Transportation Industry

The transportation industry includes both those businesses carrying people and those moving freight. This is true because manufacturers need to safely transport their goods from one place to another in the same way that passengers must be transported. Historically, stagecoaches, steamships, and railroads developed operating systems that accommodated mail, freight, and passengers. Today, some businesses in the transportation industry, such as United Parcel Service (UPS) and Federal Express (FedEx), specialize in the transportation of freight, others emphasize passenger transportation, and still others provide both. For the hospitality manager, knowledge of the laws related to the passenger transportation industries is very important. These include the airlines, as well as rail, cruise ship, bus, and—although they are not technically common carriers—car rental companies.

International travel has become an important topic, particularly as it relates to common carriers. As technology advances, and people are able to move around the world with much ease and little cost, the U.S. and foreign governments have worked together in order to find ways to more safely and effectively administer international travel. Specifically, there are numerous international travel treaties that have been executed between the U.S. and other foreign governments; two of the major treaties being the Warsaw Convention, and the Montreal Convention. *The Warsaw Convention*, or the Convention for the Unification of Certain Rules Relating to International Transportation by Air, seeks to create a uniform body of law pertaining the rights and responsibilities of international passengers, shippers, and air carriers. The main purpose of the Warsaw Convention is to limit the liability of air carriers by fixing the liability of carriers for harm to passengers, baggage, and goods; as well as creating uniform documentation, procedures, and law for claims arising out of international air carriage.

The Warsaw Convention was subsequently amended by the Convention for the Unification of Certain Rules for International Carriage by Air drafted in Montreal, called the Montreal Convention. The Montreal Convention has been described as favoring passengers rather than the air carriers. Specifically, the Montreal Convention provides that a carrier is liable for damages sustained in cases of death or bodily injury of a passenger if the injury occurred aboard the aircraft or at any time during embarking or disembarking. To read more about the Warsaw and Montreal Conventions, go to: [www.dot.gov/ost/ogc/Warsaw1929](http://www.dot.gov/ost/ogc/Warsaw1929), and [www.dot.gov/ost/ogc/ProtocolNo4](http://www.dot.gov/ost/ogc/ProtocolNo4).

### LEGALESE

**Warsaw Convention:** Short for the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw on October 12, 1929, this agreement set limits on the liabilities of airlines that follow established guidelines for the safe operation of international airline flights.

## Airlines

U.S. airlines carry over 500 million passengers per year. In most cases, airplanes are the preferred method of long-distance travel for both leisure and business travelers—despite the tragic events of 9/11. Since 1954, the total number of passengers served by the airline industry has increased significantly each year, because of the speed and relatively low cost. Of course, with large numbers of travelers comes the potential for large numbers of legal issues, especially given the number of factors that can affect on-time arrivals and departures, along with the inconvenience and difficulty caused by missed connections, damaged luggage, or physical injury. While it is rare, airplanes can and do crash, and lawsuits inevitably result. In all cases, the cause of the crash is investigated thoroughly, and the findings are used to assist in the assignment of liability for the accident, and to determine the law that applies to the particulars of the crash.

Precisely which laws apply to the relationship between a service provider and a consumer depends, in large measure, on what each party has promised and agreed to. The same is true of the relationship between airlines and their passengers. The details of the contract made between an airline and the passengers it carries is called the *tariff*, which, by law, must be made available, in its entirety, from the airline. To enforce the terms of its tariff, an airline must:

- Ensure that passengers can receive an explanation of key terms identified on the ticket from any location where the carrier's tickets are sold, including travel agencies.
- Make available for inspection the full text of its contract (tariff) at each of its own airport and city ticket offices.
- Mail a free copy of the full text of its tariff to the passenger upon request.

The terms of the tariffs affect how passengers are treated. For example, each airline has its own policies about what it will do for passengers whose flights are delayed. There are no federal laws or requirements in this area. Some airlines, especially those charging very low fares, do not provide any amenities to stranded passengers. Others may not offer amenities if the delay is caused by bad weather, or something else beyond the airline's control. Contrary to popular belief, airlines are not required to compensate passengers whose flights are delayed or canceled. Compensation is required by law only when a passenger is "bumped" from a flight that has been overbooked.

U.S. airlines operate flights regionally, nationally, and internationally. When operating solely within the borders of the United States, federal law applies. This is because the U.S. Supreme Court has ruled that the Airline Deregulation Act of 1978 and the Federal Aviation Act 1958 preempt all state statutory and common law claims related to rates, routes, or services of air carriers.

In a similar manner, when airlines operate internationally, they are subject to the rules and liability limitations of the Warsaw Convention. The agreements made at the Warsaw Convention have been amended and updated several times. Today, as modified by subsequent agreements, it governs claims arising from international air transportation, and preempts common law and those laws created by various countries in which airlines operate. The Warsaw Convention applies to all international transportation supplied to persons, baggage, or goods by any aircraft for hire. It sets forth a comprehensive scheme that defines the liability of international air carriers for personal injuries, damage, loss of baggage and goods, and damage caused by delay. The United States is a *signatory* of the Warsaw Convention, which means that, for international flights, U.S. consumer protection laws are preempted by its terms.

### LEGALESE

**Tariff:** The agreement between an airline and its passengers. When purchasing a ticket, the passenger agrees to the terms of the tariff.

### LEGALESE

**Signatory:** An entity that signs and agrees to abide by the terms of a document.

## *Trains*

Train transportation was instrumental in the early development of the United States, but today its role is far smaller than that of airplanes and automobiles. Although rail companies can move freight efficiently, and make money doing so, given the present structure of the rail system in this country, it is simply unprofitable in most cases to operate trains for the purpose of passenger transportation. This should come as no surprise. Public dollars are routinely used to build airports, and the airlines that utilize them profit from doing so. In a similar manner, the automobile industry has benefited from the immense investment in public roads and highways undertaken by federal, state, and local governments. The average U.S. citizen has been less enthusiastic, however, about using tax dollars to invest in the land, track, signals, and equipment needed to build and maintain a reliable passenger rail system. Consequently, with the exception of specific areas or routes, especially in highly populated regions, passenger rail service is not routinely available. There are, however, still nationwide passenger rail routes operated by Amtrak.

Despite a widely held belief to the contrary, Amtrak—whose name is a blend of the words “American” and “track”—is not a part of the federal government. Officially the National Railroad Passenger Corporation, Amtrak is, ostensibly, the nation’s for-profit passenger rail service. However, since its inception in 1971, it has been dependent on the federal government (as well as some state governments) for grants that enable it to continue offering its services. In 2010, Amtrak employed about 20,000. More than 28 million passengers rode Amtrak in fiscal year 2010, a ridership record that was 5.7 percent higher than the previous year, which earned Amtrak \$1.74 billion in ticket revenue.<sup>3</sup>

Since its inception, New York City, Philadelphia, and Washington, DC, are the most popular boarding and disembarkment points for Amtrak rail travelers, reflecting actual use of the railroad for large-city commuting rather than long-distance travel.

Amtrak, like all other common carriers, is responsible for the safe delivery of its travelers and can be held liable for its negligence. And as on airplanes, train delays can occur and travelers can be inconvenienced, and as a common carrier, Amtrak may bear some responsibility for the resulting impact on travelers. As can be seen in Figure 13.5, Amtrak’s liability disclaimer seeks to limit its liability for the effects of traveler inconvenience by carefully detailing its responsibility in the event of a travel disruption.

Amtrak’s fares, time schedules, equipment, routing, services and accessibility information are not guaranteed, are subject to change without notice, and form no part of the contract between Amtrak and a passenger. Amtrak reserves the right to change its policies without notice. Amtrak disclaims liability for inconvenience, expense, or damage resulting from errors in its timetable, shortages of equipment, or delayed trains, except when such a delay causes a passenger to miss a guaranteed connection. When a guaranteed connection is missed, Amtrak will provide alternate transportation on Amtrak, another carrier, or overnight hotel accommodations at Amtrak’s discretion. It may be necessary for Amtrak to provide substitute transportation and to cancel service when necessitated by operational or safety conditions. (Effective 9/2003)

**Figure 13.5** Amtrak liability disclaimer.

<sup>3</sup>“Amtrak Sets New Ridership Record Thanks Passengers for Taking the Train,” Amtrak News Release, October 11, 2010. [www.amtrak.com/servlet/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1249216336898&blobheader=application%2Fpdf&blobheadername1=Content-disposition&blobheadervalue1=attachment;filename=Amtrak\\_ATK-10-134\\_AmtrakRidershipRecordFY10.pdf](http://www.amtrak.com/servlet/BlobServer?blobcol=urldata&blobtable=MungoBlobs&blobkey=id&blobwhere=1249216336898&blobheader=application%2Fpdf&blobheadername1=Content-disposition&blobheadervalue1=attachment;filename=Amtrak_ATK-10-134_AmtrakRidershipRecordFY10.pdf).

## Search the Web 13.7

Rail travel takes longer than air travel, but passenger fares, in some cases, make it more cost-effective. Log on to the Internet and enter [www.amtrak.com](http://www.amtrak.com).

1. At the site, price a passenger fare between New York City and Chicago.
2. Now price the same trip by airplane on [www.Travelocity.com](http://www.Travelocity.com).
3. Compare the travel time involved with the fare savings. To whom do you believe train travel would be most appealing?

### ***Cruise Ships***

Before the advent of airplanes, ships and luxury liners were the only available method of traveling from one continent to another. While the use of ships for business and vacation travel has generally decreased from the early 1900s through today, the use of cruise ships for, specifically, vacation travel has increased steadily. According to the Cruise Lines International Association (CLIA), about 13.5 million passengers took a cruise in 2009.<sup>4</sup>

The U.S. government also keeps statistics on cruise lines. The Maritime Administration (MARAD, [www.marad.dot.gov](http://www.marad.dot.gov)), which is part of the U.S. Department of Transportation, is responsible for the U.S. maritime transportation system of freight cargo and cruise travel. MARAD's statistics cover the major cruise lines that offer North American cruises with a U.S. port of call. They include Azamara, Carnival, Celebrity, Costa, Crystal, Cunard, Disney, Fred Olsen, Holland America, MSC, Norwegian (NCL), Oceania, Princess, Regent, Royal Caribbean, Seabourn, Seadream, Silversea, and Windstar. For vacation cruises, Miami is the largest departure port in the United States; Ft. Lauderdale is second. The western Caribbean was the most visited destination in 2010, with the Bahamas in second place and Alaska finishing third. Cruises typically range in length from three days to three months, with those cruises in the six- to eight-day category having the largest share of both number of cruises and passengers.

Perhaps part of the reason for the increase in cruise ship popularity is that cruise itineraries include some of the calmest waters in the world. In addition, stabilizers on modern ships, the availability of advance weather information, and the development of effective preventative medications have, for the most part, eliminated the incidence of motion (sea) sickness. In 2010, the North America cruise market added four huge ships: Royal Caribbean's *Oasis of the Seas* (5,400 passenger capacity) and *Allure of the Seas* (5,400 passengers), NCL's *Norwegian Epic* (4,200 passengers), and Carnival's *Carnival Dream* (3,646 passengers). Together, these four accounted for 10 percent of the fourth quarter 2010 North America cruise passenger capacity.<sup>5</sup>

<sup>4</sup>Cruise Lines International Association, "Profile of the U.S. Cruise Industry," 2010, [www2.cruising.org/Press/sourcebook2010/profile\\_cruise\\_industry.cfm](http://www2.cruising.org/Press/sourcebook2010/profile_cruise_industry.cfm). Accessed June 2011.

<sup>5</sup>U.S. Department of Transportation, *Maritime Administration, North American Cruise Statistical Snapshots, 2010*, March 2011, pp. 9, 13. Accessed October 5, 2010, at [www.marad.dot.gov/documents/North\\_American\\_Cruise\\_Statistics\\_Quarterly\\_Snapshot.pdf](http://www.marad.dot.gov/documents/North_American_Cruise_Statistics_Quarterly_Snapshot.pdf).

**LEGALESE**

**Maritime law:** Also called “admiralty law” or “the law of admiralty,” the laws, regulations, international agreements, and treaties that govern activities in navigable waters.

Legal issues related to cruise travel have not similarly disappeared. In many respects, a cruise ship is very much like a floating full-service hotel. Thus, managers working in the cruise industry face many of the same guest safety, security, and liability issues as their land-based hospitality management counterparts. Like all common carriers, those who operate cruise ships are subject to many local, state, national, and international laws. Cruise ships and their passengers are also subject to *maritime laws*, many of which may preempt more localized laws.

**Buses**

Buses are still an extremely important mode of transport for the travel and tourism industry. True, their use for long-distance travel is substantially less than that of either airplanes or automobiles, yet they play an important role in many areas, including shuttle services from train stations, bus depots, and parking lots. Buses are also widely used for charters on routes between destinations within 200 or 300 miles of each other. On these routes, buses may actually be faster than air travel, especially considering new time-consuming airport security measures. Transporting groups to hotels, restaurants, and nightclubs; visiting historic sites and local attractions; attending concerts, sporting events, and competitions; and the going on group shopping trips are additional popular ways groups make use of bus travel.

The federal government defines a bus as a passenger-carrying vehicle designed to seat at least 16 people, including the driver. The U.S. Department of Transportation’s Motor Carrier Safety Administration is the major regulatory agency responsible for bus safety. The agency develops rules and regulations in an effort to ensure the safety of bus passengers. Such rules include the hours a bus driver may be required to drive, safety features of buses, and operator license requirements.

In the hospitality industry, the term *bus* is sometimes misunderstood, and that misunderstanding can lead to contract disputes. Consider, for example, the corporate executive who contracts with a bus operator for a bus to transport 30 high-level managers to and from a pro football game. Greytrails Bus Lines agrees to supply a bus for the trip; however, when the day of the trip arrives, the bus provided turns out to be a school bus. Clearly, it is unlikely that the desired bus and the bus provided are one and the same in the mind of the executive arranging the travel. Although no mandated definitions exist, those in the bus industry generally recognize the following bus types:

- *Economy:* School-type buses represent the basic, lowest-cost option for group travelers wishing to minimize their expense. These buses typically are arranged with bench (not individual) seating, and contain no restroom facilities.
- *Deluxe motor coach:* This type of tour bus is most often selected for longer trips, or for those groups seeking greater comfort than is afforded by economy buses. The typical seating is 47 to 55 individual seats, with VCR/DVD capability, multiple monitors, advanced sound systems, and restroom facilities.
- *Executive motor coach:* This top-of-the-line bus is chosen by those who prefer extra-luxurious bus travel. Executive coaches are custom-made, so options vary, but typically they include full bedrooms, showers, social and meeting space, and state-of-the-art telecommunications. The maximum capacity for buses of this type range from 5 to 20 persons.
- *Specialty:* In some cases, trolley or double-decker buses are appropriate and are contracted for on a special-case basis.

For managers in the hospitality industry, bus travelers can be a significant source of income. Restaurant managers encourage buses to stop at their restaurants for meals, and hotel managers seek to contract with bus operators for the overnight hotel stays required in long-distance bus travel.

## ***Car Rentals***

Car rental companies are not technically common carriers because they lease cars rather than transport passengers. The car rental business is, however, an important component of the transportation industry, and it comprises establishments primarily engaged in renting or leasing passenger cars, vans, trucks, and utility trailers. There are more than 10,000 such operations within the United States alone. These businesses generally operate from a retail facility. Some establishments offer only short-term rental, others only longer-term leases, and still others provide both types of services. Not surprisingly, California, Florida, and Texas are the three states that host the greatest number of car rental outlets and lease the most vehicles.

Rental car companies operate under laws within the states they do business. The terms of the rental agreements made must be clear to the person renting the vehicle, and rental companies are held responsible for renting safe vehicles to persons qualified to drive them. When they are not, the car rental company may, under a variety of statutes, be held liable for the accidents that ensue, or the consumer rights violated.

## **Regulation in the Transportation Industry**

The transportation industry is one of the most highly regulated industries in the world. In the United States, for example, local and state laws may govern the terms of transportation service that can be provided (e.g., at what speed a bus may drive when transporting passengers on a state-maintained highway), federal law may dictate how those in the transportation business must maintain their equipment (e.g., the Federal Aviation Administration requirements for plane maintenance). Similarly, international maritime law may dictate the responsibilities of an internationally registered cruise ship docked in a U.S. port.

In addition to various state and local regulation enforcement agencies, at the federal level, those agencies that impose requirements on various businesses in the transportation industry include the FAA, DOT, NTSB, U.S. Postal Service, EPA, IRS, Interstate Commerce Commission, Department of Labor, Bureau of Citizenship and Immigration Services, Department of Agriculture, and other federal agencies; as well as nonfederal governmental agencies such as local airport authorities.

For those businesses in the transportation industry that operate across national borders, compliance with international law is critical. To facilitate the legal conformity of these businesses, each industry segment maintains its own voluntary compliance enforcement group. For example, in the airline industry, those companies that transport passengers internationally belong to the International Air Transport Association (IATA). The IATA was founded in Havana, Cuba, in April 1945. It is the prime vehicle for interairline cooperation in promoting safe, reliable, secure, and economical air services. At its founding, IATA had 57 members from 31 nations, mostly in Europe and North America. Today it has over 230 members from more than 130 nations. Since January 1, 2000, all airlines joining IATA have been required to demonstrate, as part of the membership eligibility process, that they operate according to an existing set of recognized international operational quality standards (OQS). These standards encompass not only flight safety but also engineering, maintenance, security, and flight operations.

## **Potential Liability Issues**

A myriad of legal issues confront consumers and those who do business in the transportation industry. Those of most interest to hospitality managers are discussed in the following subsections.

### ***Legal Jurisdiction***

One of the most difficult issues to resolve in a legal dispute related to transportation is the identification of the appropriate court to hear the complaint. If, for example, a traveler residing in Texas purchased, from a Texas-based travel agent, an airline ticket for an intrastate (within the state) flight operated by an airline incorporated in Texas, and that traveler experienced difficulty, it is likely the traveler's complaint would be heard in a Texas court. But, if, instead, the traveler were an Israeli citizen who purchased via a London-based travel agent a vacation cruise operated by a Scandinavian cruise line that docked in the Bahamas, and, while docked there, the traveler was injured on the ship, the question of which court of law should hear this traveler's complaint would, of course, be much more complex. Often, the contracts themselves will specify which location will have jurisdiction should a dispute arise, but others may not, and the battles can be fierce; as "home-field" jurisdictions often provide the same advantages in litigation as they do in sporting events.

The hospitality manager involved in international travel and venues must be certain to operate under the applicable laws at the appropriate times.

### ***Overbooking***

Just as hotels can sometimes miscalculate their occupancy forecasts and oversell their capacity, so too can airlines and rental car companies. Thus, hotel managers often find themselves housing guests who are affected by the overbooking of a transportation provider. In many such cases, guests are understandably upset and, consequently, may express much more dissatisfaction with their accommodations than would a guest whose travel plans had not been disrupted by overbooking. When this happens, it is important for the hotel manager to understand that the client paying for the hotel's services (generally, the transportation provider) is in an unfortunate situation, as is the guest staying in the hotel, and that both parties should be accommodated in the best manner possible.

U.S. federal regulations do not require any compensation be made for a delayed or canceled flight if the delay or cancellation is due to circumstances beyond the airline's control, such as inclement weather. For other kinds of delays and schedule interruptions, each airline has its own policies on offering compensation for a passenger. Those policies are either included with the paperwork associated with passenger tickets or are available from an airline's airport or ticket offices. Typical compensation offered for a delayed flight may range from free meals to hotel accommodations. When faced with a delay, passengers should either review the airline's policy or obtain a copy of the policy to see what compensation is available.

Federal law specifically allows airlines to overbook flights to allow for no-show passengers. But when passengers are involuntarily bumped, airlines are first required to request volunteers to give up their seats in exchange for compensation. Involuntarily bumped passengers are subject to minimum compensation as follows:

- No compensation if alternative transportation is available to get the passenger to his or her destination within one hour of the original scheduled arrival.
- The equivalent of the passenger's one-way fare up to a maximum of \$200 for substitute domestic flights that arrive between one and two hours after the original scheduled arrival time, or for substitute international flights that arrive between one and four hours after the original scheduled arrival time.
- If the substitute transportation is scheduled to get the passenger to his or her destination more than two hours later (four hours internationally), or if the airline does not make any substitute travel arrangements, the compensation doubles, to a maximum of \$400.

The compensation schedule does not apply to charter flights or scheduled flights operated with planes that hold 60 or fewer passengers, or international flights inbound to the United States.

### ***Responsibility for Baggage***

With millions of people traveling each year, it is inevitable that some of those travelers get separated from their luggage. Also, despite their best efforts, common carriers may damage baggage that has been entrusted to them. Airlines, by far, handle the greatest amount of passenger luggage. Thus, airlines flying domestic routes may, as part of their tariffs, set limits on the amount they will pay for lost or damaged bags. For travel wholly between U.S. points, federal rules require any limit on an airline's total baggage liability to be at least \$2,500 per passenger; and this information must be communicated to the passenger. For international flights, provisions of the Warsaw Convention limit liability for lost or damaged baggage unless a higher value is declared in advance and additional charges are paid. The limit for most international travel is approximately \$9 per pound for checked baggage and \$400 for unchecked baggage.

Baggage that has been lost is an inconvenience to both the traveler and the business responsible for the loss. Hospitality managers hosting travelers who have lost their luggage should, of course, ensure that their operations will do all they can to assist these travelers.

### ***Unplanned Changes in Itinerary***

Travel plans can be disrupted by a variety of factors, some controllable, some not. Inclement weather, mechanical failures, traffic congestion, and human error can all disrupt travel plans, resulting in losses of both time and money. For example, if a couple's flight delay means they miss a cruise ship departure, an entire vacation may be in jeopardy. Regardless of who is responsible, when travel plans are disrupted, those in the restaurant and hotel business may be affected. Meals may be delayed or canceled, hotel rooms may go unused, or, when travel departure plans are disrupted, a hotel may be overbooked.

Managers must be sensitive to the needs of the inconvenienced traveler, as well as the needs of their own business. The best time to address the potential difficulties that could result from unanticipated itinerary changes is prior to signing a contract with a service provider. For example, assume that a restaurant agrees to serve dinner to a sports team traveling from one state to another. The 45-person team is scheduled to arrive at the restaurant at 6:00 P.M. The food for the group is prepared and the dining area reserved. But due to mechanical trouble with the bus used to transport the players, the team is stranded 100 miles away and elects to eat dinner in the town where the bus has broken down. The terms of the contract signed between the restaurant and the team's representative will dictate what level, if any, of charges will be assessed by the restaurant.

### ***Industry-specific Issues***

Because the transportation industry is so diverse, certain laws will apply only to specific segments of it. This is especially true with regard to catastrophic events. Catastrophic events involving common carriers include plane crashes, train derailments, bus accidents, and maritime accidents. Additionally, a common carrier might be liable for other noncatastrophic incidents such as a slip and fall on a cruise ship, a sexual assault by a cruise ship employee or passenger, and other occurrences. Generally, common carriers are held to a very high safety standard, and hence may be liable for even the slightest amount of neglect. Moreover, laws have been passed in direct response to specific incidents. For example, in 1996, after the

TWA crash that killed 230 people off Long Island, New York, Congress passed the Aviation Disaster Family Assistance Act, which provides that, after a crash involving fatalities:

- Family members must be given time to notify other relatives before the names of passengers are made public.
- The airline must offer crisis counseling.
- The airline must make hotel rooms and food available for relatives.
- The airlines must help family members retrieve dental records and X-rays to identify the victims.
- The airlines must provide transportation to families to and from the crash site.

Hotel and restaurant managers are not, of course, expected to be experts in all areas of travel law; nevertheless, managers whose jobs bring them in regular contact with specific segments of the transportation industry are well advised to familiarize themselves with the industry-specific legislation that directly affects their hospitality operations.

## 13.4 TOURISM

### LEGALESE

**Gaming:** Legalized gambling.

### LEGALESE

**Timeshare:** A form of shared property ownership in which a buyer acquires the right to occupy a piece of real estate, such as a condominium in a resort area, for a specific period of time each year.

### LEGALESE

**Amusement park:** An entertainment facility featuring rides, games, food, and sometimes shows. Theme parks are amusement parks in which the rides, attractions, shows, and buildings revolve around a central theme or group of themes. Examples include the Disney- and Universal Studios–owned amusement parks.

The terms *travel* and *tourism* are not synonymous. Travel, especially business-related, is conducted for a specific commercial purpose. Much business travel is undertaken strictly to advance commerce, and travelers typically have little or no time to take in the sights and attractions of the places to which they travel. Tourism, in contrast, consists of the activities directly related to pleasure travel. Tourists, in most cases, select their destinations based on what they want to see and do when they get there. There is, of course, some crossover between the two definitions. Business groups, for example, may choose their meeting locations based on what attendees can do after their scheduled daily activities have concluded. As noted earlier in this chapter, tourism can have a major impact on local economies and ecologies. As a result, circumstances often arise that can result in legal conflict, related to zoning, taxation, environmental impact, and human resources management, to name but a few.

For those hospitality managers working in areas that cater to large numbers of tourists, tourism may represent a substantial portion of the total income generated by their business. Many legal issues specifically related to tourism are important to hospitality managers, but three areas are of particular interest: the *gaming* industry, the resort industry (including *timeshares*), and the *amusement park* industry.

## Unique Responsibilities of Gaming Operations

Few segments of the travel and tourism industry elicit a more passionate response from both its advocates and adversaries than the gaming industry. Not surprisingly, the litigation surrounding gaming is significant and continues to grow as gaming, as a form of recreational activity, expands both in the United States and internationally. The result, for those working in the industry, is a unique set of regulatory requirements, as well as potential liability issues.

### *History of the Gaming Industry*

Gambling is not a recent phenomenon. The Chinese, Japanese, Greeks, and Romans all were known to play games of chance as early as 2300 B.C. Gambling is not new to the United States, either. Both Native Americans and colonists brought a history of gambling from their own cultures that helped shape America's gaming views and

practices. Native Americans even developed language to describe gambling, and in 1643, the explorer Roger Williams wrote about the games of chance developed by the Narragansett Indians of Rhode Island.

Government-approved gambling, and the idea of using gaming proceeds to pay for societal projects is also a concept with a long history in the United States. Lotteries, a popular form of voluntary taxation in England during the Georgian era (1720–1750), subsequently became popular in America as European settlers arrived here. Lotteries sponsored by prominent individuals such as Ben Franklin, John Hancock, and George Washington operated in each of the 13 colonies to raise funds for building projects. Between 1765 and 1806, the state of Massachusetts authorized lotteries to help build dormitories and supply equipment for Harvard College (now Harvard University), as well as many other institutions of higher learning. Dartmouth, Yale, and Columbia are all examples of educational institutions whose early development was financed, in large part, through lotteries. A lottery was even approved to provide funds for the American Revolution.

Today, the gaming industry in the United States is large and growing. Its exact size is difficult to establish; thus, estimates can vary widely. Though there are many ways to measure the size of an industry, conventional standards include using the number of employees, the output of products, tax receipts, or customer count. The most common measure, however, is gross revenues, or sales. When gross revenue is used to gauge the size of the gaming industry, it is common to measure either how much consumers bet or how much the gaming operator wins on legal gambling games. This undertaking is more complex than it may first appear.

For example, assume that Bessie Hale, a retired schoolteacher, elects to visit a local casino with her friends. Bessie intends to play some slot machines and attend a Doug Stone concert held in the casino's ballroom. While at the casino, Bessie exchanges \$100 in cash for 100 \$1 tokens to use in the slot machines. One token at a time, Bessie bets all of the original 100 tokens. Based on the machine's payout, Bessie will win some of her \$1 bets, and because the average slot machine pays out 90 cents for every dollar put in, Bessie will end up with about 90 tokens. She continues to bet one token at a time, until she has gone through her 90 remaining tokens. Again Bessie wins about 90 percent of her bets, and thus, after betting each of her tokens, retains about 81 tokens (90 percent win rate times 90 tokens equals 81 tokens). By this time, the concert is about to begin, and so Bessie cashes in her 81 tokens and goes to the concert. Of her original \$100, Bessie has \$81 left. She will have, in the opinion of most observers, spent \$19 on the slot machines. The slot machine records, however, \$190 in total wagers (her original \$100 plus \$90 winnings). The casino's winnings are, of course, only Bessie's actual "loss" of \$19.

Confusion between the amount actually bet, which is sometimes referred to as the "handle," and the amount actually spent (lost) accounts for the widely varying estimates of the size of the legalized gaming industry. But most observers agree that the amount actually spent (lost) by customers, not the total amount they may have wagered repeatedly over the course of an evening, is the best way to measure the industry's size. Based on that approach, legalized gambling is an industry with revenue estimates exceeding \$75 billion per year. The industry encompasses state-operated lotteries, casinos, horse and dog tracks, and other locations where gambling is legally allowed (such as off-track betting parlors—OTBs).

### ***Gaming Regulation and Control***

All states that allow gaming regulate it. The federal government also regulates gaming through the U.S. Justice Department, the U.S. Treasury Department, and the Department of the Interior. Other agencies with oversight relationships to gaming include the FBI, the IRS, the U.S. Attorney General's Office, the U.S. Marshals, the Secret Service, and the Bureau of Indian Affairs. Gaming is also allowed, under strict control, in casinos operated by Native Americans (Indians). The Indian Gaming

Regulatory Act of 1988 (IGRA), which provides for a thorough system of regulation of Indian gaming, divides gaming activity into three categories:

**Class I:** Social or traditional and cultural forms of Indian gaming, conducted for minimal prizes or in connection with ceremonies or celebrations, and solely regulated by the tribes.

**Class II:** Includes bingo and related games, as well as nonbanking card games, if those games are otherwise lawful within the states where tribes conduct those activities. This gaming is regulated by the National Indian Gaming Commission and Tribes through the Tribal Gaming Commissions (TGC). TGCs are established and operated by Indian nations to regulate gaming activities on reservations. There are some 186 TGCs in full operation nationwide.

**Class III:** All other gaming, including casino gaming. Class III gaming is regulated according to the terms of compacts tribes negotiate with the governments of the states where they are located. These compacts often give tribal gaming commissions the primary, on-site regulatory responsibility for gaming.

Gaming is one of the most highly regulated industries in the United States. The governmental agencies involved with gaming regulation have their own professional association, called the North American Gaming Regulators Association (NAGRA). Formed in 1984, NAGRA is composed of federal, state, local, tribal, and provincial government agencies that are responsible primarily for the regulation of legalized gaming activities.

#### Search the Web 13.8

Log on to the Internet and enter [www.nagra.org](http://www.nagra.org).

1. At the site, click on About NAGRA.
2. Next, click on Vision & Goals.
3. Why would standardization among regulations be important for the continued development of the gaming industry?

### ***Potential Liability Issues***

Hospitality managers operating hotels or food and beverage outlets within casinos, or near other gambling venues face a number of liability issues. Those managers should continually monitor the legal environment surrounding gaming. There are three current issues of significance in this area:

1. *Accountability for reckless gaming behavior.* If a society allows gaming, does it follow that an individual should have the right to wage (and lose) all of his or her family possessions? This question is one with both ethical and legal implications. It also raises the question: What responsibility does a gaming operator have to prevent excessive or reckless wagering by those who are compulsive gamblers, visibly intoxicated, or underage? These are difficult questions to answer. To avoid problems, well-managed casino operations train their employees to watch for telltale signs that indicate threats to responsible gaming and might result in litigation in which the gaming operator is accused of irresponsible behavior. Harrah's casinos

have pioneered efforts in this area through their “Operation Bet Smart” program, designed to alert Harrah’s employees to gamblers who may have problems controlling their behavior. And Harrah’s “Project 21” is designed to help employees enforce regulations related to the minimum legal age requirements of gamblers.

2. *Employee working conditions.* The operation of gaming facilities involves legal issues that affect employees as well as consumers. One such issue is smoking. Many casinos allow smoking throughout their premises. Increasingly, employee rights groups, as well as state and local communities, are restricting smoking in casinos because of the dangers of second-hand smoke. Currently, 25 states fully or partially ban smoking in public places such as casinos. Those casino operators who continue to allow smoking where it is prohibited do so at some legal risk.

Other current issues affecting casino employees are sexual harassment of workers by guests, the legality of extensive employee background checks, and level of training and experience required by employees to demonstrate that reasonable care standards in operations are met.

3. *Internet gambling.* Bricks-and-mortar casinos in the United States are subject to federal corporate taxes; publicly traded companies must comply with Securities and Exchange Commission rules; and casinos must report large winnings with the IRS, as well as withhold federal taxes on certain winnings. In addition, “land-based” casinos must adhere to anti-money-laundering statutes and regulations administered by the U.S. Treasury Department. In contrast, currently, gaming operators engaged in the business of taking Internet wagers from U.S. citizens are not currently subject to such federal and state legal requirements. And though it is unlikely that the U.S. governments will ban all Internet gaming, probably Internet gaming operators will become subject to state and federal gaming oversight in the future. Legislation addressing the differences between currently “approved” gaming and Internet gaming is taking shape and is well worth monitoring by those managers working in the gaming industry.

Gaming remains an activity that is enjoyed by millions in this country, and it is an area within the travel and tourism industry that carries with it the potential for a great deal of enjoyment. But it also presents complex legal challenges for the businesspeople, lawmakers, and the public at large.

## Unique Responsibilities of Resort/Timeshare Operations

For many travelers, a resort is the ideal location for a vacation or holiday. There is no universally accepted definition for the term *resort*, but in the hospitality industry, it generally refers to an operation offering food and beverages, lodging, and entertainment and/or recreation. Thus, resorts are found in many locations. Favorite resort types include:

- Summer resorts
- Winter resorts
- Beach resorts
- Ski resorts
- Spa and health-related resorts
- Fishing resorts
- Recreational resorts (e.g., golf, tennis, etc.)

Some travelers became so enamored with a specific resort that they seek to reserve space at it year after year. This gave rise to the development of the timeshare concept, whereby a buyer acquires the right to occupy a piece of real estate, such as an apartment or condominium in a resort area, for a specific period of time each year. From this grew the practice of timeshare owners trading their occupancy rights with others.

### ***Background to the Resort/Timeshare Industry***

In most respects, the resort industry is not unlike the mainstream hotel industry, with two significant differences. The first is that guests at resorts are likely to engage in activities that can, potentially, put them at some level of physical risk. Resorts typically offer their guests the chance to participate in optional recreational activities. Whereas a show or concert presents minimal physical risk, others are not so benign. For example, assume that a couple elects to visit a Western-style “working ranch,” which features outdoor camping, as well as the opportunity to herd cattle while on horseback. Obviously, these activities raise the risk for numerous kinds of accidents and injuries.

The second major difference is that the resort industry has embraced timeshare as a method of development and expansion. There are essentially two main types of time-sharing plans: “deeded” and “undeeded.” Under the deeded plan, a buyer purchases an ownership interest in a piece of real estate. Under the undeeded plan, buyers purchase a lease, license, or club membership that lets them use the property for a specific amount of time each year for a specific number of years. Under both plans, the cost of the unit is related to the dates and length of time the property will be occupied.

### ***Potential Liability Issues***

Liability issues raised by the resort and timeshare industry revolve around the impact of resorts on their local communities, and the sales techniques used to sell timeshare units. On the face of it, the process of selling timeshares appears to be fairly straightforward, but the tactics used in some real estate transactions have resulted in major legal difficulties in this segment of the resort market. Consider three possible liability issues:

**1. *Economic and environmental impact of resorts and resort activities.***

Resorts, especially those in countries with underdeveloped economies, can have a tremendously positive financial impact. There are more than 7 million timeshare owners, in more than 100 countries.<sup>6</sup> Jobs, improvements to utilities, construction of roads and other infrastructure components can all result when a resort is developed. But resort development can also drive up the cost of living for local residents, damage ecosystems, and consume a disproportionately large share of natural resources. In some local economies, other businesses cannot compete with resorts for available labor, and so these communities come to depend almost entirely on the resort(s) for their livelihood. The result is litigation between the entities operating the resorts and residents and governments seeking to control the impact of the resort on the local area.

**2. *Deceptive sales tactics.*** With over 5,700 resorts worldwide participating in timeshare sales, it is inevitable that some would employ unscrupulous means to sell their products. Most states regulate time-sharing sales either under existing state real estate laws or under laws that were specifically enacted to address time-sharing. The regulating authority is usually the real estate commission in the state where the timeshare is located. In the past, problems have arisen with regard to sales deception in the areas of total costs, exchange programs, and facility operations.

<sup>6</sup>Timeshare Consumers Guide, “Timeshare Statistics,” 2009, [www.timeshareconsumerguide.org/statistics.htm](http://www.timeshareconsumerguide.org/statistics.htm). Accessed June 2011.

## Search the Web 13.9

The timeshare industry has been helped tremendously by the entrance of large and well-established hotel companies seeking to promote the resorts they own and operate.

Go to [www.hiltongrandvacations.com](http://www.hiltongrandvacations.com).

1. Click on Learn About Ownership.
2. Do you believe Hilton does a good job explaining the advantages and limitations of a timeshare purchase?

The cost of buying a timeshare includes its purchase price, as well as any required monthly or annual maintenance fees. Maintenance fees are related to the normal upkeep of common ownership property areas such as pools, tennis courts, and the like. These fees typically rise at rates that equal or exceed inflation, though some timeshare operators have used increases in annual maintenance fees to generate exorbitant profits.

For many vacationers, the chance to participate in exchange programs is a major factor in their buying decision. Exchange programs offer the opportunity to arrange trades with the owners of other resort units in different locations. But promises about the specifics of such exchange programs can be exaggerated, and hence result in litigation alleging deceptive sales practices.

In sum, timeshares can be good investments if they are operated properly. And buyers must consider the track record of the seller, developer, and management company before making a purchase. In short, they must do their homework.

3. *Rights in event of default.* Perhaps the worst-case scenario for timeshare purchasers (or managers!) is the closure or bankruptcy of the resort they partially “own.” If a developer, builder, or management company defaults on its financial obligations for a resort, the impact on the individual timeshare owners of that resort can be significant. To help ensure against problems of this type, timeshare buyers should insist that their contracts include a *nondisturbance clause*. A nondisturbance provision ensures that individual timeshare owners will continue to have the use of their timeshare unit in the event of default and subsequent third-party claims against the resort’s developer or management firm.

Given the popularity of resorts and the perceived advantages of timeshare ownership, these two components of the travel and tourism industry will continue to grow. Those hospitality managers involved in these industry segments should, as appropriate, monitor the legal environment related to them.

## Unique Responsibilities of Amusement Park Operations

Amusement parks are extremely popular with visitors of all ages. The International Association of Amusement Parks and Attractions (IAAPA) estimates that over 325 million people visit amusement parks each year, and while there, these visitors spend over \$10.8 billion. Hospitality managers working within these parks typically provide food, beverage, and lodging services, and many hospitality managers work in communities whose travel patterns and economies are heavily influenced by the amusement parks in their area.

### LEGALESE

#### Nondisturbance clause:

A clause in a contract that stipulates that leases or other ownership investments in the property will be allowed to continue uninterrupted in the event of a default or insolvency by the landlord/seller.

## History of the Amusement Park Industry

The amusement park industry began in medieval Europe when pleasure gardens were developed on the outskirts of major European cities. These gardens, forerunners of today's amusement parks, featured live entertainment, fireworks, dancing, games, and even some primitive amusement rides. Pleasure gardens remained extremely popular until the 1700s, when the political environment caused most of them to close. But one such park still exists, in Bakken, north of Copenhagen. It opened in 1583 and now enjoys the status of being the world's oldest operating amusement park.

In the late 1800s, the growth of the amusement industry shifted to the United States and the amusement park entered what many say was its golden era, culminating with the 1893 World's Columbian Exposition in Chicago. This world's fair introduced the Ferris wheel and the midway to the world. The midway, with its wide array of rides and concessions, was a huge success. The following year, Captain Paul Boyton borrowed the midway concept and opened the world's first modern amusement park on the south side of Chicago. The success of his Chicago park inspired him to open a similar facility at the then-fledgling Coney Island resort in New York City, in 1895. That, too, was a great success, and subsequently, many amusement parks were developed following the Coney Island model. In 1929, when America entered the Great Depression, spending declined, and by 1935, those amusement parks that still remained were struggling to survive.

The end of World War II brought a brief resurgence to amusement parks, but by the 1950s, television began replacing the amusement park as a major source of entertainment. Thus, when Walt Disney opened Disneyland in 1955, many were skeptical that an amusement park without any of the traditional attractions would succeed. But Disneyland, as everyone knows, proved the skeptics wrong. Instead of a midway, Disneyland offered five distinct themed areas, providing visitors with the fantasy of travel to different lands and times. It also offered many activities that could be enjoyed by the very young and the young at heart. An immediate success, Disneyland gave rise to the theme park era.

But by the 1980s, while the theme park boom began spreading around the world, the industry growth had slowed considerably in the United States, due to high operational costs and a lack of markets large enough to support a theme park. Today, those parks that remain are very large and thus have substantial impact on the economies of those communities in which they are located.

### ***Potential Liability Issues***

In addition to issues related to food and beverage service, hospitality managers working at or near major amusement parks may face three amusement park-specific legal challenges:

1. *Safety of activities.* Accidents related to amusement park rides, though they typically receive widespread publicity, are actually quite rare. Injury figures are but a small fraction of those attributed to other recreational activities. In fact, in 2009, 1,181 ride accidents were reported to the National Safety Council,<sup>7</sup> most of which were minor bruises, strains, and sprains. In comparison, each year, an estimated 20,000 people are treated for injuries sustained at concerts. Nevertheless, amusement park operators implicated in the injury of a visitor will be expected to have exhibited an appropriate

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<sup>7</sup>National Safety Council Research and Statistical Services Group, "Fixed-Site Amusement Ride Injury Survey, 2009 Update," Prepared for the International Association of Amusement Parks and Attractions, Alexandria, Virginia, August 2010, [www.iaapa.org/safety/RideSafetyReports.asp](http://www.iaapa.org/safety/RideSafetyReports.asp). Accessed June 2011.

amount of care in the maintenance and operation of their rides. If they do not, probably they will be held all or partially liable for the damages.

2. *Performance expectations.* When guests are charged an admission fee to enter a park, there are expectations on the part of the park's operators that guests will behave appropriately. If guests do not, they can be removed from the park. In a similar manner, guests will have expectations, too; for example, that advertised rides will be available, that appropriate facilities such as restrooms and food and beverage outlets will be provided, and that these will be maintained in an appropriate manner. If they are not, guests may have a legitimate basis for legal action against the park.
3. *Litigation related to employee training.* Much of the work required to appropriately maintain amusement type rides can be dangerous if not performed properly. Thus, adequate staff training programs are critical if park employees are to safely perform their required tasks. If such training, as well as the proper tools and safety devices, are not provided by a park's management, potential lawsuits related to resulting accident or injury are very likely to occur.

## » ANALYZE THE SITUATION 13.2

SANDRA WILKENS WAS A roller-coaster enthusiast who, along with others, attended the Harley Amusement park's "Roller Fest," a POP (pay one price) event featuring unlimited roller-coaster riding by all attendees. Sandra, 25 years old, paid the \$50 admission fee and was, at the time of her fatal accident, riding the Superman, a wooden double-loop coaster. On the final loop, Sandra was thrown from the coaster and killed. Witnesses say she was standing in the coaster car as it approached the final loop.

Sandra's family filed suit against the park and its state ride inspectors, claiming negligence because Sandra was placed in a car where she had the ability to stand up. Park officials countered that all riders were informed, via a public address system, not to stand during the ride's operation. In addition, they pointed to posted signs that warned riders not to stand up during the entire length of the ride. Further, they said, the ride was operating properly, all rider restraints had been inspected and approved that morning, and Sandra had taken inadvisable action to defeat the restraining devices built into the ride.

1. What level of responsibility should the park operators be assigned for Sandra's behavior?
2. List five specific actions the park management could take, or institute, to help eliminate such guest behavior in the future.
3. What similar situations might you face in your own area of hospitality where responsibility for guest injury may be all or partially related to guest behavior?

## 13.5 ONLINE TRAVEL SALES

Online travel sales are those that are completed via use of the Internet and the World Wide Web. They include the sale of hotel rooms, car rentals, and other transportation services such as airline tickets and cruise reservations. Travelers who use online services tend to be computer-savvy, using the Internet at a higher rate than the general public, according to a Travel Industry Association of America “Travelers’ Use of the Internet” study. Currently, over 100 million travelers use the Internet to seek travel information or to book travel. This number includes both business and leisure travelers.

The online travel sales segment is also one of the Internet’s largest components. By most industry estimates, travel accounts for 30 to 40 percent of all Internet consumer sales. And this segment of the travel industry continues to grow, posting a 47 percent increase in online travel sales revenue in 2002, despite an overall travel industry sales decline of 5 percent.

### Background of the Online Travel Sales Industry

In 1995, the total revenue generated by the online travel sales industry was close to zero. According to eMarketer, 2010 sales exceeded \$92.5 billion. That year, 162 million people in the United States will research products online, and much of this research will lead to in-store purchases. More than 82 percent, or 133 million people, who research travel options online end up making online purchases.<sup>8</sup>

The enhanced accessibility of last-minute travel specials via the Internet, coupled with everyday low prices, have resulted in a tremendous increase in online travel sales. Whether true or not, the majority of travelers believe that the best travel “deals” can be found on the Internet, and for these travel buyers, price is a very important decision factor. As a result, the online travel sales industry will likely continue to play a larger and larger role in the overall travel industry.

Essentially, there are two basic types of websites used to sell online travel services. The first are those that serve as electronic brochures (e-brochures) and in this capacity display information about one or more travel products. An e-brochure might include, for example, pictures of a hotel room, departure and arrival schedules of a common carrier, or details of a travel package. These websites also act as catalogs, basically displaying information about a business and include, in most cases, a method (typically email) that enables the website visitor to ask for additional information about ordering products or services, or about communicating directly with the entity identified on the site.

The second type of website enables consumers to make a purchase or reservation online. Thus, an airline ticket can be purchased, a hotel reservation made, or a rental car reserved directly at the website. These e-commerce sites allow the traveler to see the product offered, as well as buy and pay for it online. In order to do so, however, the site must have several features not required by an e-brochure site, and it is the use of these features that raise the legal issues surrounding the use of e-commerce sites. These features include:

- *A bank account that can process Internet purchases:* This means an Internet merchant account, which is different from a typical business bank account because it is designed specifically to handle Internet purchases. Funds from Internet purchases are deposited in these accounts.
- *An agreement with a credit (bank) card processor:* A credit or bank card processing company is responsible for collecting funds from the buyer and depositing those funds into the Internet merchant’s bank account. For this

<sup>8</sup>Jeffrey Grau, “U.S. Retail E-Commerce Forecast: Room to Grow,” *eMarketer*, March 2010, [www.emarketer.com/Report.aspx?code=emarketer\\_2000672](http://www.emarketer.com/Report.aspx?code=emarketer_2000672). Accessed June 2011.

Search the Web **13.10**

E-commerce sites, by definition, must allow consumers to buy while at the sites. PayPal is one example of a credit card processing company required to allow such purchasing. Log on to the Internet, and enter [www.paypal.com](http://www.paypal.com).

1. When you arrive, click on Business.
2. Next, review the different payment options.
3. Describe the differences between these options.
4. Which do you believe would be the best choice for a business in the hospitality industry?

service, the processor will take, from the revenue generated by the merchant, an agreed-on fee for each purchase. This fee will vary, based on the type of bank card used by the purchaser.

- *A secure connection:* When a website takes private and sensitive information like a credit card number from a visitor, it must provide a level of security to protect it from unscrupulous individuals. To do so, an e-commerce website must have a “secure” connection. Sites can purchase their own secure connection or share the use of one with others for a small percentage of the sold item’s purchase price.

The total cost of developing and maintaining an e-commerce site is, because of the fees involved, higher than that of maintaining an e-brochure site. Thus, some travel providers elect to allow online purchases, while others prefer the brochure approach. Each type is involved in a rapidly developing and specialized area of law associated with the online travel sales industry.

## Legal Issues Related to Online Travel Sales

The advent of the online travel industry has raised some new issues, and caused the modification of some older legal issues. Here are five of the most important:

1. *Parties to the contract.* On websites, it is sometimes difficult to determine exactly who is party to a consumer transaction. For example, assume that a business traveler, utilizing the Internet, logs on to the Priceline.com travel site. While there, the traveler bids for a room and is successful in getting a reservation for the Chicago Hilton. Upon arrival, however, the Chicago Hilton has no record of the traveler’s reservation. If, indeed, the error was on the part of Priceline.com, the traveler’s legal action would likely be, all or in part, with Priceline.com. In this scenario, a judge would likely rule that Priceline advertised the ability to secure for the traveler a reservation that, in this example, it did not. Alternatively, if the traveler had made the same reservation on Hilton’s own website, the responsibility for providing the room, and hence the responsibility for failure to provide it, would ultimately rest with the hotel. With multiple third-party websites, and with the ownership of websites frequently shared by members of the travel industry, the entity responsible for performing the terms of a web-initiated contract may not be readily apparent to any but the most sophisticated of users.

**LEGALESE****Global distribution system**

**(GDS):** An interconnected computer system that connects travel professionals worldwide to those companies selling travel services.

2. *Data interface issues.* When airlines, hotels, cruise lines, and others take reservations on the Internet, the potential for problems, and thus litigation, increases. The reason is that reservation systems on the Internet are often not directly connected (interfaced) with the service provider. To clearly understand the problem, it is important to understand that an independent hotel in, say, Manhattan is not likely to directly connect its reservation systems with the thousands of websites offering hotel rooms for sale. Such direct connections are expensive and frequently technologically unwieldy. As a result, if a third-party-operated website advertising hotel reservations for a specific hotel is not interfaced with the hotel's reservation system through the *global distribution system (GDS)*, it must communicate with the hotel via fax or email to confirm that a room has been sold via the website. The problem, of course, is that in the time between the sale of the room on the website and the hotel's notification (and acknowledgment) of the sale, the same room may have been sold by the hotel itself, or even on another website. The result may be either an oversold situation, or that the product reserved (and in many cases confirmed on the website making the sale) is not available upon the guest's arrival.

Hospitality managers entering into sales agreements with websites that are not interfaced with their own product inventories should have a very clear understanding with the website provider as to responsibility in the event guests arrive with reservations erroneously made due to an absence of real-time interfacing.

3. *Data security/ownership issues.* When a reservation for a hotel room, cruise, or airline flight is made, personal information is typically gathered from travelers. Other businesses in the travel industry are often interested in this information, especially as it relates to the latest economic data on travel to an area, where those travelers come from, and their spending patterns. Consumers, on the other hand, have a right to privacy, and when personal information is accessed by organizations unknown to them, or unapproved by them, they may have cause for concern and complaint.

Even within a single company, sharing personal guest information can be cause for litigation. For example, consider the case of Marques Johnson. He is a hotel franchisee who owns and operates a Best Sleep hotel. Best Sleep is one of five hotel brands franchised by United Hotels Inc., a large franchise company. United instructs all franchisees that they are to begin collecting email addresses from guests and then make the database of those email addresses available to United so that corporate advertising efforts can be better targeted. Mr. Johnson objects on three grounds: First, that it is his staff, not the franchisor's who will collect the information, and thus it rightfully belongs to Johnson's company, not United Hotels. Second, he is concerned that the addresses of his guests will be shared, by United, with other

Search the Web **13.11**

Hospitality managers and service providers seeking to offer consumers the ability to reserve online can choose from a variety of options. Log on to the Internet, and enter [www.webervations.com](http://www.webervations.com).

1. When you arrive, scroll down to Online Reservations.
2. Describe the differences between a "reservation request" and a "real-time reservation."
3. Why would a hotel manager elect to choose one or the other?

United franchisees operating different United brands in the same city as Johnson's franchise. These hotels, in many cases, compete directly with Johnson's hotel. Therefore, sharing data on his guests would, in his opinion, unfairly assist these other hotels in competing with him. Last, Johnson states, his guests have a right to know when he is sharing their email addresses with others; thus, ethically, unless he has these guests' preapproval, he does not believe he should share their email addresses. The franchisor maintains that he must, to remain a franchise in good standing, collect and share the addresses.

Lost in this disagreement, of course, is the issue of the guests' right to privacy. Although the law in this area is still developing, the best practice today is that personal data related to guests should not be shared with organizations that did not directly collect the data, unless the guest has been explicitly informed about the sharing arrangement prior to the information's collection. In addition, those who collect personal data on guests have a responsibility to take reasonable care in securing that data from theft or misuse by others.

4. *Forum (venue) selection issues.* "Forum" refers to the location in which a lawsuit may properly be filed. In many cases, where a legal dispute has taken place, and thus should be settled, is relatively straightforward. For example, assume that a restaurant manager working in Alabama hires a local electrician to install additional lighting in the restaurant's parking area. If the restaurateur does not believe the electrician has adequately performed the terms of his contract, the dispute would be resolved, in all likelihood, by a court in Alabama and in accordance with Alabama law.

Now assume that the same restaurateur purchased, online, a cruise for herself and her husband. The cruise was advertised on a website managed by a New York state travel agency. It offered a ten-day Caribbean cruise departing from Miami. The cruise ship itself is operated by an Italian cruise line company. If, ultimately, the cruise supplied did not meet the expectations of the restaurateur, the proper venue for her potential legal action would be less clear. But there would be no question if the contract agreed to by the restaurant manager included information about the appropriate location for any needed legal action. A *forum (venue) selection clause* is a statement in a contract specifically identifying the court or entity authorized to hear disputes related to a contract's terms.

Those travel companies doing business on the Web will typically insert forum selection clauses into their contracts in an effort to preclude having to defend against lawsuits that might be filed anywhere in the world. The courts will generally enforce Internet forum selection clauses if they are clearly communicated to purchasers. But though forum selection clauses are commonly used by hotels and international cruise line operators, it is important to point out that the U.S. Department of Transportation (DOT) has prohibited the use of these clauses for the purchase of airline tickets.

In addition to identifying the location of potential litigation, website travel providers may, for instance, insert contract clauses that require buyers to agree that any dispute arising would be resolved before an arbitration tribunal, rather than a court.

5. *Lawful advertising.* Internet travel advertising, like all advertising, is subject to regulation through state consumer protection statutes, state and federal telemarketing statutes, the Federal Trade Commission (FTC), the Department of Transportation (DOT), and the Sellers of Travel statutes enacted by some states. Many of these are intended to address the problem of deceptive advertising versus "puffing." Puffing is a common, and allowable, advertising technique used by both e-brochure and e-commerce sites. It is, essentially, the act of "accentuating the positive" when promoting a travel product. Thus, a hotel site may claim that its rooms are "beautiful," "modern," or "spacious," and the assumption by law is that consumers should recognize such terms as an attempt by the advertiser

## LEGALESE

### Forum (venue) selection

**clause:** A statement in a contract identifying the agreed-on tribunal for resolving legal disputes related to the contract's terms.

to encourage sales. But when such superlatives are considered sufficiently misleading and deceiving, they may fall under deceptive advertising or actionable misrepresentation statutes; depending on the specific conditions of the accommodations, or actual inferiority of the services purchased online. Certainly, puffing makes for interesting and effective advertising copy, but truth in advertising is as effective a practice when describing products and services on a website as it is on a restaurant menu.

For the most part, websites are just another form of advertisement, and thus the developed law related to advertising applies to them as well. Some special managerial considerations about website advertising are given in the next Legally Managing at Work section.

## LEGALLY MANAGING AT WORK:

### Internet Advertising Checklist

The Federal Trade Commission (FTC) considers as deceptive any ad that is likely to mislead consumers acting reasonably and that is material (i.e., important) to a consumer's decision to buy the product or service. To avoid charges of deceptive or illegal advertising, hospitality managers should review with its website developers the following Internet advertising checklist. If the answer to any of the checklisted items is no, the site content should be revised until the answer is yes.

#### 1. Are all statements and claims true?

A claim is a legal advertising term referring to any provable statement contained in an advertisement. It is the responsibility of the advertiser to be able to "prove" all claims made. Hospitality managers should ensure that they have the ability and proof required to substantiate all claims made before they are published on the website. If there is any doubt about the validity of the claim, it should not be posted on the Internet.

#### 2. Are prices accurate?

Prices, if given, must be stated accurately. If taxes or local assessments will be added, these too must be identified. In addition, any conditions that must be met to get the advertised price must also be disclosed.

#### 3. Are conditions spelled out clearly?

It is best to disclose all conditions necessary to enable the buyer to fully understand what is offered for sale. For example, a hotel offering "free breakfast" with the price of a room would be well advised to detail whether there are limits to the number of guests per room who are allowed to eat, as well as when the breakfast is offered. In general, the use of the word free should be avoided when there are, in fact, conditions that must first be met, unless those conditions are prominently disclosed. In addition, the words sale or discount should be avoided, unless there have been substantial and recent real-life sales made at a higher price.

#### 4. Is inappropriate puffery avoided?

The development of an Internet site typically involves the use of sight, sound, and text on a webpage. Although puffery is allowed, the information that is presented must be carefully reviewed to ensure that it is within acceptable bounds. It is difficult, for example, to claim that a web ad contains allowable puffery, when a hotel displays the picture of one very nice room, and uses the phrase “great rooms,” when, in fact, other rooms of the same quality do not exist within the hotel.

The Web has spawned some new views toward puffery. In a recent lawsuit against a college textbook retailer that on its site that its store was “the globe’s largest college bookstore,” the website owners claimed that the statement was puffery and thus allowable. The National Advertising Division of the Council of Better Business Bureaus Inc. disagreed, stating that claims like this might have been puffery in a non-Web context, but online, which is accessible worldwide, and where the website owner can appear large or small with few obvious clues to actual size, statements such as this one appear, on their face, to be believable, and thus are no longer puffery.

#### 5. Have web-specific advertising issues been considered?

The Federal Trade Commission has developed some web-specific standards for advertising. Some of those standards include:

- Placing disclosures near, or on the same screen as, the related claims.
- Ensuring that, when using links or hyperlinks to disclosures, the links are obvious and easy to find.
- Ensuring that text, graphics, or sound is not used to distract attention from disclosure information.
- Ensuring that disclosures are repeated, as needed, on lengthy websites.

#### 6. Are proper marks, logos, and business names used correctly?

Are proper symbols, such as the trademark symbol, used where appropriate? Are trademarks and logos accurate and used only when written, prior approval has been granted? Many website developers create a style manual that details the approval procedures to be used before including such marks, logos, or business names on their sites.

#### 7. Have photos and drawings used been cleared for intellectual property rights?

The Internet abounds with pictures and images that can be easily copied or downloaded. The best rule to follow when creating your own website is quite simple: If your organization did not directly create or pay for the creation of the image you wish to use, you should obtain written permission from the owner of that image prior to its use, unless its reproduction and sharing has been authorized by the owner.

## WHAT WOULD YOU DO?

You are the manager of a franchised, 90-room limited-service hotel property located across the highway from 7 Flags, a major amusement park that is extremely busy in the summer. One of the most popular family packages your hotel sells includes a two-night stay (in on Friday night, out on Sunday morning), complimentary breakfast, and tickets to 7 Flags. You purchase the tickets, in quantity, from the 7 Flags group sales department. Your packages are marketed directly by your hotel and sold through select travel agents to whom you pay a sales commission.

At 3:00 P.M. on a Saturday afternoon in July, lightning from a severe summer thunderstorm strikes a major electrical transformer in the area, causing an area power outage that includes the amusement park and results in the park's immediate closure. Your hotel is sold out. The power company is unsure how long it will take to fully restore power, but its estimate is hours, not minutes. Your own hotel has a backup generator—thus, essential hotel services such as emergency lighting and power to the property management system (PMS) are maintained.

Your lobby, however, is filled with families seeking to check out (it is 4:30 P.M.) so they can leave the area and drive back to their

homes (where most of them will have power.) Approximately 60 guests want to check out. None of these guests believe they should have to pay for their Saturday night stay because, due to the power outage, they will not use their reserved rooms. Some want a refund for Friday night as well, claiming the hotel did not provide the complete two-day “package” that was promised.

1. Would you bill these 60 guests for Saturday night's stay, even if they elect to leave?
2. Would you give the guests any other compensation?
3. Would your course of action be affected if you learned the theme park had made the decision to refund the price of admission to all those who entered the park on that day?
4. If the theme park had made the refund mentioned, do you believe the amount of the refund belongs to the disappointed park attendee or to your hotel?
5. Describe briefly how the decision you make will affect:
  - a. Your relationship with the theme park's management
  - b. The relationship with your franchisor
  - c. Your relationship with travel agents marketing your packages

## THE HOSPITALITY INDUSTRY IN COURT

For an example of a case on matters of jurisdiction, consider the case of *Decker v. Circus Circus Hotel*, 49 F.Supp. 2d 743 (Dist. N.J.).

### FACTUAL SUMMARY

Janice and Robert Decker (the Deckers), New Jersey residents, were guests at the Circus Circus Hotel (the Hotel) in Las Vegas, Nevada. The Hotel was part of a Nevada corporation doing business in Nevada. One or both of the Deckers were injured while at the hotel, and they sued Circus Circus for negligence in New Jersey Federal District Court.

### QUESTION FOR THE COURT

The question for the court was whether the New Jersey court had jurisdiction or the power to adjudicate the matter. A court can exercise jurisdiction over a defendant if the defendant has a certain level of contact with the geographical area

where the court sits. This level of contact is referred to as minimum contact, and the resulting jurisdiction is personal or specific jurisdiction. The Deckers argued that the Hotel had enough contact with the state of New Jersey to allow the court to exercise jurisdiction. Specifically, the Deckers pointed to national television campaigns, which aired in New Jersey, and advertisements printed in national print media such as *USA Today* and *People* magazine. The Hotel first contended the ads used in New Jersey were isolated, one-time television spots. The Hotel also argued the lawsuit brought by the Deckers did not arise from the television or magazine ads, so the contact between the Hotel and New Jersey would not meet the minimum contacts standard.

## DECISION

The court held in favor of the Hotel and found there was not enough contact between the Hotel and the state of New Jersey to give the New Jersey court jurisdiction. Instead, the case was transferred to the U.S. District Court in Las Vegas, Nevada, since the Hotel was a Nevada corporation, hence jurisdiction would be proper for the state of incorporation.

## MESSAGE TO MANAGEMENT

Plaintiffs want to sue in the most convenient (and sometimes favorable) location possible. Potential defendants want to reduce the number of locations in which they can be sued due to the expense and uncertainty involved.

For an example of an international jurisdiction case, consider the case of *Bernardi v. Apple Vacations*, 236 F.Supp. 2d 465 (E.D. Penn., 2002).

## FACTUAL SUMMARY

Karen Bernardi, a resident of Pennsylvania, was a passenger on a Lineas Aereas Allegro S.A. de C.V. (Allegro) flight from Cancun, Mexico, to Newark, New Jersey. Bernardi and several other passengers alleged they were treated inhumanely during their flight. Bernardi and the other plaintiffs sued Allegro for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, misrepresentation, false imprisonment, intentional infliction of emotional distress, and negligence, all of which are state law causes of action. The original suit was filed in the Court of Common Pleas of Delaware County, a Pennsylvania State Court. Allegro requested the case be moved to the United States District Court for the Eastern District of Pennsylvania, which was granted. At that time, Allegro requested to have the case dismissed since the Warsaw Convention governs injuries suffered by passengers on international airline flights.

## QUESTION FOR THE COURT

The question for the court was whether the Warsaw Convention, an international treaty signed and ratified by the United States, preempts or overrules state law dealing with injuries suffered on international flights. Bernardi argued the Warsaw Convention only applied to acts of negligence, not willful misconduct. Therefore, the claims based on the willful misconduct of the defendant should be allowed to proceed under Pennsylvania state law. Allegro first argued the language of the Warsaw Convention expressly included provisions relating to willful misconduct. There were specific causes of action contained in the Warsaw Convention for willful misconduct. Allegro also argued the purpose of the Warsaw Convention was to achieve uniformity in international airline litigation; to allow state law claims for willful misconduct would be counterproductive. The defendant also pointed out the recent U.S. Supreme Court cases where the Warsaw Convention was found to apply to willful

misconduct claims. Finally, Allegro argued the plaintiffs were misreading a provision, which allowed the determination as to whether conduct was willful misconduct to be made using local (state) law.

### DECISION

The court held for the defendant, Allegro, and dismissed the claims brought by Bernardi. The court did point out, however, that Bernardi could bring suit against Allegro for any cause of action allowed under the Warsaw Convention.

### MESSAGE TO MANAGEMENT

Be sure to put venue and jurisdiction clauses in all contracts for passage, as these issues can be very expensive to litigate and may require the carrier to defend itself around the world.

## WHAT DID YOU LEARN IN THIS CHAPTER?

The hospitality industry is one component of the larger travel (and tourism) industry, which is heavily regulated. Because it is so large and diverse, the number of groups and organizations responsible for the legal oversight of travel activities is large. Some of the most notable of these include governmental agencies, at both the federal and the state level, as well as nongovernmental groups that operate internationally to coordinate travel policies.

The travel industry has historically relied on travel experts (travel agents) to assist travelers in planning their trips. These agents, who have a fiduciary responsibility to travelers, are a highly professional group. Tour operators, whose role is to develop travel and vacation packages, typically use travel agents to market these packages, thus creating a special, mutually dependent relationship between travel agents and tour operators.

The transportation industry also plays a critical role in the travel industry. It consists primarily of common carriers, which include those entities providing transportation services to all travelers. These companies, providing airline, bus, cruise ship, and train services, are a large and highly regulated segment of the travel industry. The rental car portion of the transportation industry, while not technically a common carrier, also plays a critical role in the U.S. travel market, as well as in those countries with well-developed road and highway systems.

Because so many people travel for enjoyment, the tourism business is, for many communities, a critical factor in the local economy. Gaming establishments, resorts, and amusement parks are all popular leisure-time venues, but they are also potential sites of legal entanglements for those who operate them, as well as for those who visit them.

The Internet has emerged as a major force in the travel and tourism industry. It has affected how industry products are marketed and sold and has raised new legal questions relating to the uniqueness of the electronic product distribution systems now in widespread use on the World Wide Web.

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

1. Identify the five major components of the travel industry.
2. Detail the legal relationship that exists between the three parties when a travel agent sells to a client a travel package marketed by a tour operator.
3. Specify at least two legal issues that would be considered unique to the transportation industry.
4. Tribal gaming is a controversial issue in many communities. Prepare a list of five points explaining your support for or opposition to its expansion.
5. Write a paragraph explaining why you might seek employment in the gaming, resort, or amusement park industries. What might be some disadvantages of such employment?
6. The Internet is popular among travelers. Discuss your view of how the Internet will impact the travel agent and tour operator segments of the travel industry in the coming years.

## RAPID REVIEW

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In teams of four, collect and review at least eight “legal disclaimers and legal acknowledgment notices” from online reservation sources (both from branded sites such as Hilton.com and third-party sites such as Expedia.com). Using this information, the discussion in the book, and input from the class, in two pages or less, create a model disclaimer and notice provision for a branded online reservation site.

## TEAM ACTIVITY