

Law and the Hospitality Industry

Law and the Hospitality Industry

SECOND EDITION

Sandi Towers-Romero

FLORIDA SOUTHWESTERN STATE COLLEGE



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*To my students, my friends, my colleagues and
the wonderful staff at Carolina Academic Press.*

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Preface to the First Edition

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

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

Sandi Towers-Romero

Preface to the Second Edition

I am so excited to welcome you to the completely updated *Law and the Hospitality Industry*.

New cases in the second edition include:

Bostock v. Clayton County, Georgia

Braswell v. Colonial Pipeline Co.

California, et al. vs. Texas, et al.

Craig v. Boren

Department of Revenue of Ky. v. Davis

Fisher v. University of Texas at Austin I and II

Granholm v. Heald

Guy v. Baltimore

Stricker v. Shor

Tennessee Wine and Spirits Retailers Assn. v. Thomas, Executive Director of the Tennessee Alcoholic Beverage Commission, et al.

Texas v. Azar

Other new material in the second edition includes:

A Note on the COVID-19's Pandemic Impact on the Hospitality Industry

Chapter One:

- Complete update on the associations in the hospitality industry—their new roles and new statistics
- Updates on states having regulations over the hospitality industry
- Update on the High Speed Rail Initiative
- Update on Cruise Lines International Association (CLIA®)
- Update on Indian Gaming

Chapter Two:

- Update on franchising fees
- Update on international franchising requirements, including the new Brazilian Franchise Law

Chapter Three:

- Update on Federal Unemployment Tax Act (FUTA)
- Inclusion of *Bostock v. Clayton County, Georgia*, 590 U.S. ____ (2020), (S. Ct. June 15, 2020) the Supreme Court held that firing individuals because of their sexual orientation or transgender status violates Title VII's prohibition on discrimination because of sex. Title VII prohibits discrimination because of an "individual's ... sex." 42 U.S.C. § 2000e-2(a)(1).

Chapter Five:

- Updates on the Restatement of Torts 2nd and 3rd

Chapter Six:

- Updates on State Innkeepers' Laws

Chapter Seven:

- Update on background checks for employment
- Update on affirmative action and *Fisher v. University of Texas at Austin I*, 570 U.S. 297 (2013), the USSC stated the 5th Circuit Court of Appeals should apply strict scrutiny to determine the constitutionality of the University's race-sensitive admissions policy, and in *Fisher II*, 579 U.S. ____, 136 S. Ct. 2198, 195 L. Ed. 2d 511, (2016) the USSC held the Court of Appeals for the 5th Circuit correctly found that the University of Texas at Austin's undergraduate admission policy survived strict scrutiny.
- Update on how to qualify employees for employee exemptions as to overtime pay
- Complete update on tip credits—their use and amounts
- Update on when tip pooling is allowed
- Inclusion of updates on the Trade Adjustment Assistance Reauthorization Act 2015

Chapter Eight:

- Discussion of the Defend Trade Secrets Act of 2016 (DTSA)

Chapter Nine:

- Update on the roles of the Hotel and Motel Associations

Chapter Ten:

- Update on the FDA and defining gluten free
- Inclusion and discussion of *Tennessee Wine and Spirits Retailers Assn. v. Thomas, Executive Director of the Tennessee Alcoholic Beverage Commission, et al.*, 139 S. Ct. 2449 (2019), a case that chipped away at some of a state's control over alcohol.

Chapter Twelve:

- Update to the Alabama Workers' Compensation Law
- Update to the Affordable Care Act (ACA)
- Inclusion and discussion of *California, et al. vs. Texas, et al. and California v. Texas* as they pertain to the future of the ACA
- Update on the ACA and small businesses

Enjoy!

Sandi Towers-Romero, May 2021

A Note on the COVID-19 Pandemic's Impact on the Hospitality Industry

This book is being updated for the second edition, during the first worldwide pandemic in 100-years — COVID-19. The Spanish Flu pandemic of 1918 to 1920, affected the hospitality industry the same as today—with social distancing, lockdowns, required mask wearing, and limiting access to public places. Governments encouraged higher sanitation procedures, and yes, there was the mass distribution of flu vaccines. Just as today, there were protests against these restrictions. Some people felt they went too far, and some felt stricter measures were called for.

It was reported in the cities of Minneapolis and St. Paul, Minnesota, that several establishments serving alcohol and food deliberately broke the Spanish Flu closing order to continue their regular business. “One saloon was discovered with the back door route open.”

The elevator regulations in St. Paul were particularly unpopular. “Some of the downtown hotels objected to stopping their elevators, saying that they would lose guests.” This caused a change in the regulations to permit hotel elevators and those in apartment houses to operate. Many people insisted it was unhealthy for the sick to be forced to climb stairs in their impaired state, while others felt concerned people would be shut off from fresh air if they were not allowed to use their elevators. The city of St. Paul compromised and all elevators were back in use starting November 9, 1918, although only one person per 5 square feet was permitted. (www.ncbi.nlm.nih.gov/pmc/articles/PMC1997248)

Fast-forward to 2020–2021, and the hospitality industry is now following similar, albeit, more modern protocols and mandates that were imposed 100-years ago during the Spanish Flu pandemic:

- Requiring social distancing in enclosed areas
- Increased sanitation measures—from more regular and deeper cleaning procedures, to the installation of HEPA air filters in ventilation systems
- Limiting the number of guests at hospitality functions, to allow for social distancing
- Lockdowns of establishments such as restaurants and especially “saloons”—bars and nightclubs
- Mask mandates prior to entering the hospitality business or venue.

As I am writing this, there are multiple vaccines being distributed and administered around the globe. They are promising great efficacy in protecting against the COVID-19 virus. As such, I felt adding this issue to the core of the book would make the book less relevant and dated as the world hopefully re-opens in the near future. But still, we need to look briefly at COVID's lasting impact on the hospitality industry.

Impact on Hospitality

- According to the American Hotel and Lodging Association, 71% of American hotels will not make it for another 6 months without federal assistance, as per projected travel demands. (www.ahla.com)
- The World Travel & Tourism Council has recently warned the COVID-19 pandemic could lead to a cut of 50 million jobs worldwide, in the travel and tourism industry. As per an Oxford economics study, Asia is expected to be the worst affected. The hospitality industry accounts for 10% of global GDP. (www.hospitalityinsights.ehl.edu)

Impact by Country

- **Fiji's** tourism total contribution to GDP: \$2 billion (39.3 percent of total GDP). Jobs reliant on tourism: 117,200 (35.7 percent of all jobs). Fiji tourist arrivals fell by 99 percent in May 2020, compared with the same period 2019. With such a large chunk of its revenue usually relying on foreign visitors, the country is expecting its overall economy to decline by 21.7 percent in 2020. (www.travelpulse.com)
- **Belize's** tourism total contribution to GDP: \$794 million (41.8 percent of total GDP). Jobs reliant on tourism: 61,400 (37.1 percent of all jobs). Without tourism dollars coming in, indigenous business

- owners in Belize are closing up shop and reverting to their roots as farmers and fisherman to sustain themselves. (www.travelpulse.com)
- In **Thailand** 11% of the population rely on tourism for their income, that is 4.4 million people. After a record 39.8 million foreign visitors in 2019, whose spending accounted for 11.4% of gross domestic product, Thailand had looked to welcome more than 40 million tourists in 2020. But with flight bans and quarantines, the Central Bank of Thailand expects only 8 million visitors this year. (www.weforum.org)
 - **Mexico** is perhaps the most vulnerable of the countries, with 15.5% of its GDP relying on the travel and tourism industry. (www.weforum.org)
 - **Spain and Italy** are highly vulnerable; Spain owes 14.3% of its GDP and Italy owes 13.0% of its GDP to tourism. (www.weforum.org)
 - In the **U.S.**, despite just 8.6% of GDP being associated with tourism, the travel and tourism industry represents 16.8 million jobs. (www.weforum.org)

Companies Filing for Bankruptcy Due to COVID

- **FoodFirst Global Holdings**, the parent company of restaurant chains Bravo Cucina Italiano and Brio Tuscan Grille, filed for Chapter 11 bankruptcy on April 10, 2020. (www.nbcnews.com)
- **CMX Cinemas**, a chain of movie theaters with dine-in options, filed for Chapter 11 bankruptcy on April 25, 2020. The theaters, are owned by parent company Cinemex Holdings. Cinemex was in the process of acquiring the Star Cinema Grill, a deal that was inked only six weeks prior to filing for bankruptcy. (www.nbcnews.com)
- **Hertz Corporation**, car rental services, filed for Chapter 11 bankruptcy on May 22, 2020. Hertz, also owns Dollar and Thrifty car rental brands. (www.nbcnews.com)
- French-inspired bakery and café chain **Le Pain Quotidien** filed for Chapter 11 bankruptcy on May 27, 2020. The company's U.S.-based unit, PQ New York, is selling its locations to Aurify Brands, which owns fast casual chains The Little Beet and Five Guys Burgers, among others. (www.nbcnews.com)
- **CEC Entertainment**, the parent company of kid-friendly Chuck E. Cheese restaurants, filed for Chapter 11 bankruptcy on June 24, 2020. The Texas-based company operates over 700 Chuck E. Cheese and Peter Piper's Pizza locations. (www.nbcnews.com)
- **Cirque du Soleil**, the Canadian-based acrobatics and entertainment group, filed for Chapter 15 bankruptcy on June 29, 2020. The com-

pany said their financial restructuring is due to pandemic-related cancellations and closures. (www.nbcnews.com)

- **Sizzler USA**, the operator of the casual steakhouse chain, filed for Chapter 11 bankruptcy on Sept. 21, 2020. The 62-year-old brand cited the filing as a direct result of pandemic financial strain and stated it plans to keep all of its 14 company-owned locations open. This information is according to a press release from Sizzler. Sizzler also has more than 90 franchised locations. (www.nbcnews.com)
- **Garden Fresh Restaurants, LLC** (Souplantation/Sweet Tomatoes) is liquidating all assets under their Chapter 7 Bankruptcy filing. The chain, could not survive the impact of the COVID-19 pandemic. They permanently closed all 97 restaurants and 3 distribution centers in early May 2020. It is, to-date, the largest restaurant bankruptcy and liquidation as a result of the pandemic. (www.prnewswire.com)
- **Thai Airways** officially entered its bankruptcy reorganization, filed on 27 May 2020. This bankruptcy reorganization was granted by the Central Bankruptcy Court of Thailand on 14 September, 2020. This allows the company to proceed with its recovery plans. The company expects to complete the legal steps and be fully into its reorganization process before the end of first quarter, 2021. (www.paxex.aero)

This is a short list of bankruptcy filings due to COVID-19. Not all of these filings will result in complete closures, unless so noted, but it shows the severe economic distress placed on the hospitality industry resulting from this pandemic.

Expansion of Chapter 11 Bankruptcy for Small Businesses

On February 19, 2020, the Small Business Reorganization Act (SBRA), added a new subchapter to the United States Bankruptcy Code. Commonly referred to as Subchapter V, the SBRA was enacted in an effort to reduce the cost and expense of small business bankruptcy reorganizations. Congress passed this just in time for the global COVID-19 pandemic, which is anticipated to have a devastating impact on small businesses, especially the hospitality industry. Subchapter V may be a key to their survival. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, which includes the first amendment to Subchapter V, greatly expanded bankruptcy protection to small businesses. In the first full year of Subchapter V, 1643 cases have been filed nationwide. (<https://news.bloomberglaw.com/>)

Who Is an Eligible Debtor under Subchapter V?

To be eligible for Subchapter V, an individual or business debtor must be engaged in a commercial activity with total debts of less than \$2,725,625. In response to the COVID-19 pandemic, the Coronavirus Aid, Relief and Economic Security Act (“CARES”) temporarily amended SBRA to increase the debt eligibility ceiling for Subchapter V to \$7.5 million until March 27, 2022. (<https://www.jdsupra.com/legalnews/global-pandemic-subchapter-v-debt-4550283/>)

Face Masks, Quarantines, Lockdowns

As I am writing this in May 2021, Japan has declared a 3rd state of emergency for most of the country. In India, a variant of COVID is tearing through the country, infecting millions of people. Yet, the United States has just lifted its mask mandate for people that have been fully vaccinated. And, even bigger news, the European Union will reopen its borders to fully vaccinated, non-European visitors sometime in June 2021.

Other countries worldwide, and states in the U.S. have gone in and out of partial to total lockdowns. Of course the first businesses to be shut down are those that are considered non-essential, especially places where people gather in close proximity to each other, such as restaurants, theaters, theme parks, and especially bars. Many countries have imposed quarantines on people arriving into their country.

Which country, at this time, has been the most effective in controlling COVID-19, with the imposition of restrictions and lockdowns on their citizens? The winner at this time is ... New Zealand! Life within the country has gone back to pre-COVID times. They even celebrated the 2021 New Year with the normal crowds and fireworks. Does the country still have quarantines and restrictions on incoming visitors? Absolutely! But whatever Jacinda Ardern, New Zealand's 40th prime minister is doing, all I can say is “keep up the good work.”

Looking ahead, as someone who loves the hospitality industry, I am hoping the world's vaccination effort is successful and we get back to “normal.” I cannot wait to get into a plane, cruise ship, hotel, dine-in restaurant, theme park, casino, or any other place we gather in the hospitality industry!

Take care and enjoy the book!

Sandi

About the Author

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

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

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

